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'The European Union (EU) is a family of democratic European countries created on the basis of committing to working together for peace and prosperity'[1]. The present EU we have come to know and understand was established out of The European Economic Community (EEC) which was founded in 1957 following the signing of the Treaty of Rome by the six original Member States. In 1967 the EEC joined together with the European Atomic Energy Community (Euratom) which was also established in 1957 and the European Coal and Steel Community which was established in 1951 to form the European Communities, or EC. The creation of these treaties represented the culmination of a movement towards international cooperation by member states which was an unprecedented achievement in the twentieth century.

The EC later transpired into the European Union (EU) by the establishment and ratification of the Treaty on European Union at Maastricht on 7 February 1992. The treaty came in to existence on the 1st of November 1993 to create the European Union out of the European Community. The treaty also paved the way for European Economic Community to be renamed the European Community and the EC's Council of Ministers was renamed the Council of Ministers of the European Union.

In the aftermath of the establishment of the EU there has been some deep transformation in the way in which the European Union functions. A good example is the emergence of the democratically elected European Parliament as a key actor in European policy-making.

'The EU has moved beyond the realm of economic regulation into areas such as environmental and consumer protection, and health and safety issues. Although this expansion process was initially founded on a rather tenuous legal base, it has been ratified by successive Treaty changes: the Single European Act, and the Maastricht and Amsterdam Treaties consolidated European intervention in the area of social or risk regulation'[2].

The Treaty of European Union (TEU), signed in Maastricht,[3] led towards the development of a single currency and further institutional reforms. The TEU created a European Union with three pillars: European Community, Common Foreign and Security Policy and Home Affairs Policy[4]. It also has provisions on three matters of constitutional importance: human rights, subsidiarity and citizenship.

The Maastricht Treaty saw the freeing up of the market as an extension of integration. The social dimension of the project was the agreement on monetary union. All of the MS, with the exception of the UK, agreed to implement the 1989 European Social Charter and, UK and Denmark also opted-out from the third stage of EMU.

This flexible, open-ended and paradoxical nature of EU law allows Member States (MS) to choose to adhere to EU legislation yet still be able to

[1] http://europa.eu.int/index_en.htm
[2] http://www.delnam.cec.eu.int/EUInstitutions/Institutions/main.htm
[3] 1993
[4] Curtin, D. The Constitutional Structure of the Union: A Europe of Bits and Pieces', Common Market Law Review

define their own presence within the EU. These attributes could be said to encompass the essence of what defines the idea behind the EU itself. The paradoxical nature of the EU is emphasised by its conflicting goals: the need for 'integration yet pluralism, more and, at the same time, less centralisation, external homogeneity and internal heterogeneity, supremacy of EU law and principle of subsidiarity, economic development and social equality'[5].

There are many EU institutions involved in the European law making process which includes executive, legislative and judicial institutions. 'In the EC's early years, the Commission proposed, the Parliament advised, the Council decided and the Court interpreted Community legislation, but the Parliament and the Court have gradually become more powerful'[6].

This unique structure of the EU, with its ability to enact and implement laws binding throughout EU territory (the 25 Member States), differentiates the European Union from any other international organization. Legislation takes the form primarily of regulations and directives. 'Regulations have general application: they are binding in their entirety and directly applicable in all Member States. Directives, on the other hand, are binding only on the Member States to which they are addressed. The form and method for implementing them is left to the Member States, who have a given time in which to do so'[7].

EU regulations are compulsory in their entirety and directly applicable in all Member States[8]. Regulations take effect in the UK without the need for further implementation. An example is: *Re Macrogas: Commission v UK*[9] where the Government decided not to implement a Regulation but to leave it to individuals. The ECJ held that Member States had no discretion in implementing regulations'[10].

Directives are seen as more flexible in that unlike regulations they are not directly applicable because it is left to the individual member state to implement them[11]. In the UK this may be done by Order in Council, statutory instrument, or by Act of Parliament.

For example, the Consumer Protection Act[12] and the Unfair Terms in Consumer Contract Regulations[13], both implemented EU directives in the UK. In a number of cases the ECJ has held that a Directive can have direct effect. In Marshall v Southampton Area Health Authority[14] where a woman was required to retire at 62 when men doing the same job did not have to retire until 65. This was held not be discriminatory under English law but it was under the Equal Treatment Directive.

