

# Researching European Law – a Basic Introduction

This paper formed the basis of a seminar given by John Furlong and Susan Doe at the Canadian Association of Law Libraries Annual Conference in St Johns, Newfoundland in May 2005.

## I. European law in context

*“Europe will not be made all at once or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity”.*<sup>1</sup>

1.1 Robert Schuman’s concept<sup>2</sup> of a unified grouping of nation states addressed the immediate strategic concerns of post-war Europe on the basis of a modest initial goal – the creation of a single authority to oversee coal and steel production in the former adversary states of France and Germany. There was little doubt that this concept had wider objectives<sup>3</sup> and the building of today’s European Union has been largely achieved on the basis of market freedoms, equal rights and harmonisation of law. The development of the European Union has been propelled on the back of constant market development, of continuing expansion and on harmonisation of laws. In recent times, a Europe seeking to maintain the momentum of change has sought to substantively deal with political issues on a more fundamental constitutional basis<sup>4</sup>.

1.2 The European Union now comprises the world’s largest trading bloc with twenty five Member States<sup>5</sup>. Within the Union there exists a virtual free market for movement of capital, establishment of businesses and freedom of work. These elements underpin the ability of the Union to operate effectively as a global trading giant. The European Union describes itself as a family of “democratic European countries committed to working together for peace and prosperity”<sup>6</sup>. The Union extends beyond the boundaries of an international organisation and is based on an expectation of a limited pooling of sovereignty by its Member States<sup>7</sup>.

1.3 In addition, the European Union operates at a supra national level through a series of key institutions which propose, examine and adopt law. The development of the European Union has seen the movement of a grouping of singular states operating in a co-operative economic and trading environment towards a more unified political entity.

1.4 “Law of the European Union” means laws of the European Communities<sup>8</sup>. Primary legislation is to be

found in the Treaties<sup>9</sup>. Secondary legislation is subject to the Treaties and takes its authority from them<sup>10</sup>. The Treaties provide the key legal concepts and framework for the laws of the European Union. It is within the Treaties that the principal legal rights conferred on members and citizens of the European Union are found:

- Citizenship
- Freedom of goods
- Freedom of services
- Freedom of capital
- Equality
- Freedom of establishment

In general, by virtue of judicial interpretation and a series of measures at national level, the Treaties are viewed as having primacy over the national laws of the Member States<sup>11</sup>. Secondary legislation is in the form of Regulations, Directives and Decisions and provides the substantive detail of European Union law. The legislative principles laid down in the various Treaties are supported by this substantive secondary layer.

1.5 Both primary and secondary legislation will impact on the legal and regulatory systems of all Member States. National courts may be required to seek interpretation of these laws by reference to the European Court of Justice<sup>12</sup>. Treaties may require constitutional approval at national level in some Member States. Secondary legislation in the form of Directives will require transposition into the national law of each individual Member State.

1.6 The volume of legislative materials, proposals and commentaries is expanded further by the requirement that legislation and documents of major importance must be published in each of the twenty official languages of the European Union.<sup>13</sup>

1.7 Consequently, the search for European Union law can be quite daunting for researchers. Precise and accurate information may prove difficult to locate due in part to the complex legislative framework, the lengthy legislative process and the sheer volume of material produced. The purpose of this paper is to provide a

simple introduction at novice or introductory level to the laws of the European Union. It is not intended to be a detailed research guide. Many excellent examples of these guides are listed in the appendix to this paper. Where detail is necessary it has been consigned to the footnotes and we hope that by simplifying the approach we can make this topic less daunting to someone who has only an occasional requirement to address it. While technically the laws and legislative acts referred to are those of the European Communities, for the sake of convenience we will use the term European Union throughout this paper<sup>14</sup>.

### 2. Canada and the European Union

2.1 Canada has a long historical and cultural association with many European countries. Canada is also an important trading partner of the European Union ranking twelfth in terms of EU external trade<sup>15</sup>. Cross investment between the European Union and Canada is very significant<sup>16</sup>.

2.2 Trade and economic cooperation is largely based on a number of bilateral agreements<sup>17</sup>. Recently, the Canadian Government and the European Commission have agreed a framework for regulatory cooperation to assist in the elimination of regulatory barriers to trade and a series of initial projects are to be pursued under this framework<sup>18</sup>.

### 3. Treaties – primary legislation

3.1 The primary legislation of the European Union is found in the Treaties and Primary Acts (“the Treaties”). This body of law provides the constitutional basis and the overall framework for its legislative operation. The evolution of the European Union can be viewed historically as a linear movement from the initial ECSC Treaty of 1951 to the Treaty of Nice 2001 – a movement from economic pragmatism to proposals for political union.

3.2 In addition to the main policy driven Treaties, an Accession Treaty will set out the basis in which new Member States join the European Union. Accession Treaties will contain specific provisions, protocols, derogations and transitory arrangements applicable to the accession of a particular Member State<sup>19</sup>.

