SYSTEM OF EUROPEAN UNION LAW AND THE EURATOM TREATY

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1 Introduction

The article deals with the system of EU law within the European Atomic Energy Community (EURATOM). The Lisbon Treaty which became effective as from 1 December 2009 also changed the system of law applicable within the European Atomic Energy Community. The system of EURATOM law is very similar to EU law. Both the sources of law as well as the legislative procedure are regulated by the Treaty on the Functioning of the European Union. The Treaty Establishing the European Atomic Energy Community has a position of special treaty regulating special issues. On the other hand, the Treaty on the Functioning of the European Union has a character of a general treaty and regulates thus the general issues, including the sources of law and the legislation process. This article provides an overview of the system of EU law that is also applicable to the European Atomic Energy Community.

2 Treaties

Treaties are the primary source of EU law. Currently, the principal sources of law are the Treaty on EU and the Treaty on the Functioning of the EU, including their amendments. Originally, there were three treaties in 1950’s:

- Treaty establishing the European Coal and Steel Community;

1 Príspevok je výsledkom riešenia grantového projektu VEGA č. 1/0256/12 „Občianskoprávny režim zodpovednosti za jadrové škody – perspektívy a možnosti jeho ďalšieho vývoja na úrovni slovenského, medzinárodného a európskeho práva“. 
• Treaty on Establishing the European Economic Community;
• Treaty establishing the European Atomic Community (EURATOM).

The treaties which constitute primary source of law have been amended and supplemented by a number of amendments. These include not only the amendment of the treaties, but also accession treaties. These treaties are interpreted by the EU courts by using the specific interpretation method, e.g. teleological method reflecting rather the spirit of the provision than its literal wording.

The provisions of the treaties are applicable in the territories of the member states and are directly applicable in their territories. This means that they are binding both for the member states as well as for the individuals, i.e. natural persons and legal entities in member states. The treaties have a character of self-executing law. In international public law, the self-executing treaty becomes legally valid without a further action of a member state. This approach was also confirmed by the van Gend en Loos case. The provisions of the treaties are very often very broad and vague; many terms used in the treaties are not explained. The treaties, for example, ensure the free movement of goods. The term goods is however not defined in the treaties, i.e. this term was interpreted by the Court of Justice of the EU.

There is therefore broad space for interpretation of the treaties’ provisions by the Court of Justice of the EU. Please note, that the Treaty of Lisbon also recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU of 7 December 2000, which shall have the same legal value as the treaties.

During the period of the existence of the European Communities and the EU, several protocols and annexes were added to the treaties. These protocols and annexes shall form an integral part of the treaties, i.e. they are of the same legal value. The purpose of the protocol and annexes is to interpret treaty articles and to provide more details concerning a specific issue. There are also declarations attached to the treaties. Unlike the protocols and annexes, the legal status of declarations is not explicitly regulated by the treaties. These declarations usually make a unilateral declaration on a particular matter. Declarations need to be taken into account as they may influence application of the treaty provisions.

3 General Principles of EU law

Article 6(3) TEU stipulates that the 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 EU’s law. There are number of principles that are classified as principles of natural justice and are associated with administrative law principles. These principles may have different form in each member state, but their common feature is that all member states accept them and respect their existence and apply them. General Principles of EU law are not codified and have not a prescribed form as other formal laws. The Court of Justice of the EU recognized several General Principles of EU law, e.g. legal certainty, non-retroactivity, legitimate expectation, unjustified enrichment, rule of law, *ne bis in idem*, prohibition of discrimination, etc. These are applicable in the whole EU legal order, including the European Atomic Energy Community.

### 4 Secondary legislation

Secondary legislation is a legislation that has legal bases in the treaties and is created by the EU institutions in a legislation process according to the treaties. Secondary legislation must be in accordance with the treaties. If the secondary legislation is adopted by the EU institutions, it becomes legally valid and it becomes a source of law that is binding also for the member states. Article 288 TFEU contains a list of various forms of secondary legislation that may be adopted by the EU institutions. These forms of secondary legislation have the EU institutions to exercise their competences. It is important to realize that according to the Article 106a\(^2\) of the Treaty Establishing the European Atomic Energy Community Articles 285 to 304 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty. The European Atomic Energy Community thus has the same sources of secondary legislation as the European Union.

The Lisbon Treaty brings differentiation of the secondary legislation into two categories. The base for differentiation represents the legal procedure.

