



STUDY PROGRAMME

1. European Legal Studies Programme

ACADEMIC YEAR

SEMESTER

2. Transatlantic Affairs

2023-24

First

COURSE TITLE

The Constitution(alisation) of EU Law

COURSE PROFESSOR

S. Garben

COURSE ASSISTANT

F. Romanelli

NATURE OF COURSE (COMPULSORY, OPTIONAL)

Compulsory

LANGUAGE OF INSTRUCTION

English

ECTS CREDITS

6

1. COURSE OBJECTIVES

The overarching aim of the course is to provide students with a profound understanding of, and critical reflection on, the European integration process as a constitutional project, and the EU legal order as a constitutional order.

The course aims to provide students with:

- (1) A deep knowledge and profound understanding of the functioning of the EU constitutional system and the factors that drive its development;
- (2) a critical appreciation of the shortcomings of the current system and creative reflection on constitutional reform;
- (3) engagement with constitutional concepts and theories to frame the analysis and normative assessment of the EU legal order and European integration process, and its contestation.

2. LEARNING OUTCOMES

The course objectives tie in with the following learning outcomes of the programme **European Legal Studies**:

- 1.1. Possess advanced knowledge of the European Union (EU), its institutions, competences, substantive principles and legal doctrines
- 1.2. Possess general knowledge on the main elements of the EU's law and policy at large
- 1.3. Possess in-depth, scientific knowledge on specific areas of EU law
- 2.1. Be able to think analytically, correctly analysing complex legal problems in a multi-level legal



order, the various sources of law, legal instruments and actors, and to formulate a scientifically sound position on the basis of logical reasoning

2.2. Be able to think dynamically, to understand the constantly changing and evolving nature of the European integration process and to provide constructive commentary on its possible future development

2.3. Be able to think critically, formulating an independent opinion and interpretation of complex legal problems, contextualising findings and weighing a multitude of different factors, including findings from other disciplines

2.4. Be able to process a large amount of information within a short amount of time and to deliver accurate and reflective outcomes

2.5. Be able to work with primary sources of law, such as judgments and legislation, and to reflect independently on their significance and interpretation

2.6. Be able to work in a multi-cultural context, understanding and mediating different legal systems, legal traditions and normative frameworks in a constructive way

2.7. Be able to develop, research, discuss and critically answer questions regarding a scientific research question of EU law in a scientifically responsible way

2.9. Draft a clear legal scientific text in the area of EU law

2.10. Present and defend orally an issue relating to EU law on the basis of legal argumentation or a personal position

2.11. Be able to study and work in the area of EU law in English and French, including through interaction with native speakers

The course objectives tie in with the following learning outcomes of the programme **Transatlantic Affairs**:

1.1 The graduate masters the most important theoretical approaches and concepts of, depending on his or her disciplinary focus, Economics, International Relations and Diplomacy Studies, Legal Studies and/or Political Science relevant for the analysis of transatlantic affairs.

1.3 The graduate has good knowledge of, depending on his or her disciplinary focus, the political and/or legal systems, the decision-making processes, the economic structures and the main internal and external policies of the European Union and the United States.

1.4 The graduate has insights into historical, political, legal and economic aspects of transatlantic affairs as well as into those policy areas that are of essential importance to transatlantic affairs. He or she can use these insights to contextualize and interpret new developments.

1.5 The graduate is able to incorporate knowledge and understanding of various fields of transatlantic affairs and of different related disciplines (such as Economics, International Relations, Legal Studies, Political Science)

2.1 The graduate can approach the field of transatlantic affairs in a broad sense analytically by assessing the challenges in this domain with an open mind for diversity and for complex situations.

2.2 The graduate has the ability to critically reflect upon problems regarding an extensive range of transatlantic affairs, to adopt well-informed points of view and to communicate them effectively orally and in writing, whether working independently or in a team.

2.4 The graduate is capable of processing a large amount of information and appropriately analyse relevant sources depending on his or her disciplinary focus within a short period of time and of suggesting possible actions that contribute to problem-solving in a creative way.

In order to account for the 1 additional ECTS that MATA students receive for this course, MATA-students will write a non-graded essay (3000 - 5000 words) of a constitutional topic of their choice in a comparative EU-US perspective.



3. COURSE CONTENTS

From the outset, the course will explore key concepts such as 'Constitution', 'Constitutionalism' and 'Constitutionalisation' and contemplate the manifold implications and applications of these notions for the EU and EU law.

The course will trace the dynamic process of constitutionalisation of EU law that started with the CJEU's interpretation of the EEC Treaty in the foundational rulings and that continues to this day, identifying within this timeline the key constitutional moments as well as the underlying dynamics that (continue to) drive this evolution. The legal components of the EU's key constitutional claim to an autonomous and original legal order, that establishes (a degree of) direct and final authority in relation to the European citizens, will be examined in detail.

The course will furthermore critically engage with the legitimacy implications of this constitutional claim: does (all of) European integration merit the label 'Constitutional' and the profound power that is attached to that label? As we will see, EU authority faces certain challenges from a perspective of constitutional democracy and democratic constitutionalism: the core of its constitutional claim has in fact not been accepted by the national constitutional courts, and scholars have alleged that EU law is both 'over-constitutionalised' and 'under-constitutionalised' in important respects. We will aim to disentangle that conundrum and reflect constructively on options for future reform.

4. TEACHING METHOD

The course will be taught in an interactive way following the Socratic method. There will be several debating exercises taking place throughout the course.

The course will furthermore feature a graded exercise where students work in small groups formulating proposals for constitutional reform and present these in class (see below under 'evaluation').

5. COURSE MATERIAL

A detailed syllabus with an outline of the course and reading assignments will be handed out at the beginning of the course. The syllabus contains the relevant primary sources as well as key academic writings that should be read before class to enable an active participation in class discussions.

6. EVALUATION

Students are evaluated on the basis of:

- (1) a group work (written paper and presentation) formulating a proposal for constitutional change (ALL students, 25% of the final grade) *MATA students are additionally required to write a 5-page non-graded essay on a topic of comparative constitutional law

AND

- (2) a written 'open book' examination (75% of the final grade).

7. COVID

The College of Europe reserves the right to change the delivery and assessment of the course in case of restrictions related to the Covid-19 pandemic. Any communication from the Department in this regard takes precedence over the information provided in this ECTS card.



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ECTS CARD

8. MASTER'S THESIS EVALUATION

The Master's thesis will be orally defended in the final exam session in the presence of the Supervising Professor and the Academic Assistant responsible for the specific compulsory course, seminar or compact seminar.

The defence shall begin with a compulsory 10-minute Power Point Presentation by the student with an added value to the written work (correct potential mistakes, include updates, additional information, etc.).

The Master's thesis defence should allow the student, the Supervising Professor and the Academic Assistant to further demonstrate, scrutinise and develop insights and skills.