

European Business Law

Part B : Legal sources – European law

University of Strasbourg
Faculty of Law – Master 1

Prof. Jochen BAUERREIS
Avocat & Rechtsanwalt
Avocat spécialisé en droit de l'Arbitrage
Avocat spécialisé en droit international et de l'Union Européenne

PRESENTATION OUTLINE

- I. Treaties**
- II. Regulations / Conventions**
- III. Directives**

I. TREATIES

A. Primary law

- ① Treaty on European Union (TEU)
- ② Treaty on the Functioning of the EU (TFEU)
- ③ Charter of Fundamental Rights of the EU

① Treaty on European Union (TEU)

1. Scope of Application

- Also known as the Maastricht Treaty (1992), amended by the Lisbon Treaty (2009)
- Defines main EU institutions, their roles and powers
- Introduces principles of attribution and subsidiarity

① Treaty on European Union (TEU)

1. Scope of Application

- Applies in all EU Member States and to EU institutions
- Constitutional treaty of the EU
- Sets core principles of EU functioning
- Defines EU objectives : internal market, social Europe, sustainable development, etc.
- Establishes EU values and competences

① Treaty on European Union (TEU)

2. Legal structure

- Title I : common provisions (Art. 1-8)
- Title II : provisions on democratic principles (Art. 9-12)
- Title III : provisions on the institutions (Art.13-19)
- Title IV : provisions on enhanced cooperation (Art. 20)
- Title V : general provisions on the Union's external action and specific provisions on the common foreign and security policy (Art. 21-46)
- Title VI : final provisions (Art.47-55)

① Treaty on European Union (TEU)

3. Key provisions

- Art. 3 → Objectives : social market economy, cohesion, equality, intergenerational solidarity, children's rights
- Art. 5 → Competence principles : attribution, subsidiarity, proportionality
- Art. 6 → Charter of Fundamental Rights becomes binding : aims for EU accession to ECHR

② Treaty on the Functioning of the EU (TFEU)

1. Scope of Application

- Complements the TEU
- Origin : Treaty of Rome (1958), revised by Treaty of Lisbon (13 December 2007)
- Lists common policies and internal market framework

② Treaty on the Functioning of the EU (TFEU)

1. Scope of Application

- Covers EU substantive law
- Governs concrete EU policies : internal market, social, environmental, etc.
- Defines EU competences and how they are exercised

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Part one – Principles (Art. 1-17)
 - Title I – Categories and areas of Union competence (Art. 2-6)
 - Title II – Provisions having general application (Art. 7-17)
- Part two – Non-discrimination and Citizenship of the Union (Art. 18-25)
- Part three – Union policies and internal actions (Art. 26-197)
 - Title I – Internal market (Art. 26-27)
 - Title II – Free movement of goods (Art. 28-37)

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Title III – Agriculture and fisheries (Art. 38-44)
- Title IV – Free movement of persons, services and capital (Art. 45-66)
- Title V – Area of freedom, security and justice (Art. 67-89)
- Title VI – Transport (Art. 90-100)
- Title VII – Common rules on competition, taxation and approximation of laws (Art. 101-118)
- Title VIII – Economic and monetary policy (Art. 119-144)
- Title IX – Employment (Art. 145-150)
- Title X – Social policy (Art. 151-161)
- Title XI – European social fund (Art. 162-164)

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Title XII – Education, vocational training, youth and sport (Art. 165-166)
- Title XIII – Culture (Art. 167)
- Title XIV – Public health (Art. 168)
- Title XV – Consumer protection (Art. 169)
- Title XVI – Trans-european networks (Art. 170-172)
- Title XVII – Industry (Art. 173)
- Title XVIII – Economic, social and territorial cohesion (Art. 174-178)
- Title XIX – Research and technological development and space (Art. 179-190)
- Title XX – Environment (Art. 191-193)

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Title XXI – Energy (Art. 194)
 - Title XXII – Tourism (Art. 195)
 - Title XXIII – Civil protection (Art. 196)
 - Title XXIV – Administrative cooperation (Art. 197)
-
- Part four – Association of the overseas countries and territories (Art. 198-204)
 - Part five – The Union's external action (Art. 205-222)
 - Title I – General provisions on the Union's external action (Art. 205)
 - Title II – Common commercial policy (Art. 206-207)

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Title III – Cooperation with third countries and humanitarian aid (Art. 208-214)
- Title IV – Restrictive measures (Art. 215)
- Title V – international agreements (Art. 216-219)
- Title VI – The union's relations with international organizations and third countries and union delegations (Art. 220-221)
- Title VII – Solidarity clause (Art. 222)