\(^2\) The text of Article 106a of the Treaty Establishing the European Atomic Energy: 1. Article 7, Articles 13 to 19, Article 48(2) to (5), and Articles 49 and 50 of the Treaty on European Union, and Article 15, Articles 223 to 236, Articles 237 to 244, Article 245, Articles 246 to 270, Article 272, 273 and 274, Articles 277 to 281, Articles 285 to 304, Articles 310 to 320, Articles 322 to 325 and Articles 336, 342 and 344 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty.
**legislative acts**
Legislative acts consist of legal acts adopted by legislative procedure (both ordinary legal procedure as well as special legislative procedure).

**non-legislative acts**
Non-legislative acts are legal acts of general application. A legislative act may delegate to the European Commission the power to adopt non-legislative acts to supplement or amend certain non-essential elements of legislative act. The legislative acts explicitly define the objectives, content, scope and duration of the delegation of power. The essential elements of legal regulation of a specific area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power, i.e. only non-essential elements of legislative acts can be supplemented or amended. The rules give the European Parliament and the Council equal powers to block delegated acts. The delegated legal acts shall be titled by an adjective “delegated” [Article 290(3) TFEU].

The Lisbon Treaty brings new rules on the Commission’s delegated and implementing powers (this system is called as “Comitology”). The comitology procedures were changed substantially. The comitology procedures govern a wide range of day to day decisions. These concern the quasi-legislative measures which are referred as “delegated acts” and the implementing measures which are referred as “implementing acts”.

Where uniform conditions for implementing legally binding EU acts are needed, those acts shall confer implementing powers on the European Commission, or on the Council in specified cases. The word “implementing” shall be inserted in the title of implementing acts [Article 291(4) TFEU].


The examination procedure applies to measures of general scope and specific measures that have an important impact (these are listed in the —Article 2(b) of the regulation and include programmes with substantial implications; the common agricultural and common fisheries policies; the environment, security and safety, or protection of the health or safety, of hu-
mans, animals or plants, the common commercial policy; taxation). It aims to ensure that Commission implementing acts are supported by a qualified majority of the committee. If the committee opposes the draft measures by qualified majority, the Commission must not adopt the draft implementing act. Where an implementing act is deemed to be necessary, the Commission may either submit an amended version of the draft implementing act to the same committee within two months, or submit the draft implementing act within one month to the appeal committee for further deliberation. If the committee does not deliver an opinion, the Commission may adopt the draft act under certain conditions. Specific rules apply for trade policy.

The *advisory procedure* applies as a general rule, for the adoption of implementing acts not falling within the ambit of the examination procedure. The Commission must take the utmost account of the committee’s opinions, which are adopted by a simple majority.

In both procedures, the European Parliament and the Council have a right of scrutiny. Where the basic act has been adopted under the co-decision procedure, the European Parliament or the Council may at any time inform the Commission that it considers the proposed implementing act to exceed the powers conferred on it. In such a case, the Commission must review the draft act and decide whether to maintain, amend or withdraw it.

### 4.1 Regulations

Regulations are defined in Article 288(2) TFEU: A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states.

Regulations are directly applicable and legally binding for member states, EU, national institutions and individuals. Regulations have the same form and content in all member states as they are generally binding, i.e. they are self-executing. Regulations become legally binding in the member states without any need of their implementation in national legal orders. The member states cannot even make the regulation subject to any kind of implementing measures. There may however be situations, where the member states are required to adopt implementing measures to ensure the effective application of a regulation.
4.2 Directives

Article 288(3) TFEU defines directives: A directive shall be binding, as to the result to be achieved, upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods.

Directives are specific legal instruments of EU law. Directives are binding on those to whom they are addressed. They are addressed either to all member states or to some member states. Directives set out the aims that must be achieved by the member states and the member states may opt the form and method of their implementation. Directives thus respect the legal characteristics of each member states legal order as they provide a wide range of discretion to do this.

Directives become effective on the day which is specified in a concrete directive or if such a date is not specified, on the 20th day after they are published in the Official Journal of the EU. Member states are given a period for implementation of a directive. This period varies and depends on the urgency or complexity of the subject matter of the directive. Directives are not directly applicable as they are binding on the member states. However, if certain criteria are met, directives may become directly effective (see the chapter 4.3).

4.3 Decisions

Article 288(4) TFEU defines decisions: A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Decisions are directly applicable sources of law that are addressed to a concrete addressee: either a member state or an individual. They are not generally binding, but are binding on its addressees.

4.4 Recommendations and opinions

Recommendations and opinions are regulated in Article 288(5) TFEU. Recommendations and opinions are not legally binding. The case Grimaldi confirmed that despite the recommendations are not legally binding national courts shall be obliged to take them into consideration when interpreting national law that is based on EU law.

