



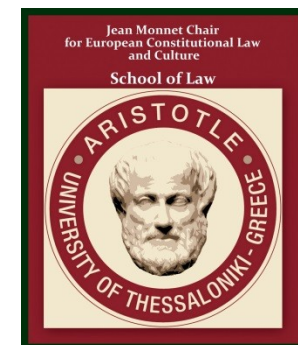
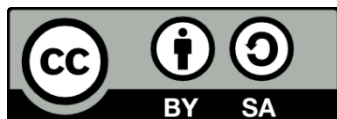
European Constitutional Law

Unit 4: The material Constitution of the EU

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Περιεχόμενα ενότητας

1. Constitutional values (substance).
2. Constitutional principles (organizational).
 1. The principle of conferred powers.
 2. The principle of subsidiarity.
 3. The principle of proportionality.
 4. Flexibility.
3. Constitutional principles (organizational and substantial).
4. Liberty, democracy and rule of law.
5. Protecting fundamental rights.



Σκοποί ενότητας

- The material constitution, emphasis on the constitutional values and principles.



Constitutional values

TITLE I: Common Provisions: Article 2 TEU:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3 (1 out of 2)

- 1. The Union's aim is to promote peace, its values and the well-being of its peoples.
- 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
- 3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

Article 3 (2 out of 2)

- 4. The Union shall establish an economic and monetary union whose currency is the euro.
- 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

The principle of conferral

- **Art 3 TEU:** The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.
- **Article 4:**
 1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.
- **Article 5:**
 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.



The principle of subsidiarity

Article 5 TEU:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

Art 5 para 3 TEU:

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.



The principle of proportionality

- Art 5 para 4 TEU:
- Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
- The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Respect for equality and national identity

- Article 4 TEU:
 2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.
 3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

The material EU Constitution

A. Constitutional principles

Article 6 TEU:

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.



The material EU Constitution: A. Constitutional principles of organizational nature 1

TITLE IV: PROVISIONS ON ENHANCED COOPERATION (Flexibility)

Article 20 TEU:

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.



The material EU Constitution: A. Constitutional principles of organizational nature 2

TITLE IV: PROVISIONS ON ENHANCED COOPERATION (Flexibility)

Article 20 TEU:

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.
4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

Bibliography

- Hermann-Josef Blanke, Stelio Mangiameli (eds), The European Union after Lisbon - Constitutional Basis, Economic Order and External Action, 2012.

Σημείωμα Αναφοράς

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