② Treaty on the Functioning of the EU (TFEU)

2. Legal structure

- Part six – Institutional and financial provisions (Art. 223-334)
 - Title I – Institutional provisions (Art. 223-309)
 - Title II – Financial provisions (Art. 310-325)
 - Title III – Enhanced cooperation (Art. 326-334)
- Part seven – General and final provisions (Art. 335-358)

② Treaty on the Functioning of the EU (TFEU)

3. Key provisions

- Art. 9 : Social clause (social protection in all EU actions)
- Art. 17 : Non-discrimination based on nationality
- Art. 26 : Internal market = free movement without borders
- Art. 49 : Right of establishment
- Art. 54 : EU companies are treated as natural persons who are nationals of Member States : companies' mobility within the EU

② Treaty on the Functioning of the EU (TFEU)

3. Key provisions

- Art. 67 : Area of freedom, security, and justice
- Art. 151-161 : Social policy
- Art. 191-193 : Environmental policy

③ Charter of Fundamental Rights of the EU

1. Scope of Application

- Proclaimed in 2000, legally binding since Treaty of Lisbon (entered into force 1st December 2009)
- Primary EU law (constitutional value)
- Applies to EU institutions and to Member States when implementing EU law

③ Charter of Fundamental Rights of the EU

2. Legal structure

- 7 Chapters :
 - Dignity (Art. 1-5)
 - Freedoms (Art. 6-19)
 - Equality (Art. 20-26)
 - Solidarity (Art. 27-38)
 - Citizens' Rights (Art. 39-46)
 - Justice (Art. 47-50)
 - General provisions on interpretation and application (Art. 51-54)

③ Charter of Fundamental Rights of the EU

3. Key provisions

- Art. 15 → Freedom to choose occupation
- Art. 18 → Right to asylum
- Art. 21 → Non-discrimination
- Art. 37 → Environmental protection
- Art. 45 → Freedom of movement

II. REGULATIONS / CONVENTIONS

A. Conflicts of jurisdiction

B. Conflicts of law

C. EU company regulations

II. REGULATIONS / CONVENTIONS

A. Conflicts of jurisdiction

- ④ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis Regulation) & Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention) of 27 September 1968
- ⑤ Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention) of 30 October 2007

④ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Secondary EU law (binding regulation)
- Based on Art. 81 TFEU
- Harmonizes jurisdiction and recognition / enforcement of judgments in EU

④ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Civil and commercial matters (excludes fiscal, customs, administrative, and public power responsibility)
- Intra-EU disputes (based on domicile of defendant – Art. 6)
- Brussels I bis Regulation applies to cases initiated after 10 January 2015 (Art. 66 §1)

④ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Brussels I bis Regulation replaces the 1968 Brussels Convention, which was the initial legal instrument
- Successive reforms:
 - Brussels Convention (1968)
 - Brussels I Regulation (2001)
 - Brussels I bis Regulation (2012)

④ Brussels I bis Regulation & Brussels Convention

2. Legal structure

- Chapter 1 : Scope and definitions (Art. 1-3)
- Chapter 2 : Jurisdiction (Art. 4-35)
- Chapter 3 : Recognition and enforcement (Art. 36-57)
- Chapter 4 : Authentic instruments and court settlements (Art. 58-60)
- Chapter 5 : General provisions (Art. 61-65)
- Chapter 6 : Transitional provisions (Art. 66)
- Chapter 7 : Relationship with other instruments (Art. 67-73)
- Chapter 8 : Final provisions (Art. 75-81)

④ Brussels I bis Regulation & Brussels Convention

3. Key provisions

- **Art. 25** : Choice of court agreement (autonomy of the parties)
- **Art. 4** : General principle → jurisdiction at defendant's domicile
- **Art. 7** : Special jurisdiction in contractual/tort matters
 - **Art 7(1)** : contractual matters:
 - Principle : place of performance
 - Specific applications:
 - ✓ Sales of goods: place of delivery
 - ✓ Provision of services : place of provision
 - **Art. 7(2)** : tort matters : place of damage

④ Brussels I bis Regulation & Brussels Convention

3. Key provisions

- Section 3-5 : protection of the "weak party"
 - Art. 10-16 : Matters relating to insurance
 - Art. 17-19 : Consumer contracts
 - Art. 20-23 : Individual contracts of employment

