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# THE FOUNDATIONS OF EUROPEAN UNION LAW



TC HARTLEY

SEVENTH EDITION



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# THE FOUNDATIONS OF EUROPEAN UNION LAW

AN INTRODUCTION TO THE  
CONSTITUTIONAL AND  
ADMINISTRATIVE LAW OF THE  
EUROPEAN UNION

by

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## PREFACE

In preparing this new edition, I have been conscious of the original aim of the book, which was to focus on the basic principles that constitute the foundations of the EU legal system. The book is intended as an introduction to EU law for those with no previous knowledge of the subject, and I believe that, for such persons, what is needed first and foremost is an appreciation of the conceptual structure of EU law. This requires an understanding of basic principles and the relationship between them, as well as an understanding of the relationship between the EU system and other legal systems – in particular, national constitutional law and international law. Once this framework has been fully grasped, more detailed rules can be slotted into it, and their relationship with other rules appreciated. With this in mind, I have tried to clear away some of the conceptual clutter that has built up in the book over the years and threatens to obscure the underlying structure.

I start with the institutions: the first Part deals with these and is more descriptive than analytical. The second and third Parts cover the EU legal system and the major constitutional issues: they are analytical, though not excessively technical. The final Part takes us into the realm of administrative law and remedies: it is more legal in character and explains some of the things that lawyers will need to know if they are contemplating litigation in the European Court or the General Court. My hope is that each Part will prepare the ground for the next so that a balanced understanding of the whole subject will be possible.

This new edition, which appears only three years after the last, was made necessary by the coming into force (a year behind schedule) of the Treaty of Lisbon, an instrument intended, to some extent, to fill the gap left by the demise of the Constitution for Europe.

The Treaty of Lisbon, in force from 1 December 2009, makes significant changes to the institutional structure of the European Union and the way it operates; it introduces new legal principles, and makes many terminological changes.<sup>1</sup> This has required considerable rewriting of the earlier chapters; the title of the book has been changed to reflect the new terminology.<sup>2</sup>

Certain passages in Chapter 3 have been reproduced from my article, 'International Law and the Law of the European Union – A Reassessment' [2002] BYIL 1. I am grateful to Professor James Crawford, the editor of the Yearbook, for granting his permission. Most of the Introduction to Part III is derived from pp. 237–44 of my article, 'The Constitutional Foundations of the European Union' (2001) 117 LQR 225. I would like to thank Professor Francis Reynolds, the editor of the Quarterly, for his permission to re-use it. The section on Denmark in Chapter 8 is taken from pp. 157–9 of my book,

<sup>1</sup> The latter are outlined in *User Information for this Book* (below).

<sup>2</sup> It was previously called *The Foundations of European Community Law*.

*Constitutional Problems of the European Union* (Hart Publishing, Oxford and Portland, Oregon, 1999). I would like to thank Richard Hart for his permission to do so.

I have received a great deal of help from my wife. To her, as always, I owe my greatest debt.

This edition attempts to state the law as it existed on 1 January 2010.

TCH

1 January 2010

# USER INFORMATION FOR THIS BOOK

## CHANGES IN NOMENCLATURE

One of the characteristic features of the European enterprise is the constant tendency to change the names of things.<sup>3</sup> What is now called the 'European Union' (EU) was originally called the 'European Economic Community' (EEC). This was renamed the 'European Community' (EC) by the Treaty on European Union 1992 (in force in 1993), a treaty which created another entity, the European Union.<sup>4</sup> The Treaty of Lisbon later abolished the European Community and merged its activities into the European Union. So 'European Union' is the correct term today.<sup>5</sup> For ease of understanding, I have adopted the current terminology throughout the book (even when discussing past events) except where it would be clearly inappropriate.<sup>6</sup>

## RENUMBERING OF TREATY ARTICLES

The Articles in the main EU Treaties have been renumbered twice, first by the Treaty of Amsterdam 1997 (in force in 1999) and then by the Treaty of Lisbon (in force from 1 December 2009). The Treaty establishing the European Community is now renamed the Treaty on the Functioning of the European Union (TFEU). The new numbering has been used throughout the book (except where it would be misleading); nevertheless, where it was thought useful, the older numbers are shown in square brackets after the current number. For example, a reference to 'Article 267 TFEU [234/177 EC]' is a reference to the provision originally known as 'Article 177 EEC', changed to 'Article 177 EC' as a result of the Treaty on European Union, renumbered 'Article 234 EC' by the Treaty of Amsterdam and now called 'Article 267 TFEU'.<sup>7</sup>

## CITATION AND REPORTING OF EUROPEAN COURT CASES

At the beginning of the proceedings, every case is given a number by the Registrar of the European Court or the Registrar of the General Court. Since the establishment of the General Court (formerly the Court of First Instance), cases in the European Court have had the prefix 'C', e.g., 'Case C-9/94'. Cases in the General Court have the prefix 'T' (from the French, *Tribunal*), e.g., 'Case T-9/94'. The figures after the oblique stroke indicate the year when the proceedings began. When a case goes on appeal from the General

<sup>3</sup> Perhaps this gives the appearance of greater progress than has in fact occurred.

<sup>4</sup> The European Union included the European Community, but covered other things as well.

<sup>5</sup> There have been further changes, also adopted throughout the book: 'common market' is replaced by 'internal market'; 'Court of Justice of the European Communities' becomes 'Court of Justice of the European Union', and the Court of First Instance is now to be known as the 'General Court'.

<sup>6</sup> Quotations have not of course been changed.

<sup>7</sup> In some cases, there may have been changes in the text of the provision.

Court to the European Court, it is given a new case number by the Registrar of the European Court; thus Case T-120/89 might become Case C-220/91 P, the different figures after the oblique stroke indicating the difference between the date when the proceedings commenced in the General Court and when the appeal was lodged. 'Opinions' and 'Rulings' of the Court (as distinct from 'Cases') are numbered separately, e.g., Opinion 9/94; Opinions of an Advocate General have the number of the case in which they were given.

### CITATIONS IN FOOTNOTES IN THIS BOOK

In footnotes, decisions of the European Court are cited to the European Court Reports (ECR). Where a case is not yet reported in the ECR, the date alone is normally given. Since cases are published in chronological order, this will enable the reader to find them without difficulty when the relevant volume is published.

### CITATIONS IN THE TABLE OF CASES

Judgments of the European Court are listed in the Table of Cases for this book in both numerical and alphabetical order. Though the latter may be more convenient to use, the former is more accurate. Cases are cited under their abbreviated name rather than their full name. The abbreviations used are normally those found in the ECR, but since cases are sometimes known under different names, the only sure way of finding a case is to search for it by number.

In the Table of Cases (numerical order), cases are listed first by year (the number after the oblique stroke) and then by the number before it; for each year, 'Opinions' and 'Rulings' are listed before 'Cases', and cases with a C-prefix come before those with a T-prefix.

### INTERNET

Judgments of the European Court (and Opinions of Advocates General) may be obtained on the Court's website, <http://curia.europa.eu/en/>, though this does not always produce satisfactory results: all too often the case is listed as unavailable, even though it can easily be obtained on other databases, such as Westlaw.

### BIBLIOGRAPHY AND FURTHER READING

There is a general bibliography provided at the end of the book. Bibliographic material that relates specifically to the subject matter of a chapter is given in the 'Further Reading' after that chapter. The items are listed in date order: readers who wish to find the latest books and articles should look towards the end of the list.

### WEBSITE FOR THIS BOOK

The website for this book is <http://www.oxfordtextbooks.co.uk/orc/hartley7e>. Updates covering new developments will be posted periodically.

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