3.3 The principal Treaties<sup>20</sup> in chronological order are:

- European Coal and Steel Treaty (ECSC) Paris 1951
- European Economic Community Treaty (EEC) Rome 1957
- European Treaty (Rome) 1957
- Single European Act (Luxembourg) 1987
- Treaty of European Union (Maastricht) 1992

- Treaty of Amsterdam 1997
- Treaty of Nice 2001

3.4 It is worth noting that the text of the Treaties has been consolidated on a number of occasions<sup>21</sup>. The Treaty of Amsterdam (1997) renumbered the Articles of the original Treaties. This can lead to some confusion or difficulty when using textbooks or other source materials which were published prior to 1997 and use the old numbering system<sup>22</sup>.

3.5 It is also worth noting that some reference sources organise materials under a hierarchical classification system based on the key provisions of Articles of the Treaties. Familiarity with this hierarchical structure can assist research<sup>23</sup>.

### 4. Secondary legislation – regulations, directives and decisions

4.1 Legal principles and the general frameworks are contained in the Treaties. The detailed legislative and regulatory provisions are contained in the secondary legislation made in conformity and under the authority of the Treaties. Secondary legislation takes the form of a legal instrument which sets out detailed provisions to be adopted by the Member States. Secondary legislation of the European Union is analogous to the statutes and regulations enacted or made within any national jurisdiction. The principal difference is the need for this secondary legislation to be capable of implementation in each Member State and to allow for specific jurisdictional or transitional measures.

4.2 There are four types of legal measure or quasi legal measure at secondary level. They constitute the most common types of legislative material required for research purposes:-

- Regulations which have general application in all Member States are binding in their entirety and are directly applicable as to their purpose and their specific content<sup>24</sup>
- Directives which are binding as to the result to be achieved for each Member State but leave a choice to the Member State as to the form and methods for implementation<sup>25</sup>
- Decisions which are binding in all respects on the addressee and which may be addressed to Member States, corporate entities and individuals<sup>26</sup>
- Recommendations, Communications and Opinions. These are not legislative acts as they are not binding.

4.3 The official texts of the legislative acts follow a particular style and structure. They are identified by their year and a number and are usually cited by short title, year and number and their publication details in the Official Journal<sup>27</sup>. Regulations, directives and decisions

are each numbered in individual sequence and consequently a directive, regulation or decision may have similar numeric citations<sup>28</sup>. The long title of the regulation, directive or decision will identify its purpose and where appropriate its connection to earlier Acts<sup>29</sup>. The preamble section of these legislative acts (and in particular the preamble of a Directive) forms an integral part of the act and it will set out the relevant Treaty provisions, the consultation and preparatory work, the background objectives and purpose. Directives and Regulations are laid out by Articles and more complex ones will have detailed technical schedules and appendices attached. Directives will contain details of the required implementation measures and implementation dates to be adopted by Member States, along with any transitional measures and derogation applicable. These details are normally contained towards the end of the Directive<sup>30</sup>.

4.4 It should be noted that legislative acts will be published in the Official Journal and will also be published in the official languages of the European Union<sup>31</sup>. All of the legislative acts will also be published on Eurlex - the portal website for all European Union legal materials<sup>32</sup>.

## 5. Law making institutions

5.1 Four bodies within the European Union can be identified as players in the legislative process – the European Commission, the European Parliament, the Council and the Court of Justice<sup>33</sup>.

5.2 The European Commission<sup>34</sup> is normally charged with the initial drafting of legislative proposals particularly in respect of common policy matters and the internal market of the European Union. The Commission acts on behalf of the European Union as a whole and is answerable to the European Parliament. The Commission is also responsible for implementing decisions of the Parliament and the Council. In addition to its central role in the legislative process, the European Commission provides the executive structure through which laws are administered. This is achieved through the Directorates-Generale and their associated agencies<sup>35</sup>. The Directorates-Generale (DG's) are important as the initiators and administrators of proposals for legislative acts as well as being the responsible bodies for implementation of measures once legislation has been adopted. As a consequence, the relevant DG can be a significant source of materials and documentation on proposals and legislative acts.<sup>36</sup> Once adopted by the Commission a proposal is published as a Commission document with a COM reference. Most proposals are also published in the Official Journal.<sup>37</sup>

5.3 The European Parliament is comprised of 624 elected members who sit in European wide political groups<sup>38</sup>. Following a series of reforms (most notably those introduced after the Single European Act), Parliament is now more involved in the legislative process

through a series of procedures – consultation, cooperation, co-decision and assent.<sup>39</sup>

5.4 The Council of the European Union is the representative body for the Member States. Appropriate Government Ministers from each of the Member States attend the relevant meetings of the Council.<sup>40</sup>

5.5 The Court of Justice has the primary function of ensuring that EU law is observed in the interpretation and application of primary and secondary law and in all related activities. It comprises one judge representative for each Member State assisted by eight Advocate Generale who present reasoned opinions on cases brought before the Court.<sup>41</sup> Part of the Court's jurisdiction is exercised by the Court of First Instance.<sup>42</sup>

## 6. Using Europa as a research tool

6.1 One of the most significant resources available to researchers is the Europa portal website. It provides the means to access all of the websites and documentation produced by the institutions of the European Union. Due to the scale of the Europa website and the volume of documentation available, it can prove difficult to navigate. In addition to various peripheral informational items and background on the European Union, Europa is divided into four main sectors:

- Activities;
- Institutions;
- Documents; and
- Services.

