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#### *Column 4*

with this column we are now entering "European legal territory". I would first like to give you an overview of the development and current status of the **European Union** (*hereinafter: EU*), as reflected in the treaties. In doing so, we always look at the treaties and their development from the perspective of the citizen who relies on legal protection, i.e. in particular from the perspective of the fundamental freedoms and rights guaranteed by Union law.

We would like to remind you that **Georgia** applied to join the EU on March 3, 2022, under the impression of the Russian invasion of Ukraine. This means that for Georgia, the treaties as they currently apply to the Union in the version of the **Treaty of Lisbon of 2007** would claim direct application should accession take place in the foreseeable future.

The focus of our considerations is therefore the Constitution of the Union, as updated with the treaty reform of 2007 in the **Treaty of Lisbon** and currently applicable to the Union countries. The Reform Treaty has fundamentally changed the previous structure of the European Union by establishing a new Union with its own legal personality and giving it legal capacity (Article 46a Lisbon Treaty – *Official Journal of the European Union 17.12.2007 – C 306/1 = Article 47 EUV – Consolidated version*).

The treaty builds on the treaty on the "European Union" agreed in **Maastricht** in 1992 (EU Treaty, see below). At the same time, it incorporates the Treaty on the "European Community" (EC Treaty), which remains unchanged in its basic structure and is only renamed the "Treaty on the Functioning of the European Union" (TFEU Treaty). The European Community (EC) is dissolved as an independent institution, and the Union

is now its sole legal successor. Both treaties - the EU Treaty and the TFEU Treaty - are the sole legal bases of the Union.

First, I will provide the references (links) of the preceding treaties and treaty amendments with their treaty texts that are still important for the *Treaty of Lisbon*, chronologically from the *Single European Act of 1987*, the *Treaty of Maastricht of 1992* to the *Treaty of Lisbon of 2007* and currently up to the *Proclamation of the European Pillar of Social Rights of 26 April 2017*, and add a brief description and explanation of the content of each document:

- **Single European Act (EEA, SEA) 1987**

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11986U/TXT> (German version)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11986U/TXT> (English version)

The EEA "unified" the bundle of Community policies and previously non-Community policy areas such as foreign policy. Above all, it changed and reformed the EEC Treaty, particularly in the policy areas of the European internal market, cooperation in economic policy, social policy, and created new responsibilities in the areas of research, technology, and environmental protection. It also reformed the decision-making and legislative procedures.

The free movement of people, goods, services, and capital (the four fundamental freedoms) was to be made possible between all Member States by the end of 1992, by which time the national laws of the individual countries had to be harmonized.

- **Treaty of Maastricht 1992 – EU Treaty**

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11992M/TXT> (German version)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11992M/TXT> (English version)

The Maastricht Treaty is also known as the **Treaty on European Union**. The European Union is now based on three pillars:

- The first and most important pillar is the **European Community**, which is a legal entity and signatory to all treaties. In particular, it created a common internal market to which the twelve member states belong.

- The **Common Foreign and Security Policy** forms the second pillar. It enables a European defense policy, including humanitarian and peacekeeping tasks as well as crisis management.
- The third pillar of the European Union aims at a **Common Internal and Legal Policy** of the governments in the issues of immigration and asylum policy as well as the fight against crime.

The subject matter of this treaty is therefore intergovernmental policy areas (common foreign and security policy, cooperation in the areas of justice and home affairs). Above all, however, the treaty incorporated fundamental (amending) provisions of the three Community treaties of the European Community (EC), the European Atomic Energy Community (EAEC) and the European Coal and Steel Community (ECSC).

The European Economic Community (EEC) thus became the comprehensive **European Community (EC)** with the *Economic and Monetary Union* anchored in the EC Treaty as its core and the granting of **civil rights** to Union citizens (see below - ex-Art. 17 - 22 EC Treaty, old version).

### **EC Treaty (old version)**

#### ***(Ex-) Art. A para. 2***

*This Treaty represents a new stage in the realization of an ever closer union among the peoples of Europe, in which decisions are taken as close as possible to the citizen.*

#### ***(Ex-) Art. 17 – 22***

#### ***Art. 17 [Citizenship of the Union]***

*(1) Citizenship of the Union is hereby introduced. A citizen of the Union shall be any person who holds the nationality of a Member State. Citizenship of the Union shall complement national citizenship but shall not replace it.*

*(2) Citizens of the Union shall have the rights and obligations provided for in this Treaty.*

### **Art. 18 [Freedom of movement]**

*(1) Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*

*(2) If Community action should prove necessary to achieve this objective and this Treaty does not provide for such powers, the Council may adopt provisions to facilitate the exercise of the rights referred to in paragraph 1. It shall act in accordance with the procedure laid down in Article 251.*