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[5] Craig, P & De Burca, G. EU Law. Text, cases and materials. 3rd Edition. 2003
[6] Steiner, J & Woods, L. EC Law, 8th Edition 2003
[7] http://www.delnam.cec.eu.int/EUInstitutions/Institutions/main.htm
[8] (Art. 249)
[9] 1979 ECJ (Case 128/78).
[10] Medhurst, D. A Brief & Practical Guide to EU Law, 3rd Edition. 2001
[11] (Art. 249)
[12] 1987
[13] 1999
[14] 1986 ECR (Case 152/84)

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Even though the Directive had not been implemented, the ECJ held it could be relied upon because the employers were "an arm of the state". However, in *Duke v GEC Reliance Ltd (1988)*[15] – the facts were similar to [illegible] but Mrs Duke was unable to rely on the Directive because her employer was a private company. In such circumstances the failure of the member state to implement a Directive may give rise in EC law to an action for damages.

In a series of important rulings the ECJ has developed the doctrine of supremacy of EU over national law. In *Van Gend en Loos (1963)*[16], the ECJ stated that

"the Community constitutes a new legal order in international law, for whose benefit the States have limited their sovereign rights, albeit in limited fields"

However, it was the case of *Costa v ENEL (1964)*[17], which introduced the doctrine of supremacy. The ECJ noted that the EC Treaty indicated that there had been a transfer of powers to the Community institutions and that Member States were committed to observe EC law. This was a permanent limitation of their sovereign rights, against which subsequent laws incompatible with the EC could not prevail.

The ECJ emphasised that supremacy of EU law affects both prior and future legislation, in *Simmenthal (1978)*[18], where there was a conflict between an EC regulation and Italian laws, some of which were passed after the regulation. The ECJ held that national courts must set aside any national law which conflicted with EC law, whether prior or subsequent to EC law.

The obligation to ignore conflicting national law was demonstrated more pointedly in *Factortame (1990)*.[19] 'A group of Spanish fishermen brought a claim before the English courts for an interim injunction to prevent the application of certain sections of the Merchant Shipping Act[20], which denied them the right to register their boats in the UK, and which the claimants alleged were in breach of EC law'[21]. The ECJ held that an injunction should be granted to give effect to rights under EC law.

UK courts have treated the The European Communities Act[22] as a permission by Parliament to apply Community law. Under the doctrine of Parliamentary Supremacy, any statute passed after the European Communities Act[23] will prevail over it.

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[15] Duke v GEC Reliance Ltd 1988
[16] Van Gend en Loos [1963] ECR 1
[17] Costa v ENEL [1964] ECR 585
[18] Simmenthal [1978] ECR 629
[19] Factortame [1990] ECR I-2433
[20] 1988
[21] Craig, P & De Burca, G. EU Law. Text, cases and materials. 3rd Edition. 2003
[22] 1972
[23] 1972

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Lord Denning in *Macarthys Ltd v Smith* [1980] made it clear that if Parliament were expressly to attempt to repudiate its EU obligations our courts would be obliged to give effect to Parliament's wishes. This is known as the possibility of express repeal. Whilst this is unlikely to happen as long as we remain members of the EU, it is a theoretical possibility and the principle of Parliamentary Sovereignty remains intact.

'However, this, still does not enlighten us enough as to what EU law is. A way of answering would be by saying what EU law is not: it is not simply domestic, nor simply international law, it is not simply economic, nor simply social law, it is not simply substantial, nor simply procedural law'[25].

Traditionally, two methods of EU policy making have been contrasted: inter-governmentalism, with decisions led by national governments and depending on consensus support in the Council of Ministers; the 'Community' or supra-national method, led by the Commission, with majority voting in the Council of Ministers that can override the objections of particular member states. 'The main goal of the EU, at least as frequently proclaimed by the European Court of Justcie (ECJ), is *integration* and *legal harmonisation* among all Member States (MS)'[26].

A recent white paper on EU governance approved by the European Commission contains a series of recommendations on how to enhance democracy in Europe and boost the legitimacy of the institutions within it. 'The aim is to modernise European public action in order to increase the accountability of European executive bodies to the elected assemblies and open up the Union's decision-making procedures to allow citizens to participate in making decisions which concern them'[27].

The general aspects of the Union's decision-making process have been or are being improved thanks to the White Paper and the measures implementing it, for instance 'reform of the institutions, the establishment of a culture of public consultation, the simplification of legislation, the progressive establishment of a common impact assessment system, reform of the committee system and improved monitoring of the application of Community law'[28].