The two sections of most relevance to researchers are "Institutions" and "Documents". The "Institutions" section provides portal access to the websites of the key players in the legislative process including the European Commission, the European Parliament, the Council of the European Union and the Court of Justice. Under the "Documents" section access is provided to Eurlex the portal for all European Union law and within Eurlex, access is available to OEIL (the Legislative Observatory) and Prelex (which provides monitoring of the decision making process between the institutions).

6.2 There is a search engine which can be used to search across Europa. However due to the volume of the materials available and the fact that they are published in all of the twenty official languages of the European Union, this search facility can prove quite meaningless in terms of finding a reasonable and focussed search result. It is usually far better to use individual search engines within each of the websites.

6.3 Due to the number of individual websites, the volume of material available and the permutations resulting from publication in each of the official languages, text searching in Europa is unlikely to provide valid or

useful results. The optimum information to have when beginning research is a document reference (eg the number of a Directive or Regulation or a COM document number). If this is not available it can be useful to check the relevant DG website, as it may contain either the document itself or an overview containing a document reference. There is also the option of conducting a text search within the relevant DG website. It may also be possible to locate the item by “burrowing down” through the classification structures available<sup>43</sup>.

6.4 Within the “Institutions” section of Europa access is available under “European Union Policies” to the various areas of responsibility of the European Commission.<sup>44</sup> There are 29 sectors of responsibility mirroring the work of the Directorates Generale.<sup>45</sup>

The various Directorates Generales websites are important as it is often here that the most effective access is available to materials produced under their area of responsibility, including proposals for legislation and the texts of various legislative acts for which the Directorate is responsible. The comprehensiveness of the material available tends to vary between each Directorate Generale.

6.5 Under the “Documents” section of Europa, access is available to Eurlex<sup>46</sup> the portal to all the legal documentation of the European Union. Eurlex includes the text of the Treaties in consolidated form and access to the Directory of Community Legislation In Force.<sup>47</sup>

6.6 The “Legislation In Force” section of Eurlex provides access to the various legislative acts (regulations, directives, decisions and other acts). The documents available are referenced by their document number, title and bibliographic reference (ie publication details from the Official Journal). Where relevant the document number for any amending Acts together with a hyperlink to the amendment is given. This section also contains a detailed overview of the structure and presentation details of the documents available.<sup>48</sup>

6.7 It is also possible to search in Eurlex using the “Simple Search” or “Search in Legislation” feature. As already indicated, the most effective way of searching for documents within Europa is where the researcher already knows the document number.<sup>49</sup> Nonetheless, it is possible to text search within Eurlex with some reasonable level of success, although the text search facility is not very elaborate.

6.8 Eurlex also provides access to preparatory acts (ie COM documents). Again, it is best to use this facility if the COM document reference has already been obtained, although the text search facility (particularly if limited to searching of the title field) can be used with some likelihood of success.

6.9 Finally, also contained within Eurlex is the full text of the Official Journal L and C<sup>50</sup> Series for the years 1998 onwards together with a selection of material from earlier years.<sup>51</sup>

6.10 The Official Journal (OJ) has been published throughout the existence of the EEC, the EC and the

European Union, although prior to 1973 it was published in French only. The OJ is published daily and the electronic version (from 1998 onwards) provides easy access to all of its issues and is particularly useful as a primary source of material if the relevant references are known<sup>52</sup>.

The paper edition is also still published and circulated on a subscription basis. It may be possible to source content, prior to 1998 and not available in electronic form from Eurlex on microfilm from a European Documentation Centre.<sup>53</sup>

6.11 OEIL (the “Legislative Observatory”) provides a tracking mechanism for documentation moving through the European Parliament. It is accessed through the “Documents” section of the Europa website. OEIL is particularly useful for confirming the current status of legislative proposals moving between the European Commission, the Council and the Parliament. Again, it is particularly effective if the relevant COM document is known to the researcher.

6.12 Prelex which is also accessible through the “Documents” section of Europa provides a similar checking facility for legislative proposals moving between the European Commission and the other institutions. OEIL and Prelex should be used as complementary services. It is always prudent to check the results between the two so as to obtain the most up to date progress of a proposal and/or copies of the most recent revisions or commentaries.

6.13 When a legislative proposal is adopted (ie finalised and approved) by the Council and the European Commission, it will be assigned a reference number and published in the Official Journal L Series. This publication constitutes promulgation and the Official Journal L Series text is the official text of the legislative act.

6.14 Finally, with regard to Europa it is worth mentioning the Press Centre material which is available and which can provide useful current awareness update on developments. The Press Centre of the European Council<sup>54</sup> is particularly useful for minutes and confirmation of approvals taken at European Council level. Given its key role in the publication of legislative proposals and its role in progressing proposals through the various institutions the Press Release Database (“Rapid”)<sup>55</sup> of the European Commission can be a particularly fruitful source of background information. It contains access to all the press releases of the European Commission and also includes the Mid-Day Express<sup>56</sup> service whereby detailed press overviews are published at noon<sup>57</sup> each day with press releases and background material on that day’s developments within the European Commission.