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4.5 International agreements
The EU may conclude international agreements with third countries or international organisations where the treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the EU’s policies, one of the objectives referred to in the treaties, or is provided for in a legally binding EU act or is likely to affect common rules or alter their scope. The EU may conclude international agreements as it has a legal personality, i.e. it is may enter into formally binding international agreements. International agreements form a source of EU law and are binding upon the institutions of the EU and on its member states.

There are different types of international agreements the EU may conclude (i.e. association agreements concluded with one or more third countries or international organisations or agreements concluded in the area of exclusive EU competences such as the commercial and trade policy). An international agreement between the EU and third countries or international organization is concluded in accordance with Article 218 TFEU. The Council adopts a decision concluding the agreement, in specific cases after obtaining the consent of the European Parliament. A member state, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the treaties are revised.

4.6 Soft law instruments
Soft law rules are notices, guidelines or rules of conduct which are not legally binding and enforceable before courts. Failure to comply with soft law rules does not lead to a sanction imposed on individuals. So far, numbers of soft law instruments have been issued by the EU institutions. The role of soft law rules is to provide aid with the interpretation of laws or provide aid with application of laws. The soft law instruments very often reflect the settled case law of EU courts and settled praxis of EU institutions. Despite they are not legally binding, their importance is significant, as they help to comply with binding laws.

4.7 Case law of the Court of Justice of the EU
The role of EU courts in interpreting the law is very often subject to many discussions. The Court of Justice of the EU is the institution that may legally interpret EU rules. Very often, the treaties or secondary legislation provide only
a very framework regulation and there is a big space for activity of the EU court to interpret the law. However, the case-law of the EU courts is not a formal source of law (i.e. it is not formally binding on third parties), despite its significance for interpretation of law is important. The Court of Justice of the EU itself points out to its previous decisions in order it highlights the importance of its decisions for interpretation of law. It was the Court of Justice of the EU that established the general principles of EU law and stimulated integration, often more than the member states expected.

5 Legislative process

Legislative process is a process of adoption of generally binding acts. The process of secondary legislation creation is regulated by the TFEU. Before effectiveness of the Lisbon Treaty, there were more types of legislative processes used for adoption of EU secondary legislation (e.g. co-decision procedure, cooperation procedure, assent procedure, consultation procedure). The Lisbon Treaty strengthened the role of the European Parliament in the legislative process and the previous co-decision procedure became ordinary legislative procedure. The Lisbon Treaty simplified the EU’s legislative procedures.

5.1 Ordinary legislative procedure

Ordinary legislative procedure is the former co-decision procedure and is regulated in Article 294 TFEU. The ordinary legislative procedure is, as the name suggests, the main legislative procedure of the EU’s decision-making system. The extension of co-decision procedure also extended the qualified majority voting.

The name ordinary legislative procedure was introduced by the Lisbon Treaty. The Lisbon Treaty extended the application of the former co-decision legislative procedure and thus the powers of the European Parliament to decide on adoption of EU legislation. The ordinary legislative procedure is based on the principle of parity and means that neither institution (European Parliament or Council) may adopt legislation without the other’s assent.

The co-decision procedure was established by the Maastricht Treaty, and extended and adapted by the Amsterdam Treaty and the Treaty of Nice. The ordinary legislative procedure covers now more than 80 areas regulated by the TFEU and applies to the majority of legislation governing most of the areas of policy where the EU can act (e.g. the internal market, free movement of workers, agriculture, etc.).
5.1.1 The course of the ordinary legislative procedure

Proposal for legislative act

The European Parliament may also adopt a legislative initiative and, in the case of the Area of Freedom, Security and Justice, the proposal may originate either from the Commission or from a quarter of the member states. The Court of Justice or the European Investment Bank may also present a request for adoption of a legislative act or the European Central Bank may propose a recommendation for a legislative act.

Usually, the proposal is presented by the European Commission to the European Parliament and the Council. The legislative proposal is also made available to national parliaments in member states. National parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity within an eight week period.

First reading

The European Parliament adopts its position at first reading on the proposal of a legislative act. In the European Parliament the rapporteur prepares a draft report which is then discussed within the political groups and amended in the parliamentary committees. The European Parliament adopts its position in a plenary meeting by a simple majority. The position may contain amendments to the original legislative proposal.

If the position of the European Parliament does not contain any amendments and the Council accepts the original proposal, the Council adopts the proposal by a qualified majority. The proposal is signed by the President of the European Parliament and President of the Council and is published in the Official Journal.

