



## STUDY PROGRAMME

1. European Legal Studies Programme

ACADEMIC YEAR

SEMESTER

2. Transatlantic Affairs

2019-20

Second

## COURSE TITLE

Constitutional and substantive aspects of the division of competences between the EU and the Member

## COURSE PROFESSOR

S. Garben

## COURSE ASSISTANT

S. Forderer

## NATURE OF COURSE (COMPULSORY, OPTIONAL)

Optional

## LANGUAGE OF INSTRUCTION

English

## ECTS CREDITS

5

## 1. COURSE OBJECTIVES

The aim of the course is to explore the legal dimensions of the 'power bargain' struck between the Member States and their Union, and the on-going power struggle between them. It aims to analyse in detail the legal limits on European integration and EU action, as well as the legal limits on Member States' powers, which raise existential questions about the nature of the EU as a federal order and the nature of the Member States as independent nation states. It aims to show the inherent limitations of relying on a legal approach of delimiting competences as a way to contain European integration considering the dynamics of the EU legal order, and it aims to encourage reflection on alternative ways to protect national identities, self-determination and subsidiarity (overall, to protect democracy) in Europe.

The expected learning outcomes are:

- (1) a comprehensive understanding and full knowledge of the functioning of the system of competence division in the EU legal order and how it has come to be this way;
- (2) a critical appreciation of the shortcomings of the current system;
- (3) creative reflection on possibilities for reform of the current system;
- (4) basic knowledge of the EU's law and policy in some of the areas listed as 'exclusive', 'shared', or 'complementary' EU competence.

For MATA students, this course improves their knowledge about theoretical approaches and concepts of the EU legal order as well as their skills in oral presentations and critical reflection of the current legal system.



## 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.

### 3. COURSE CONTENTS

#### I. Theoretical framework

##### 1. Theories of federalism

- Exploration of federalist theories (dual/cooperative/categorical fed)
- Comparison between US/DE/EU

##### 2. Competences from Rome to Lisbon

- Successive Treaty revisions concerning competences
- Laeken Declaration
- Question of a 'competence catalogue'
- The current competence constellation

##### 3. The legal principles underlying the current system

- Principles of subsidiarity, proportionality, national identity
- Principle of conferral (the legal basis)
- Principles of primacy and pre-emption, sincere cooperation
- Kompetenz-kompetenz

#### II. Critical assessment of the current system

##### 4. Exclusive competences

- Customs union, competition law, monetary policy, commercial policy
- Difficulties separating from other policy areas

##### 5. Shared competences

- Internal market, social policy, agriculture, environment, AFSJ, transport
- Application of the principle of pre-emption/subsidiarity

##### 6. Complementary competences

- Culture, education, sport, health, tourism, civil protection
- Negative and positive integration in areas of 'Member State autonomy'

##### 7. Human rights

- Substantive limit on exercise of EU competence; no general EU competence
- Accession to ECHR

#### III. Reflections on reform

##### 8. Confronting the 'competence conundrum'

- Various explanations for 'competence creep'



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# ECTS CARD

9. Presentations of reform proposals  
[STUDENT PRESENTATIONS]

## 4. TEACHING METHOD

The course will be taught in an interactive way following the Socratic method. Students shall receive extensive resource materials, including relevant statutes as well as analytical comments which should enable them to participate actively in class discussions and to engage in further studies.

## 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 is composed of relevant EU case-law and legislation and academic articles on the subject.

## 6. EVALUATION

Students are evaluated on the basis of

(1) an 8-minute (for individual presentations) or 12-minute (for presentations in couples) PowerPoint presentation (hand-outs required) followed by a 5 minute Q&A (25% of the final grade) to be given individually or in pairs, and

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

Exams organised in second session period are 100% written exams.