## 7. Tracking secondary law and legislative procedures

7.1 In the normal course of events, the European Commission will draw up a proposal in the form of a

“Green Paper” or a “White Paper”. The Commission proposals are normally published as COM documents. Once allotted a COM reference, the proposal will usually be published:

- in Prelex and OEIL
- on the website of the appropriate Directorate Generale
- in the Official Journal CE<sup>58</sup> Series

7.2 Proposals will move according to the relevant procedure adopted between the Parliament, the Commission and the Council<sup>59</sup>. During this time, provided a COM reference is obtained, it is relatively easy to track progress of the legislative proposal between the various institutions and to obtain up to date copies of the material online.

7.3 Directives will set out requirements for their transposition into national law of the Member States. Each Member State is required by the date or dates set out in the Directive to have made implementation measures at national level. Where implementation measures are not made in time or are not adequate or correct, the European Commission is charged with ensuring compliance. Nonetheless after the due implementation date, any rights accruing under the terms of the Directive take effect and a number of well known cases have confirmed that tardiness or delay or inadequate transposition or implementation by a Member State does not deny any rights arising under the Directive<sup>60</sup>.

7.4 Member States are required to notify the European Commission with details of their implementing measures. Unfortunately, this procedure is not entirely effective and details on implementing measures are not easily available from official sources<sup>61</sup>.

## Part II

### 8. Subscription services and case law

8.1 There are a few useful value added commercial subscription sites for researching EU law generally. Needless to say none of them are perfect. Where considerable amounts of EU research are being undertaken, a subscription to either Justis Celex<sup>62</sup> or Lawtel EU<sup>63</sup> would be recommended. These are both a flat fee, pay up front subscription service.

8.2 Westlaw contains full text cases from official sources and its own commercial sources in its *European Union-Cases All* database. However, this is not comprehensive and coverage varies. Similarly with the *All European Union Materials* database which covers treaties, legislation parliamentary questions and cases<sup>64</sup>.

8.3 Be careful on Lexis-Nexis. It is very selective on EU cases and European Court of Human Rights cases in

its Cases file, but contains full text of EU cases in its ECJ file which is pulled direct from Celex. It is English language only so relies on translations appearing, but cases date from 1954.<sup>65</sup>

8.4 Lawtel EU (as its name suggests) is a dedicated EU research database. It is my first point of call for an EU enquiry. The only caveat at present is that Lawtel used to be independent – it is now owned by Thomson and may well end up on Westlaw because of it. It links to the official European databases on the web for its full text. It is essentially an easy to use front end to all the official material, with added search facilities.

Justis Celex uses the data from the official EU Celex site, but adds on search facilities.

8.5 Both of these services provide alerts, as does Public Info Net.<sup>66</sup> This is a service produced by a barrister specialising in European business law. Her expertise makes this service very popular with lawyers. Information is gathered from the European institutions and grouped together by subject, country, source or information type (judgments, merger regulation etc). It is particularly strong on competition and trade. Their strength is that they search all of the information – there are at least 99 pages of ‘new’ information on Europa each day. They maintain that they pick up things that the main news pages miss. Nothing is edited or summarised – just indexed and sent with links to those who have chosen to be alerted.

## 9. Trade enquiries

There are some specific websites which should meet any standard trade enquiry requirements.

### 9.1 Europa – DG Trade (Director General for Trade of European Communities).<sup>67</sup>

Click on External Trade under the ‘Activities’ tab which will take you to a page entitled “Activities of the European Union”<sup>68</sup>

Click on Trade under the ‘Key Sites’ tab and this will take you to the **External Trade homepage**.<sup>69</sup>

There are three main places to visit from the Trade homepage: “What we do”, “Trade Issues” and “iCentre”.

As a beginner one of the most useful pages on the site can be found by clicking on ‘**What we do**’ at the top of the trade homepage.<sup>70</sup>

From this page you have access to the following:-

- Beginner’s guide to trade in the EU
- Types of work DG Trade do
- Glossary of trade jargon
- New developments
- Events Calendar

- Publications
  - Links to related web pages
- From the trade homepage click on **'Trade Issues.'**<sup>71</sup>
- This will give you access to the following:-

- Trade policy instruments (ie anti-dumping rules)
- Sectoral issues
- Bilateral trade issues/relations
- Harnessing globalisation

From the trade homepage you also have access to the **'iCentre.'**<sup>72</sup>

From this page you can search for the following items with regard to EU trade:-

- Speeches
- Articles
- Policy & issue papers
- Legislation
- Press releases
- Submissions to the WTO

The **'Links'** page<sup>73</sup> supplies links to governmental trade sites all over the world including a separate list for all the EU countries. In addition, there are links for regional and international trade organisations.