⑤ Lugano Convention

1. Scope of Application

- Multilateral international treaty signed in 2007 (replacing 1988 version)
- Lugano Convention mirrors Brussels I Regulation structure (rules on jurisdiction, recognition, and enforcement)
- Adopted by Council Decision 2009/430/EC to make EU a contracting party
- Adjusted to fit EFTA legal systems

⑤ Lugano Convention

1. Scope of Application

- Convention between EU and EFTA countries (Switzerland, Norway, Iceland) → extends Brussels I Regulation rules to EFTA states
- Civil and commercial matters (excludes fiscal, customs, administrative, and public power responsibility)
- Exequatur procedure abolished : ensures mutual recognition and enforcement of judgments

⑤ Lugano Convention

2. Legal structure

- Title 1 : Scope
- Title 2 : Jurisdiction
- Title 3 : Recognition and enforcement
- Title 4 : Authentic instruments and court settlements
- Title 5 : General provisions
- Title 6 : Transitional provisions
- Title 7 : Relationship to council regulation (EC) No 44/2001b and other instruments
- Title 8 : Final provisions

⑤ Lugano Convention

3. Key provisions

- Art. 2 : General principle: jurisdiction of defendant's domicile
- Art. 5 : Special Jurisdiction :
 - In matters of contracts = place of performance
 - In matters of tort = place of damage
- Art. 17 : Choice of court agreement

II. REGULATIONS / CONVENTIONS

B. Conflicts of law

⑥ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

⑦ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

⑥ Rome I

1. Scope of Application

- Regulation (EC) No 593/2008
- Based on Art. 81 TFEU
- Directly applicable in all EU Member States (except Denmark)
- Applicable to contractual obligations in civil and commercial matters in a cross-border context
- Replaces Rome Convention of 19 June 1980

⑥ Rome I

1. Scope of Application

- Legal articulation between Hague Convention 1955 and Rome I Regulation
 - Rome I Regulation does not apply if a previous international convention (like the 1955 Hague Conventions) is already in force
 - Under the condition that the Contracting States of this previous Convention are not exclusively MS of the EU (e.g., Niger and Norway)
 - Consequences for the PIL-rules before a French Court :
 - Hague Convention 1955 is the specific choice-of-laws rule for the contract of sale of goods
 - Rome I Regulation is the general choice-of laws rule for all the other types of contract (besides the sale of goods)

⑥ Rome I

2. Legal structure

- Chapter 1 : Scope (Art. 1-2)
- Chapter 2 : Uniform rules (Art. 3-18)
- Chapter 3 : Other provisions (Art. 19-28)
- Chapter 4 : Final provisions (Art. 29)

⑥ Rome I

3. Key provisions

- **Art. 3** : Freedom of choice of law
- **Art. 4** : Default rules with objective connection for determining applicable law (e.g., place of habitual residence)
 - § 1 : Abstract definition
 - § 2 : Standard contracts
 - § 3 : Escape clause
 - § 4 : Global clause
- **Art. 9** : Overriding mandatory provisions

⑦ Rome II

1. Scope of Application

- Regulation (EC) No 864/2007 of 31 July 2007
- Based on Art. 81 TFEU
- Directly applicable (except Denmark)
- Applicable to non-contractual obligations (torts, delicts) in cross-border context

⑦ Rome II

1. Scope of Application

- Legal articulation between Rome II and the Hague Convention 1973 :
 - Rome II Regulation of 11 July 2007 on the law applicable to non-contractual obligations (Art. 5 : product liability)
 - Hague Convention 1973 is in its Contracting States (that are also MS of EU) the specific conflict-of-laws rule for product liability (→ Art. 5 Rome II Regulation does not apply)
 - Rome II Regulation 2007 is in the Hague Convention's Contracting States (that are also MS of EU) the general conflict-of-laws rule for all the other non-contractual obligations (besides product liability)

⑦ Rome II

2. Legal structure

- Chapter 1 : Scope (Art. 1-3)
- Chapter 2 : Torts / delicts (Art. 4-9)
- Chapter 3 : Unjust enrichment, *negotiorum gestio* and *culpa in contrahendo* (Art. 10-13)
- Chapter 4 : Freedom of choice (Art. 14)
- Chapter 5 : Common rules (Art. 15-22)
- Chapter 6 : Other provisions (Art. 23-28)
- Chapter 7 : Final provisions (Art. 29-32)

⑦ Rome II

3. Key provisions

- Art 3 : Universal application : Rome II applies whether the applicable law to the non-contractual obligation is the national law of a Member State of the EU or not
- Art. 5 : Product liability
- Art. 12 : *Culpa in contrahendo* : sudden (and not communicated) breakdown of negotiations