*(3) Paragraph 2 shall not apply to provisions relating to passports, identity cards, residence permits or equivalent documents, nor to provisions relating to social security or social protection.*

### **Article 19 [Right to vote]**

*(1) Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in municipal elections in the Member State in which he resides, under the same conditions as nationals of that Member State. This right shall be exercised subject to detailed rules to be adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these may provide for derogations where justified by problems specific to a Member State.*

*(2) Without prejudice to Article 190(4) and the provisions implementing it, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that Member State. This right shall be exercised subject to detailed rules adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, which may provide for derogations where justified by problems specific to a Member State.*

### **Article 20 [Diplomatic protection]**

*Every citizen of the Union shall enjoy, in the territory of a third country in which the Member State of which he is a national is not represented, the diplomatic and consular protection of any Member State, under the same conditions as nationals of that State. Member States shall agree on the necessary rules and initiate the international negotiations necessary to ensure such protection.*

### **Art. 21 [Right of petition]**

*Every citizen of the Union has the right of petition to the European Parliament in accordance with Article 194.*

*Every citizen of the Union may apply to the Ombudsman established under Article 195.*

*Every citizen of the Union may write to any institution or body referred to in this Article or in Article 7 in one of the languages referred to in Article 314 and receive a reply in the same language.*

### **Art. 22 [Reporting obligation]**

*The Commission shall report every three years to the European Parliament, the Council and the Economic and Social Committee on the application of this Part. The report shall take account of the development of the Union.*

*On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to supplement the rights provided for in this Part which it recommends to the Member States for adoption in accordance with their respective constitutional requirements.*

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These provisions correspond to **Articles 20 – 25 TFEU Lisbon** (*Consolidated version*), but with the exception of **Article 24**, which grants further citizens' rights beyond the right to petition and is worded as follows:

### **Article 24 AEUT Lissabon – Consolidated Version (ex Article 21 TEC)**

*The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a **citizens' initiative** within the meaning of **Article 11 of the Treaty on European Union \***), including the minimum number of Member States from which such citizens must come.*

*Every citizen of the Union shall have **the right to petition** the European Parliament in accordance with Article 227.*

*Every citizen of the Union may apply to **the Ombudsman** established in accordance with Article 228.*

*Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.*

**\*) Article 11 TEC**

*1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.*

*2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.*

*3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.*

*4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The procedures and conditions required for such a **citizens' initiative** shall be determined in accordance with the first paragraph of **Article 24 of the Treaty on the Functioning of the European Union**.*

- **Treaty of Amsterdam 1997**

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11997D/TXT> (German version)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997D/TXT> (englische Fassung)

The Treaty of Amsterdam retained the Maastricht Union architecture, but created additional powers. It expanded the rights of the **European Parliament** by extending the codecision procedure to other legislative matters. In addition, additional powers and tasks were added in the area of *domestic policy*, such as reducing unemployment through closer cooperation between the Member States in employment policy, asylum, refugee, immigration and visa policy, free movement of persons, and improved control of the EU's external borders. Other regulations concerned bundled tasks of the **High Representative for the Common Foreign and Security Policy** and institutional reforms for **Enhanced**

**Cooperation**, as well as empowering a smaller group of Union states willing to integrate to make independent, further progress in *Integration*.

Of particular importance is the inclusion of the *1992 Protocol on Social Policy* in the Treaty of Amsterdam. The *Community Charter of the Fundamental Social Rights of Workers of 1989* had already sent a political signal, but had not yet enabled the Community to have its own social policy. However, both legal acts created the basis for the development of an independent Community social policy, which was then formally expressed in the legal acts concerning the *Proclamation of the Charter of Fundamental Rights of the European Union in the Treaty of Lisbon of 2007* and finally in the *Proclamation of the European Pillar of Social Rights of 2017*.

- **Treaty of Nice 2002 – EU Treaty Consolidated Version 2002**

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12001C/TXT> (*English version*)

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:12001C/TXT> (*German version*)

The focus of this treaty was on supplementary institutional regulations. In particular, the **Community legal protection system** with the *European Court of Justice* (ECJ) and the *European Court of First Instance* (CFI) was reformed. The *European Parliament* was also given additional powers in the codecision procedure. The increased cooperation between individual countries within the EU was further expanded, for example in the *Schengen Agreement* or the *Monetary Union*. Integration steps are now possible in these areas without all EU states necessarily having to participate.

