

JEAN MONNET CHAIR

SYLLABUS

European Union Law

-Facing the Constitutional and Governance Challenges in the Era of Globalization

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Explanatory Note

The underlying Syllabus of the Course is a preliminary version, a work still in progress.

This has mainly to do with the innovative outlook which it seeks to follow.

Essentially, we have tried to deeply innovate in the contents of a “mainstream” European Union Law Course by looking at it, rethinking it and as much as possible starting to “reshuffle” its contents from the perspective chosen: that of a fundamental concern with the present status of the European Union construction and the belief that there are two main salient issues which condition and “govern” the prospects for the future: the one of European Union constitutionalism – in short, which are the values, principles, options it shall pursue and how this impacts on the decision-making structures, procedures and legal instruments – and the one of governance – in very short, which are the actors/legal subjects, and again mechanisms, procedures and instruments it opens itself up to .

The present result is therefore actually nothing else than a, somewhat artificial, suspension moment: it certainly still dominantly conveys the “traditional” Law, while simultaneously attempting at enlisting the reformative avenues the “newer”.

There is, in any event, a sense of incompleteness which, it is hoped, the very dynamic of the proposed Course and Chair should permit to provide matured answers for, along the way. The test which the teaching, the reflection which the students and their reactions to evolving ideas as well as the research agenda thus established, should feature as prominent contributors to the pursuance of the investigation and the aims defined. There is also a deliberate commitment to pursue them.

Among the more innovative Chapters or sections which represent this more innovative intellectual, theoretical, conceptual query, it seems appropriate to highlight the following ones:

Subtitle

Introduction: 2., 3.

Part I

Section I. 9

Section II. 8., 9., 10.

Section IV. 3., 6., 11., 12.

Section V. (whole section)

Section VII. (whole section)

Part II

Section I (whole section)

Section II (whole section)

Section IV (whole section)

Part III

Section III

Part IV

Section II. 5., 6.

Concluding Remarks

A final word on procedure:

Apart from the applicable methodological and methods considerations (set out in the final section of this Syllabus), it should be borne in mind that this intellectual framework is aimed at being presented in different settings and to different types of students: on the one hand, the undergraduate Law program, on the other one the Master's and postgraduate programs offered by the Faculty of Law.

The apparent gap is somewhat reduced by the fact the undergraduate students in the Program of Law being most European have already had some considerable exposure to the European Union if not some basics of European Union law in other former Law subjects matters, whereas most of the students in the Master's and postgraduate programs are Mainland Chinese who were never had exposure to European Union Law before and whose notion of the European union is, at the outset, usually very fuzzy. In any event, the innovative more problematising outlook shall be pursued more intensely in the context of the Master's program.

Additionally, it seems equally opportune to recall that in the structure of the Master's program in which the new course-Chair is meant to feature prominently and for which this preliminary syllabus has mainly been devised, European Union Law is taught in different "courses"/"units"/moments. Indeed, apart from the mandatory General Course, usually attend by *circa* 15 students, the big majority of which are Mainland Chinese (marginally also Macau's, European and African), and lasting for 45 hours (15 sessions of three hours), plus seminars, which would henceforth be the sole responsibility of the proposed Chairholder, there is another optional course on *Institutional Law*, covering 30 hours and usually attended by 6-10 students, for which the proposed chairholder shall also be responsible, and another optional Course on *Economic Law of the European Union*, henceforth covering 45/60 hours and usually attended by 10-15 students, which shall be shared by the proposed chairholder and the usual Visiting Professors experts on European Union Law of the University of Macau. The intention is to pursue this syllabus unitarily in the aforementioned three moments.