### 9.2 Euractiv

EU policy portal "independent media portal fully dedicated to EU affairs".<sup>74</sup>

There is no specific trade section however, searching under 'EU trade' will give plenty of hits. The results are arranged (with the most recent first) into the following:-

- News
- Interviews
- Analyses
- Link dossiers
- Profiles

### 9.3 ACP-EU Trade Organisation

Africa Caribbean Pacific – European Union Trade Organisation.<sup>75</sup>

The homepage provides easy access to the following:-

- Key official documents
- Reports
- Informal papers

- Announces major events relevant to ACP-EU trade negotiations
- Key EU and ACP debates that may impact the ACP-EU relations
- Other relevant information

### 9.4 EU Business

European Business News Online.<sup>76</sup>

From this page you will be able to find out the latest news and background information on EU trade policy.

To access some of the documents you need to be logged on. Login details can be obtained for free by registering on the homepage. Simply click on 'Join' at the top of the homepage<sup>77</sup> and fill in the details (registration only takes a minute all you need to enter is your name and email address).

You can search for specific news items however, the 'Search' function is general and there is no separate search function in the EU Trade page.

### 9.5 European Free Trade Association – EFTA

International organisation promoting free trade and economic integration - founded in 1960.<sup>78</sup>

There is not a vast amount of information on this website. Information includes:-

- Information surrounding EFTA
  - What EFTA do
  - Latest developments in the area
- (NB. this is not EU specific but Europe in general)

### 9.6 Westlaw

Westlaw<sup>79</sup> includes the following documentation:-

- EU treaties
- EU materials
- EU case-law

These are not 'Trade' specific but may contain reference to trade. Some trade specific materials can be found through the Media database from the Dialog Newsroom. However, these are limited.

## 10. Case law

10.1 Under the terms of the originating Treaties the European Union has the power to draft legislation that is

binding on all Member States. The ultimate arbiter of the interpretation of the legislation is the European Court of Justice (ECJ). National courts are the first bodies to apply EU law. The ECJ is not an appeal court. It cannot quash or change the decision of a national court, it can only answer questions referred to it from the national court on points of European law. This is known as the indirect method of access. The national court suspends the proceedings and drafts a preliminary reference to the ECJ for an interpretation of the European law. The ECJ does have exclusive jurisdiction for some direct actions (see below for the actions the Court of First Instance deals with) namely:-

- Actions for failure of a member state to fulfil its obligations
- Actions for annulment and for failure to act by community institutions and the European Central Bank; a Member State against Parliament/Council except state aid, dumping or Council's implementation powers; a Member State against the Commission concerning 'close cooperation' (as defined by the EC Treaty).

10.2 A citizen can bring a case to challenge a decision of a Community institution before the Court of First Instance, but the individual must be the one who is concerned by the act in question. This is known as the direct method. An individual cannot initiate an action against another person or Member state – they can only challenge a decision made.

All decisions have binding force across the EU.

10.3 The Court consists of twenty five judges drawn from the member states, assisted by eight advocates-general. The Court of First Instance also has twenty five judges. All serve six year terms, which are staggered to assist continuity. The role of the Advocates General is to assist the ECJ by delivering an opinion (ie a proposed draft decision) which is non binding on the ECJ.

10.4 Cases can take an age to get to, and through, the ECJ. The Court of First Instance was created in 1989 in order to speed the process of cases being heard. The Treaty of Nice expanded the jurisdiction of the court away from competition and staff cases.<sup>80</sup>

10.5 Official Court reports for the ECJ and the Court of First Instance appear in the European Court Reports (ECR). Online they appear in full on Celex. There is currently up to a two year delay in reporting due to the need to translate into all languages of the European Union.<sup>81</sup> This delay may well increase after the enlargement of the EU. Sector 6 of Celex is usually more up to date than the printed version, but is limited on opinions. Cases are listed and decisions noted in the 'C' series of the Official Journal of the EU. They are not fully reported here. Curia provides full text of recent judgments and opinions (not comprehensive, and not orders or hearing reports) from the middle of 1997. There is a digest and alphabetical subject index available.

In order to get the full set of jurisprudence of the ECJ it is still essential to subscribe to the printed version of the ECR.<sup>82</sup>

## 11. Enlargement of the European Union

11.1 On 1 May 2004 the EU increased in size from fifteen to twenty five countries. This was the biggest enlargement in the EU's fifty year history, and increased the total population of its member states to 450 million people.

11.2 The new states are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

11.3 Thirteen countries had applied, but only these ten met the stringent political and economic conditions required for entry. The main conditions are to have a stable democracy and a respect for human rights, a functioning market economy, and an overall ability to meet the obligations of membership. Those that failed this time round were Bulgaria and Romania. They are expected to meet the criteria by 2007. The jury is still out on Turkey. Croatia and Macedonia have also applied for membership.

11.4 The enlargement causes issues in sheer management. There are now (as of 1 November 2004) 25 members of the European Commission, each of whom need to have a designated role. There is an increase in number of MEP's in the European Parliament to represent the new countries, and the voting rights have become increasingly complicated. One can only begin to wonder at the problems arising with implementation of laws and enforcement.