'The Commission initiatives consist of two sets of measures: those aimed at improving the preparation of Community legislation and following more closely the adoption of the Union's legislative acts ("*legislation*") on the one hand, and those aimed at improving the implementation of Community policies ("*operation*") on the other'[29]. The main measures aimed at improving the preparation of legislation relate to four areas: public consultation, impact assessment, obtaining and using expertise and the use of agencies. These measures are an attempt by the Commission to make the EU and its various institutions open, participative and democratic.

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[24] Macarthys Ltd v Smith [1980] ECR 1275 (case 129/79)
[25] EU Law Handbook
[26] EU Law Handbook
[27] http://europa.eu.int/index_en.htm
[28] http://europa.eu.int/index_en.htm
[29] http://europa.eu.int/index_en.htm

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In the drive for openness the European Union and member states need to achieve a certain degree of legal harmonisation to realize a proclaimed goal. The goal of harmonising legislation to define member states (MS) relations.

To achieve legal harmonisation the degree of legal harmonisation between Member States (MS) should be defined. Secondly, methods and forms of possible legal harmonisation should be clarified. Besides, legal harmonisation includes several levels from adoption through implementation to adjudication. Thus legal harmonisation is a multilevel process and should include all levels for a consistent approximation.
From the political point of view, a number of aspects are to be considered. First, the process of Member States (MS) legal approximation and eventual harmonisation is part and parcel of a more general process of Europeanization on the European continent. Secondly, the process of legal harmonisation raises very important questions of democracy and democratic deficit in Member States (MS). Thirdly, a delicate balance between international and supranational relations and the question of sovereignty should be explored.

A way in which it has been described the EU can achieve a greater level of legal harmonisation is the ratification of the European Constitution. The European Parliament has endorsed the proposed European Constitution. All that is needed now is the 25 EU member states to back the text by public referendum or parliamentary vote before it can be implemented. Ten countries have so far confirmed that they will hold referendums on whether to sign the constitution, which was agreed at a summit meeting of European leaders in Brussels in June.

The European Union constitution is basically a rule book setting out what the EU can and cannot do. It lays down the EU's values and political objectives and makes clear that member states confer powers on the EU, not the other way round. It also opens the way to deeper EU integration, which some people argue will turn the Union into a superstate.

The Constitution creates a full-time president of the Council, who may give more continuity than the existing rotating presidency. It also streamlines the unelected European Commission, cutting one third of its members from 2014 onwards, thus making the Commission more accountable and coherent.

Some see the European Constitution as a reform package in increasing the democratic accountability of the EU. The constitution gives way to increasing powers for the European Parliament. It allows greater involvement of national parliaments and proposes better clarity and transparency of legislative and regulatory procedures. The Constitution makes the European Union more democratic and less able to make decisions behind closed doors. The introduction of a European Council president to counterbalance the Commission's President will usher in a new era of openness rather than boosting the 'intergovernmentalism' of EU decision making.

However the question is how these new President's who convey a message of openness and democratisation be elected. The reality remains that these new President's will once again be appointed behind closed doors while still trying to convey a message of openness and democratisation. The essence of the constitution will therefore will loose much of its legitimacy and accountability.

Nevertheless, the EU constitution 'gives national parliaments more opportunity to object to EU laws, though no power to overturn them; enables states to opt in or out of more new initiatives, as with the euro; incorporates the EU Charter of Fundamental Rights into EU law for the first time; and preserves member states' vetoes on direct taxation, foreign and defence policy, and the budget'[30].

Some see the Constitution as a missed opportunity to build a United States of Europe, while others complain it does precisely that. Much depends on how it is implemented. For example, the European Council president could become a new force for EU integration - or just a figurehead. Equally, the impact of the Charter of Fundamental Rights may hinge on rulings by the European Court of Justice.

'In short, the EU can only be defined by itself, its processes and its goals in a paradoxical and not always easy to comprehend manner. It is a unique political, economic, social, geographical and juridical organisation whose definition remains elusive and indeterminate'[31].

Such indeterminacy may be perceived as a negative thing. Ultimately, 'Indeed, it may indicate lack of unity, fragmentation and disaccord. However, it may also indicate tolerance, allowance for difference, respect to the locality or the particular. The latter have found expression in what is called 'flexible or differentiated integration', which essentially means that while economic, political and social integration remains an ideal, it must not be perceived in an absolute manner that would lead to a uniform federal organisation, but in a flexible and particularised manner that will allow for divergences and differences in opinions and actions. This is especially relevant in an organisation where unanimity or even substantial consensus is difficult to reach because of the plurality of culture'[32].

[30] www.bbc.co.uk/news
[31] EU Law Handbook
[32] EU Law Handbook

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