- **Treaty of Lisbon 2007 – Treaty amending the Treaty on European Union and the Treaty establishing the European Community – 17.12.2007, in force since 01.12.2009**

(*English versions*)

[http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC\\_19](http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL>

(*German version*)

[http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0005.01/DOC\\_19](http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0005.01/DOC_19)

- **AEU-Treaty of Lisbon 2007** – Consolidated version

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:12012E/TXT> (*German version*)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT> (*English version*)

- **Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as well as the Charter of Fundamental Rights of the European Union** – Official Journal of the European Union of 26 October 2012 (2012/C-326/01 and 326/02)

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:C:2012:326:FULL> (*German version*)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL> (*English version*)

The *Treaty of Lisbon* is essentially a follow-up to the – failed – Treaty establishing a *Constitution for Europe in 2004*, but moves away from the construction of the Union as a centralist and quasi-state entity that was originally envisaged therein. In particular, it expressly abandons the principle of the unconditional primacy of Union law over domestic law contained in the Constitutional Treaty.

The Treaty creates important institutional innovations

- Introduction of an elected President of the European Council (*Article 15 Paragraph 2 and Paragraph 5 TEU*),
- The inclusion of the European Council in the circle of Union institutions (*Article 13 Paragraph 1 TEU*),
- The strengthening of the European Parliament through the right to elect the President of the Commission (*Article 14 Paragraph 1 Sentence 3 TEU*),
- The reorganization of the voting mechanism in the Council of the Union (*Article 16 TEU*).

Major innovations concern the **Protection of Fundamental Rights** and accession to the **ECHR** (*Article 6 Paragraph 2 TEU*), which, however, leaves the distribution of competences between the Union and the Member States unaffected, and the introduction of **Citizens' Initiatives** (*Article 11 Paragraph 4 TEU, Article 24 Paragraph 1 TFEU*).

Of particular importance is the fact that the **Charter of Fundamental Rights** - which has only been slightly amended - is given legal status on an equal footing with the founding treaties of the Union and is given the *status of primary Union law* (Article 6, paragraph 1, subparagraph 1, clause 2 of the TEU).

The Union has its own **Legal Personality** (*Article 46a of the Lisbon TEU - Official Journal of the European Union 17.12.2007 - C 306/1 = Article 47 of the TEU - consolidated version*) and in each Member State the most extensive legal capacity and commercial capacity granted to legal persons under their law (*Article 335 of the TFEU*). However, its legislative activity remains bound by the powers conferred on it by the Member States (*Article 5, paragraph 2 of the TEU; Declaration No. 24 on the legal personality of the EU*).

As an independent sovereign body, the Union decides within the scope of its competences supranationally according to the majority principle, and in the area of the CFSP intergovernmentally.

- **Proclamation of the European Pillar of Social Rights** of 26 April 2017

[https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017C1213\(01\)](https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32017C1213(01)) (*German version*)

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017C1213(01)) (*englische Fassung*)

- **Communication** from the Commission concerning the proclamation of the *European Pillar of Social Rights*

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52017DC0250> (*German version*)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0250> (*English version*)

- **Proposal** for an interinstitutional proclamation of the *European Pillar of Social Rights*

<https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:52017DC0251> (*German version*)

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0251> (*English version*)

- *The European Pillar of Social Rights Proclamation in **twenty principles***

<https://ec.europa.eu/social/main.jsp?catId=1606&langId=de> (*German version*)

<https://ec.europa.eu/social/main.jsp?catId=1567&langId=en> (*English version*)

The **European Pillar of Social Rights** contains three chapters:

- Chapter I - Equal opportunities and access to the labour market
- Chapter II - Fair working conditions
- Chapter III - Social protection and social inclusion

The *European Pillar of Social Rights* is a "common social policy programme" of the Union in the rank of a non-binding recommendation without legal binding force (see Article 288 paragraph 5 TFEU, concerning the first version).

The interinstitutional cooperation, which then led to the *Joint Proclamation of the European Commission, the European Parliament and the Council* in 2017, now allows, according to Article 295 sentence 2 TFEU, more extensive *interinstitutional agreements* that can become legally binding. In order to be binding, the social rights themselves must be implemented by the EU or by the member states (see Nos. 12 and 14 of the preamble).

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*In the next column, before we deal with European law in terms of subject matter and content, I would like to use the example of the **Union's social policy**, namely **European labour law**, to show you the systemic difficulties that characterise the European social model sought by the Union and the associated uniform legal design, as well as the other connections that are associated with the corresponding harmonisation at the level of the national member states and their social policies. Of particular importance here is the focus on case law and the role that the ECJ in particular plays in the application of the law.*

*When studying the column, the focus should not be on substantive legal issues, but on the purpose of giving you an insight into the structure of a developing common social policy of the Union and consequently into the mechanisms of cooperation within the institutions and bodies dealing with it, each within the scope of their responsibilities.*

(signed) Dr. Kammerer