If the European Parliament adopts its position with amendments and the Council approves all the amendments and does not change the original proposal otherwise, the proposal can be adopted by the Council by qualified majority. The proposal is signed and published afterwards.

If the Council does not approve the proposed amendments or rejects them, it adopts its position by a qualified majority. The position of the Council is forwarded to the European Parliament for a second reading. The position of the Council must be reasoned. The European Commission informs the European Parliament of its opinion.
Second reading

At second reading, the European Parliament examines the position of the Council from the first reading. The European Parliament has a three month (extensively four month) period and may:

- approve the Council’s position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;
- reject, by a majority of its component members, the Council’s position at first reading. The proposed act shall be deemed not to have been adopted;
- propose, by a majority of its component members, amendments to the Council’s position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

The Council has three months (extensible four months) of receiving the European Parliament’s amendments, to act by a qualified majority:

- approve all the amendments of the European Parliament. The proposal is deemed to be adopted;
- does not approve all the amendments of the European Parliament. The President of the Council informs the European Parliament thereof and subsequently the Conciliation procedure is launched within a 6 week deadline.

The Council shall act unanimously on the amendments on which the European Commission has delivered a negative opinion.

Conciliation and third reading

Proposals of legal acts that were not adopted in the first two readings are subject to conciliation procedure. The Conciliation Committee, which shall be composed of the members of the Council or their representatives (i.e. 27 member states) and an equal number of members representing the European Parliament (i.e. 27 members), shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

The Conciliation Committee considers the Council position and Parliament’s amendments from the second reading. It has six weeks (extensible to
eight weeks) to find a compromise and draw up a joint text. There are the following possibilities for adoption of the proposal:

- The Conciliation Committee does not approve the joint text. The proposed act shall be deemed not to have been adopted.
- The Conciliation Committee approves a joint text. This text is submitted to the Council and the European Parliament for approval. The Council and the European Parliament have six weeks (extensible to eight weeks) to approve the joint text. The Council takes a decision by qualified majority and the European Parliament by a majority of the votes cast. If they fail to do so, the proposed act shall be deemed not to have been adopted. After both institutions approve the text, it is signed by the President of the European Parliament and by the President of the Council and it is published.

5.2 Special legislative procedure

The treaties specify in certain cases special legislative procedures [Article 289(2) TFEU]. The legislative acts may be adopted by the Council alone or, more rarely, by the European Parliament alone, rather than by the two institutions jointly. The outcome will be legislative acts of the Council adopted after consulting the European Parliament, and legislative acts of the European Parliament adopted after consulting the Council, as the case may be. The treaties do not specify the details of this legislative procedure as they do for the ordinary legislative procedure. It is therefore necessary in each individual case to refer to the legal bases which provides for these procedures. The special legislative procedures relate to a certain number of other legal bases and cover the equivalent of the former consultation, cooperation and assent procedures. They apply e.g. in the areas of justice and home affairs (e.g. measures concerning passport, identity cards and residence permits, judicial cooperation in civil matters concerning measures relating to family cross-border implications), budget (e.g. joint decision of the European Parliament and the Council), specific measures of certain policies (e.g. social security and social protection measures).

Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them and shall be published.

5.2.1 Consultation procedure

The consultation procedure is a special legislative procedure, whereby the European Parliament is asked for its opinion on proposed legislation before the Council adopts it. The consultation procedure is used only in a limited number
of cases, such as internal market exemptions and competition law. As a non-legislative procedure, it is used in Common Foreign and Security Policy.

In cases where the consultation applies, the Council consults the European Parliament before taking a decision on the Commission's proposal and makes sure that its opinion is taken into account. The Council is not legally obliged to take account of European Parliament's opinion but in line with the case-law of the Court of Justice, it must not take a decision without having received it.

5.2.2 Budget Procedure

The budget of the EU is voted for one year. The budget is drawn up jointly by the European Parliament and the Council. The European Parliament lays down budget guidelines and draws up the budget after dialogue with the other institutions. It monitors implementation of the budget and grants an annual discharge to the Commission. The European Parliament has the final word in the budget procedure according to Article 314 TFEU. The procedure of budget adoption consists of four phases:

1. Establishing the draft budget by the European Commission
   The European Commission established the annual draft budget reflecting the estimates of all EU institutions. The Commission submits the draft to the European Parliament and the Council.

2. Establishing the position of the Council
   The Council adopts its position on the draft budget and forwards its reasoned position to the European Parliament.