11.5 All countries must adopt the vast body of law in existence and set up mechanisms for effective enforcement. The laws and regulations are onerous, and wide-ranging and in most cases very different to national laws. This is especially so in competition and environmental issues.

The vast majority of laws have been adopted by the accession date, those that aren't are open to challenge for failure to implement or incorrect implementation. Some countries have agreed arrangements that will allow postponement of some legislation, but this is very limited.

11.6 In business practices the new countries have to deal with free movement of goods, services, capital and people. They have to comply with public procurement rules, state aid, product standards, employment laws, environmental laws, health and safety and customs and VAT. Even when the national governments comply with these laws ( though there are big jumps to be made, for example, most new countries did not consider state aid unlawful, but it is by definition incompatible with a common market) there is a vast gap between that and the awareness amongst the business community. There are no transition periods.

## 12. Council of Europe

12.1 The Council of Europe<sup>83</sup> is a completely separate organisation from the EU. It was formed in May 1949 in order to “strengthen democracy, human rights, the rule of law and cultural heritage”. It now has forty six members, including Russia and many former Communist

states. It played a large part in restoring democracy to central and eastern Europe during the late 1980s and early 1990s.

12.2 However, most people know of it through the role it plays as the lead body of the European Court of Human Rights. Canada has observer status to both the Committee of Ministers and the Parliamentary Assembly<sup>84</sup>.

## Appendix

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- Trade Issues – Canada  
<http://europa.eu.int/comm/trade/issues/bilateral/countries/canada/index-e>
- Canada and the European Union  
<http://www.dfait-maeci.gc.ca/canadaeuropa/canadaeu-eu.asp>
- New York University of Law – European Union Research  
<http://www.law.nyu.edu/library/euguide.htm>
- European Union in the US – EU Law and Policy Overview – Research Tools for EU Policies and Legislation  
<http://www.eurunion.org/legislat/research.htm>
- Doe & Moffitt Libraries at University of Berkeley – The European Union  
<http://www.lib.berkeley.edu/doemoff/gov-eugde.html>

### European Union websites

- Europa – main portal page  
[http://www.europa.eu.int/index\\_en.htm](http://www.europa.eu.int/index_en.htm)
- Legislative Observatory  
<http://www2.europarl.eu.int/oeil>
- Prelex  
<http://europa.eu.int/prelex>
- Eurlex – Introduction, Definitions, Process and Players  
[http://europa.eu.int/eur-lex/en/about/pap/process\\_and\\_players3.html](http://europa.eu.int/eur-lex/en/about/pap/process_and_players3.html)



- European – Summaries of Legislation  
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## References

<sup>1</sup>Declaration of Robert Schuman of the proposal for establishment of a European Coal and Steel Community 9 May 1950.

<sup>2</sup>Noted as founding father of the European Union, the former French Foreign Minister is celebrated through “Europe Day” on 9 May each year.

<sup>3</sup>In the declaration, Schuman noted that his relatively modest proposal could result in “that fusion of interest which is indispensable to the establishment of a common economic system – it may be the leaven from which may grow a wider and deeper community between countries who are opposed to one another by sanguinary divisions”.

<sup>4</sup>See for example the current debate on adoption of a European Constitution and the parallel debate on the political proposals contained in the Treaty of Nice. *Larat (2005)*.

<sup>5</sup>Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, The Netherlands, United Kingdom.

<sup>6</sup>“The European Union at a Glance” (<http://www.europa.eu.int>).

<sup>7</sup>This limited pooling of sovereignty has been evidenced by a wide range of developments including the introduction of the euro as a common currency under Economic and Monetary Union in 2002.

<sup>8</sup>The European Union is a creature of the Union Treaty (Maastricht 1992). It comprises three pillars. The European Communities operating as the membership bloc at supra national level provides all of the institutional framework to the Union. The two other pillars under the Union Treaty operate at inter-governmental level – Justice and Home Affairs (JHA) and Common Foreign and Security Policy (CFSP).

<sup>9</sup>See Section 3 *infra*.

<sup>10</sup>See Section 4 *infra*.

<sup>11</sup>For a good overview on the issue of primacy of the legal order of the European Communities see *Myles*, at Vol I Section B-24.

<sup>12</sup>See Section 11 *infra*.

<sup>13</sup>Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish and Swedish.

<sup>14</sup>See footnote 8 *supra*.

<sup>15</sup>The European Union is Canada’s second largest trading partner after the United States. The European Union accounts for ten per cent of total Canadian imports and six per cent of total Canadian exports.

<sup>16</sup>Canada is the fourth biggest investor in the European Union (after the United States, Switzerland and Japan). The European Union is the second biggest investor in Canada.

<sup>17</sup>Principally Framework Agreement for Commercial and Economic Cooperation (1976) Canada - EU Joint Action Plan (1996) EU – Canada Trade Initiative (ECTI) (1998) Trade and Investment Enhancement Agreement (TIEA) (Draft) 2004 (Source: *European Commission Trade Issues, April 2004*). See also *Trade and Investment Section on Canada: Europa* (<http://www.dfait-maeci.gc.ca/canadaeuropa>).