II. REGULATIONS / CONVENTIONS

C. EU Company Regulations

⑧ Regulation (EC) No 2157/2001 on the Statute for a European Company (Societas Europaea - SE)

⑨ Proposal for a Council Regulation of 25 June 2008 on the Statute for a European Private Company (Societas Privata Europaea - SPE)

⑧ Societas Europaea - SE

1. Scope of Application

- Council Regulation (EC) no. 2157/2001 (supplemented by Directive 2001/86/EC on the involvement of employees)
- Directly applicable (no transposition)
- National law applies to uncovered areas (e.g., insolvency)

⑧ Societas Europaea - SE

1. Scope of Application

- EU public limited company form
- Formed by at least 2 existing companies from different EU States (e.g., by merger, creation of a holding or subsidiary, or conversion)
- SE's advantages : exceptional international prestige and legal label ("SE") as a corporate form for globally acting groups
- BUT : cross-border mobility (merger / transfer of seat): today SE is less attractive than national law-based companies (due to CJEU case law)

⑧ Societas Europaea - SE

2. Legal structure

- Title 1 : General provisions
- Title 2 : Formation
 - Section 1 : General
 - Section 2 : Formation by merger
 - Section 3 : Formation of a holding SE
 - Section 4 : Formation of a subsidiary SE
 - Section 5 : Conversion of an existing public limited-liability company into an SE

⑧ Societas Europaea - SE

2. Legal structure

- Title 3 : Structure of the SE
 - Section 1 : Two-tier system
 - Section 2 : One-tier system
 - Section 3 : Rules common to the one-tier and two-tier systems
 - Section 4 : General meeting
- Title 4 : Annual accounts and consolidated accounts
- Title 5 : Winding up, liquidation, insolvency and cessation of payments
- Title 6 : Additional and transitional provisions
- Title 7 : Final provisions

⑧ Societas Europaea - SE

3. Key provisions

- Art. 2 : formation of a SE
 - By merger
 - Holding
 - Subsidiary
 - By conversion
- Art. 4 : minimum subscribed capital → €120,000
- Art. 5 : applicable law : provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered

⑧ Societas Europaea - SE

3. Key provisions

- **Art. 7** : Seat : within the EU, in the same Member State as the head office
→ statutory seat and real seat must be established in the same Member State
- **Art. 8** : transfer of registered office (=statutory seat) to another Member State → no liquidation, no new legal entity

⑧ Societas Europaea - SE

3. Key provisions

- **Art. 9** : applicable legal regime
 - SE regulation
 - SE statutes (if authorized by the Regulation)
 - If not regulated by SE regulation :
 - Laws adopted by the MS relating to SEs
 - Laws adopted by the MS relating to public limited-liability company
 - Provisions of SE statutes (if authorized by the Member State)

⑨ Private Company

1. Scope of Application

- Aims to simplify cross-border start-ups and SME-structures
- 2008 proposal of a Council Regulation → **not adopted**
- Formation by one or more natural persons or companies (including SE or national company)
- High degree of mobility : statutory seat and real seat can be situated in different Member States (important difference to the SE Regulation)

⑨ Private Company

3. Key provisions

- Art. 5 : shareholder liability = limited to subscribed amount capital = unquoted shares (no public offer)
- Art. 6 : Name must include abbreviation “SPE”
- **Art. 7** : Seat of the company : statutory seat (= registered office) and real seat (= central administration) can be situated in different MS
- Art. 19(4) : minimum capital = €1
- **Art. 35(1)** : transfer of the statutory seat to another MS allowed

II. EUROPEAN LAW

C. Directives

⑩ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Mobility Directive – Company Law Package)

⑩ Mobility Directive – Company Law Package

1. Scope of Application

- Public and private limited-liability companies
- Cross-border reorganization (framework for cross-border conversions, cross-border mergers, cross-border divisions)
- Legal transfer of statutory seat to another MS → no dissolution or new company → retains legal personality

⑩ Mobility Directive – Company Law Package

1. Scope of Application

- Directive (EU) 2019/2121 → amends Directive 2017/1132
- Adopted in 2019, transposition deadline : Jan 2023
- EU-wide application
- Based on freedom of establishment (TFEU Art. 49–54)

Thank you for your attention !



Sans limites.

Ohne Grenzen.

Without limits.

ABC International Selarl
ABCI Rechtsanwaltsgesellschaft mbH
jochen.bauerreis@abci-avocats.com
www.abci-avocats.com