3. Establishing the position of the European Parliament
   The European Parliament has 42 days and may approve the position of the Council, or, by a majority of its component members, to amend it.

4. Conciliation and adoption of the budget
   If the European Parliament has adopted any amendments, the amended text is forwarded to the Council. A Conciliation Committee is established immediately. It is composed of members of the Council or their representatives and an equal number of members representing the European Parliament. The Conciliation Committee is not created if the Council informs the European Parliament within ten days that it has approved all its amendments. The Conciliation Committee has 21 days to reach an agreement on a joint text. If the Conciliation Committee agrees on a joint text, that text is submitted to the European Parliament and the Council for approval within 14 days. There are two further possibilities:
   • joint text is approved, i.e. the procedure is completed and the budget is definitively adopted;
in case of failure of the conciliation procedure or if the joint text is rejected by the European Parliament, the Commission submits a new draft budget.

If the joint text is rejected by the Council, whilst the European Parliament approves it, the European Parliament may decide to confirm all or some of the amendments it adopted. Where an amendment is not confirmed, the position agreed in the Conciliation Committee is retained, and the budget is deemed to be adopted on that basis.

5.3 Legislative initiative

5.3.1 Legislative initiative of the European Commission
The European Commission has a right of legislative initiative, i.e. the legislative acts may only be adopted on the basis of a proposal of the European Commission, except the treaties provide otherwise. Other acts (i.e. other than legislative acts) shall be adopted on the basis of a European Commission proposal where the treaties so provide.

5.3.2 Legislative initiative of the European Parliament
Article 225 TFEU stipulates that the European Parliament, acting by a majority of its members, may request the European Commission to submit any appropriate legislative proposal on matters which it considers that an EU act is required for the purpose of implementing the treaties. The European Parliament may also set a deadline for the submission of such a proposal. The European Commission may agree or refuse to submit the proposal requested. If the European Commission does not submit a proposal, it shall inform the European Parliament of the reason.

A proposal for an EU act on the basis of the right of initiative granted to the European Parliament under Article 225 TFEU may also be proposed by an individual member of the European Parliament. Such a proposal shall be submitted to the President of the European Parliament who refers it to the committee responsible for consideration. It may decide to submit it to the plenary.

5.3.3 Legislative initiative of a group of member states and other institutions
The Article 289(4) TFEU stipulates that in specific cases provided for by the treaties, legislative acts may be adopted on the initiative of a group of member states or of the European Parliament, on a recommendation from the European
Central Bank or at the request of the Court of Justice or the European Investment Bank.

5.4 Publication of EU act – Official Journal of the European Union

Official Journal of the European Union is the gazette of record for the EU and it is also the authoritative source of EU law. It is a periodical published every working day in all official languages of the EU. The Official Journal of the EU consists of the following series:

- **L (legislation) for legislation**
  The L series contains EU legislation, including regulations, directives, decisions, recommendations or opinions.

- **C (communication) for information and notices**
  The C series contains information and notices, including summaries of judgments of the Court of Justice and the Court of First Instance, minutes of parliamentary meetings, reports of the Court of Auditors, parliamentary written questions and answers from the Council or Commission, statements from the European Economic and Social Committee and the Committee of the Regions, etc.

- **S (supplement) for public procurement**
  The S series contains invitations to tender in the following sectors: public contracts for works, supplies and services from all EU member states, utilities contracts (e.g. transport or energy), public contracts from EU institutions, external aid and European Development Fund contracts, European Investment Bank, European Central Bank and European Bank for Reconstruction and Development financed projects, European Economic Area contracts or public contracts for air services, etc.

According to the Article 297 TFEU, the legislative acts shall be published in the Official Journal of the European Union.

Non-legislative acts shall be published in the Official Journal of the European Union. This applies to regulations and directives which are addressed to all member states, as well as decisions which do not specify to whom they are addressed.

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4 Official languages of the EU are: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish.
**Effectiveness of the published acts**

The legislative or non-legislative acts shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

**Acts that are not published in the Official Journal of the European Union**

Other directives, and decisions which specify to whom they are addressed (i.e. those not published in the Official Journal of the European Union) shall be notified to those to whom they are addressed and shall take effect upon such notification.

Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than states shall be enforceable. Enforcement shall be governed by the rules of civil procedure in force in the state in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each member state shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union. After completion of these formalities, the enforcement is regulated by national law and directly before the competent authority. Enforcement may be suspended only by a decision of the Court. National courts only have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

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**6 Zhrnutie**

značnej miery totožný tak pre Európsku úniu, ako aj pre Európske spoločenstvo pre atómovú energiu.

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