<sup>18</sup>“Boosting Business between EU and Canada”. Press Release of the European Commission, 21 December 2004 (IP/04/1524).

<sup>19</sup>A full list of Accession Treaties and the text of each is accessible on Eurllex (<http://www.europa.eu.int/eur-lex/lex/en/treaties/index.htm>).

<sup>20</sup>Text of the Treaties are accessible on Eurllex (<http://www.europa.eu.int/eur-lex/lex/en/treaties/index.htm>).

<sup>21</sup>Text of the Consolidated Versions of the Treaties are available on Eurllex (<http://www.europa.eu.int/eur-lex/lex/en/treaties/index.htm>).

<sup>22</sup>For instance the original prohibition on State Aid was referred to under Article 92. It is now referred to under Article 87 of the Consolidated Treaties. The numbering change is provided for in Article 12 of the Treaty of Amsterdam.

<sup>23</sup>For example, see the classification structure used in the *Directory of Community Legislation* (<http://europa.eu.int/eur-lex/lex/en/repert/index.htm>) or the broadly similar and simplified structure used in the *Summaries of Legislation* website ([http://europa.eu.int/scadplus/scad\\_en.htm](http://europa.eu.int/scadplus/scad_en.htm)).

<sup>24</sup>For example, Council Regulation (EC) No. 1210/2003 of 7 July 2003 concerning specific restrictions on economic and financial relations with Iraq (2003 OJ L 169/6).

<sup>25</sup>For example, Directive 2002/14/EC of the Council and European Parliament of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (2002 OJ L 80/29). This is the long title.

It would normally be cited by its number – Directive 2002/14/EC or by its common title – “the Information and Consultation Directive”.

<sup>26</sup>Decision No. 3095/95/EC of the European Parliament and of the Council of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (1995 OJ L 321/1).

<sup>27</sup>See footnotes above for full citations. The Official Journal is the legal gazette of the European Communities and is discussed further at Section 6.10 *infra*.

<sup>28</sup>For example Regulation 2002/14 establishes standard input values for determining the entry price of certain fruit and vegetables. Directive 2002/14 is the “Information and Consultation Directive” (see footnote 25). Decision 2002/14 is a decision on State aid granted by France to Scott Paper SA Kimberly Clarke.

<sup>29</sup>For example, Directive 2003/58/EC of the European Parliament and Council of 15 July 2003 amending Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies (2003 OJ C 221/13).

<sup>30</sup>For example, the transitional and implementation details for the “Information and Consultation Directive” (Directive 2002/14/EC) in Articles 10 and 11 of the Directive, indicate that Member States must have adopted appropriate measures to give legal effect to the Directive no later than 23 March 2005.

<sup>31</sup>See footnote 13 *supra*.

<sup>32</sup>See section 6 *infra*.

<sup>33</sup>An excellent overview of the roles and procedures in the legislative process is available on the Eurlex portal ([http://europa.eu.int/eur-lex/en/about/pap/process\\_and\\_players3.html](http://europa.eu.int/eur-lex/en/about/pap/process_and_players3.html)).

<sup>34</sup>The four main functions of the European Commission are: To propose legislation to Parliament and the Council; To merge and implement EU policies and budget; To enforce European law jointly with the Court of Justice; To represent the European Union on the international stage.

<sup>35</sup>There are 28 Directorates Generales (DG) which are organised on particular policy areas. Until 1999, they were organised by departmental number but are now referred to by their policy area name (thus DG became the Competition DG).

<sup>36</sup>Particularly so, if little detail is known about a proposal.

<sup>37</sup>In the C Series of the Official Journal. See Section 6.8 *infra*.

<sup>38</sup>The three main functions of the European Parliament are: to legislate in conjunction with the European Council; to exercise democratic supervision over all EU institutions including a right of approval on appointment of Commissioners and a right to censure the European Commission; to exercise joint authority over the EU budget with the European Council.

<sup>39</sup>For a detailed review of these procedures, see *European Union Law Library* (Section 4400 (ff)).

<sup>40</sup>The main responsibilities of the Council are: to legislate jointly with the European Parliament; to coordinate economic policies; to conclude international agreements; to approve the EU budget; to develop policies under the CFSP and JHA pillars of the Union.

<sup>41</sup>See Section 11 in relation to case law of the Court of Justice. The primary functions of the Court of Justice are: to adjudicate in disputes involving European Union law including disputes between Member States, between individuals and the EU and between institutions; to issue rulings on breaches of European Union law; to issue rulings on cases referred by national courts.

<sup>42</sup>The Court of First Instance established in 1989 deals with particular types of case notably those taken by private individuals and companies against decisions of the European Commission.

<sup>43</sup>For example in the *Directory of Community Law in Force* or in the *Summaries of Legislation* section of Europa - (see footnote 23 *supra*).

<sup>44</sup>Essentially this provides access to materials on the DG websites.

<sup>45</sup>The sectors range from “Agriculture” to “Youth”. The key Directorates Generale (DG’s) would include Competition (dealing with antitrust law), Consumers dealing with safety of products and services, Internal Market dealing with financial services, company law, data protection, intellectual and industrial property and a wide range of other matters, and Taxation dealing with value added tax and direct taxation.

