



EUROPEAN UNION LAW IN A GLOBAL CONTEXT

Text, Cases and Materials

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European Union Law in a Global Context

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Preface

The purpose of this book is to give a picture of how the European Union operates as part of the world system. Instead of just *saying* what happens, it lets you see for yourself. It does this by presenting edited versions of the cases in which major decisions were given. You can read them, and decide for yourself whether they are right. To make this easier, the background is first explained. Treaties and other sources of law are set out in panels, so you can refer to them to check the arguments.

Why study the European Union? And why in a global context? The reason is globalization. This is the process that takes away from individual States the ability to control day-to-day activities within their territories. With globalization, a country is no longer “an island unto itself”. It is part of a larger unit – the world system. For European countries, the advent of the European Union is the most striking element in this process. In the UK, the government tells us almost every day that it cannot do this or that because it is a matter for the EU. Almost all aspects of our lives now seem to depend on some directive from Brussels. Shops are forbidden to sell goods in pounds and ounces. Our passports have “European Union” on the front cover. Across the Channel, marks and francs have been displaced by the euro – something that may happen in the UK too. The result is that democratic institutions are losing power and influence, while international institutions – diplomatic, bureaucratic or judicial – are in the ascendant.

Some people say that the EU is unique – that it resembles no other entity and, in its concept and design, owes nothing to anything found anywhere else. That is not true. Although the breadth and depth of its powers put the EU in a special position, this is merely a matter of degree. The EU is simply the foremost among a whole pack of international bodies that have the power to control what countries do. The Council of Europe is another. It is the parent organization of the European Court of Human Rights, the body responsible for the government’s decision to ban corporal punishment in British schools. When bombs rained down on Belgrade in 1999, it was NATO, another international organization, that decreed that this should happen, though it is unlikely that this provided much consolation for the citizens on whom they fell. When a factory is closed in the UK because it cannot compete with foreign imports, the cause may lie with the World Trade Organization, though this body is also responsible for more affordable goods in the shops.

The international system, therefore, consists of much more than the European Union. For Europeans, however, the EU is the most important part of it. For this reason, the European Union constitutes the centrepiece of this book. However, the EU is described in the context of the international system of which it is a part. This allows us to do two things. First, we can understand it better by comparing it with other organizations of a similar kind. Secondly, we can gain greater knowledge of the international system by examining the way the EU operates in it. The materials presented in this book enable you to do both.

Many years ago, a friend of mine asked a senior colleague (who subsequently became a judge on the European Court) whether he should take up the study of European Community law. "Oh, no, you don't want to do that", he was told, "EC cases are about nothing more interesting than the price of semolina." Though exaggerated, this reply was not totally unfair. Many EC cases are about technical matters unlikely to engage the interest, let alone enthusiasm, of anyone not an expert. The aim of this book is to avoid all cases about "semolina". To achieve this, a policy of ruthless selectivity has been adopted. The chapters that follow are focused clearly on topics that can genuinely be called "fundamental". These are the topics that anyone – from inside or outside the Union – would want to know about. Can the EU pass laws? If so, what are the limits to its powers? Can international courts enforce their judgments against States? Is there legal redress for the victims of torture? Must national courts apply international treaties? What if they conflict with national law? Can the EU sign treaties with other countries? Does this stop Member States from signing treaties? How are free-trade rights balanced against other concerns? These are just some of the issues covered in the pages that follow.

I hope you find them interesting.

Trevor Hartley
4 February 2004

Acknowledgements

Chapter 2 is based on Chapter 1 of my book, *Constitutional Problems of the European Union* (Hart Publishing, Oxford and Portland, OR, 1999). I have also reused material from the following pages: pages 18–21, 27–29, 59–61, 86 and 152–153. I would like to thank Richard Hart for generously granting permission to do so.

The Comment on the *Matthews* case in Chapter 17 is taken from pages 31–35 of my article, “International Law and the Law of the European Union – A Reassessment” (2001) 72 BYIL 1. I am grateful to the editors of the *British Yearbook of International Law* for their permission to reuse it here.

Paragraphs 19–27 and 35 of the English translation of the decision of the *Bundesverfassungsgericht* in the *Internationale Handelsgesellschaft* case, which first appeared in [1974] 2 CMLR 540, are reproduced with permission from Sweet & Maxwell, publishers of the *Common Market Law Reports* (editor, Dr Neville March Hunnings).

Finally, I would like to thank the Incorporated Council of Law Reporting for England and Wales for permission to reproduce extracts from the following cases: *Thoburn v. Sunderland City Council* [2002] 3 WLR 247 (Div. Ct); *Salomon v. Commissioners of Customs and Excise* [1967] 2 QB 116 (CA); and *Attorney General for Canada v. Attorney General for Ontario* [1937] AC 326 (PC).

How to use this book

This book has been carefully structured for ease of use.

How to find a case

The cases are listed alphabetically by name in the Table of Cases. Cases decided by the European Court are, in addition, listed by case number. Case numbers are assigned to each case at the beginning of the proceedings. They are normally in the form “Case 79/87”, in which the two digits after the oblique stroke (slash) indicate the year. Cases decided under certain special provisions – for example, Article 300(6) [228(6)] EC – are called “Opinions” and are separately numbered. We list all cases/opinions for the same year together. Within each year, they are listed according to the number before the oblique stroke, “Opinions” being listed before “Cases”. The Table of Cases gives the page number where the case is set out.

How to find a provision in a treaty, convention, statute or other instrument

All major legislative provisions discussed in the text are set out in panels, either on the page in question, on the facing page or on the next available page. These panels are numbered consecutively. The digits before the dot indicate the chapter. Thus Panel 12.2 is the second panel in Chapter 12. There is a Table of Panels, which lists all the panels in order and gives the page references. There is also a Table of Treaties and Other Instruments, which lists all provisions in treaties, etc. that are set out in this book. The list is alphabetical by instrument. Within each instrument, the individual provisions are listed by number. Page references are given. Thus if you know the number of the panel you want, you look in the Table of Panels. This is useful because references in the text give the panel number. If you know the instrument you want, you look in the Table of Treaties and Other Instruments.

The Treaty of Amsterdam renumbered the Articles in the EC Treaty and the Treaty on European Union (Maastricht Agreement). Although this made the treaties look neater, it created problems for those using them. Judgments of

the European Court given prior to the date on which the Treaty of Amsterdam took effect (1 May 1999) use the old numbering. To avoid confusion, references in this book to Articles in these two treaties will be to the new numbering with the old numbering in square brackets. Thus “Article 10 [5] EC” means the Article originally numbered 5 and now numbered 10. The text of judgments given before 1 May 1999 has been altered to conform to this system. If no bracketed Article is given for the EC Treaty or the Treaty on European Union, this means that the provision is of recent origin and there is no equivalent under the old system. Likewise, if only a bracketed Article is cited, this means that the provision in question has now been deleted or substantially amended.

How to find where a topic is discussed

There is an Index at the end of the book, which you can use to find where topics are discussed.

Further developments

Developments since the publication of this book are covered on its website, www.cambridge.org/Hartley

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