<sup>46</sup>The structure of Eurlex has recently been overhauled to incorporate the former Celex database. See *Sloane (2004)*.

<sup>47</sup>This is also published twice yearly in paper format.

<sup>48</sup><http://www.europa.eu.int/eur-lex/lex/en/legis/index.htm>.

<sup>49</sup>See section 6.3 *supra*.

<sup>50</sup>The L series of the Official Journal contains the texts of legislative acts. These OJ texts constitute the official texts of these acts. The C series contains text of legislative proposals and other communications.

<sup>51</sup>There are other series within the Official Journal, most notably the S series containing details of projects required to publish notices and tenders under EU procurement law. These details will also appear on the TED public procurement database (<http://ted.publications.eu.int/official/>). See *Alford* (p. 63) for a useful list of the component elements of the Official Journal.

<sup>52</sup>See *Alford (2005)* p. 64.

<sup>53</sup>See European Documentation Centres website (<http://www.library.law.uu.nl/edc-eu/>).

<sup>54</sup>[url>http://ue.eu.int](http://ue.eu.int).

<sup>55</sup>[http://europa.eu.int/comm/press\\_room](http://europa.eu.int/comm/press_room).

<sup>56</sup>Also at [http://europa.eu.int/comm/press\\_room](http://europa.eu.int/comm/press_room).

<sup>57</sup>Brussels time.

<sup>58</sup>For an overview of developments regarding publication of COM documents, see *Alford (2005)* p. 66.

<sup>59</sup>See section 5.3 supra.

<sup>60</sup>See in particular *Franco vich –v- Italian Republic* and *Marshall –v- Southampton and South West Hampshire Area Health Authority* (Joined cases C-6/90 and C-9/90) 1993 I CEC 604. See also *European Union Law Reporter* Section 4344 and *European Union Law Reporter - European Union Update* 1997 para 278.

<sup>61</sup>Use one of the commercial databases which include details of implementation measures within their versions of the Directives – see section 8 infra.

<sup>62</sup><http://www.justis.com>.

<sup>63</sup><http://www.lawtel.com>.

<sup>64</sup>Costs are currently between \$50-\$100 (US dollars) per search for transactional searches. ECJ cases appear from 1954.

<sup>65</sup>A rough guide price currently is around \$98 (US dollars) per transactional search.

<sup>66</sup><http://www.publicinonet.com>.

<sup>67</sup>Go to <http://www.europa.eu.int> and click on 'Gateway to European Union' (7<sup>th</sup> option down).

<sup>68</sup>[http://www.europa.eu.int/pol/comm/index\\_en.htm](http://www.europa.eu.int/pol/comm/index_en.htm).

<sup>69</sup>[http://www.europa.eu.int/comm/trade/whatwedo/index\\_en.htm](http://www.europa.eu.int/comm/trade/whatwedo/index_en.htm).

<sup>70</sup>[http://www.europa.eu.int/comm/trade/whatwedo/index\\_en.htm](http://www.europa.eu.int/comm/trade/whatwedo/index_en.htm).

<sup>71</sup>[http://www.europa.eu.int/comm/trade/issues/index\\_en.htm](http://www.europa.eu.int/comm/trade/issues/index_en.htm).

<sup>72</sup>[http://trade-info.cec.eu.int/doclib/cfm/doclib\\_search.cfm?action=search](http://trade-info.cec.eu.int/doclib/cfm/doclib_search.cfm?action=search).

<sup>73</sup>[http://www.europa.eu.int/comm/trade/gentools/links\\_en.htm](http://www.europa.eu.int/comm/trade/gentools/links_en.htm).

<sup>74</sup>Go to <http://www.euractiv.com>.

<sup>75</sup>Go to <http://www.acp-eu-trade.org> (website currently under construction).

<sup>76</sup>Go to <http://www.eubusiness.com> and on the left hand side under 'Key Topics' click on Trade <http://www.eubusiness.com/topics/trade>.

<sup>77</sup>[http://www.eubusiness.com/join\\_form](http://www.eubusiness.com/join_form).

<sup>78</sup>Go to <http://www.efta.int> click on the 'EFTA' link (surrounded by flags) this will take you to the main homepage <http://www.secretariat.efta.int/>.

<sup>79</sup>Go to <http://www.westlaw.com> (subscription needed to be able to access any documentation).

<sup>80</sup>The timetable of procedure for both written and oral stages – and what is available –or not – is at <http://curia.eu.int/en/instit/services/dpi/faq3.htm>.

<sup>81</sup>The official language is French, and this and the translation for the originating countries of the parties to the case are usually first to appear in any form.

<sup>82</sup>Details of all the official formats of the law reports and where to buy them from are at <http://curia.eu.int/en/instit/txtdocfr/documents/pub/htm>.

<sup>83</sup><http://www.coe.int>.

<sup>84</sup>Researchers would be well advised to read the 'Guide to researching the Council of Europe' by Anne Burnett at <http://www.llrx.com/features.coe.htm>.

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