Outline of the Course

Introduction - The *Jean Monnet Action* and this Course's Outlook

1. The context - *Jean Monnet Action* :
 - (i) Goals
 - (ii) Components
 - (iii) Action types
 - (iv) Types of activities
2. This Course's perspective- focus on two main topics: the European Constitution/constitutionalism; the European Union governance strategy
3. Methodological approach and teaching methods
 - (i) Law as a social construct
 - (ii) Law in its political, social and economic context
 - (iii) The relevance of case-law translated into teaching
 - (iv) Teaching and learning: cases and reading materials
 - (v) Teaching of European Union Law in the current circumstances- focus on issues and principles
 - (vi) Dynamic learning experimentation: moot courts, decision-making and negotiation games, as examples of the classic Community method and new governance approaches

Part I - Constitutional and Institutional Law

Section I. European integration and the Treaty on European Union - The run up to constitutionalism

1. Introduction
 - (i) The idea of 'Europe'
 - (ii) The idea of 'European Union'
 - (iii) Theories of 'integration'
 - (iv) The projects of integration
 - (v) The different European regional organizations
 - (vi) European integration in context: new regionalism and the other regional integration ventures
2. The European Communities and their origins
 - (i) From the Treaty of Paris to the Treaty of Rome
 - (ii) Establishing the European Economic Community

3. Early development of the European Communities
 - (i) The “*politique de la chaise vide*” and the Luxembourg Agreements
 - (ii) The initial enlargements
4. The Single European Act and beyond
 - (i) The road to the Single European Act
 - (ii) The Single European Act and the main amendments thus established
 - (iii) The road to Maastricht
5. The Treaty on European Union
 - (i) The three pillars of the European Union
 - (ii) The new competences
 - (iii) Recasting the institutional balance
 - (iv) The Union citizenship and the protection of fundamental rights
 - (v) The quest for ‘democracy’
 - (vi) Division of power between the European Union and the Member States
 - (vii) Flexibility and differentiation
6. The 1990s: a decade of europessimism
 - (i) Ratification of the Treaty on European Union
 - (ii) The Treaty of Amsterdam
 - (a) Amsterdam and the democratic deficit
 - (b) Area of Freedom, Security and Justice
 - (c) Differentiated integration
 - (d) The Protocol on subsidiarity and proportionality
7. Redrawing the borders of the European Union
8. The Treaty of Nice
 - (i) From Amsterdam to Nice
 - (ii) The Treaty of Nice
9. The aftermath of the Treaty of Nice: the future of European integration at a time of crucial reflexive perplexities.

Section II. European Union ‘constitutional law’, the Constitutional Treaty and European constitutionalism

1. Introduction
2. From the ‘constitutional Charter’ to ‘constitutional law’
3. Constitutional law through the Court of Justice
 - (i) The special identity of the European Union
 - (ii) *Van Gend en Loos*
 - (iii) Legitimacy of the ‘special legal order’
4. From “constitutional law” to constitutionalism
 - (i) Constitutionalism – substantive meaning

- (ii) Constitutionalism – formal meaning
- (iii) From constitutionalism back to the constitution?
- (iv) Nature and features of an European constitution
- 5. The Constitutional Treaty
 - (i) The reasons for the constitutional turn
 - (a) Success
 - (b) Enlargement
 - (c) The democratic challenge
 - (d) Politics and policies
- 6. Drafting of the Constitutional Treaty
 - (i) The Convention on the Future of Europe
 - (ii) The dynamics of the Convention
- 7. The Constitutional Treaty: analysis
- 8. Overview and assessment: constitutional values and constitutional principles
 - (i) Freedoms/ liberties
 - (ii) Democracy
 - (iii) Fundamental rights
 - (iv) Fairness
- 9. The ‘defeating’ referenda and British scepticism
- 10. Looking ahead: Phoenix reborn? A new constitutional hour, or just, a new ‘*institutional settlement*’? New-type constitutionalism? (reference)

Section III. The European Union Institutions

- 1. Introduction
- 2. The Commission
 - (i) The Commission structure
 - (a) The President of the Commission
 - (b) The College of Commissioners
 - (c) The Directorates-General
 - (d) The Cabinets
 - (e) Other bureaucracy
 - (ii) Powers of the Commission
 - (a) Legislative and quasi-legislative powers
 - (b) Agenda-setting
 - (c) Executive powers
 - (d) Supervisory powers
 - (iii) Regulatory agencies and the Commission
- 3. The Council of Ministers
 - (i) Powers and workings of the Council

- (ii) Decision-making within the Council
- (iii) Management of the Council: the Presidency, the Secretariat and COREPER
- 4. The European Council
 - (i) Historical development
 - (ii) Powers
- 5. The European Parliament
 - (i) Composition of the European Parliament
 - (ii) Powers of the European Parliament
 - (a) Legislative powers of the European Parliament
 - (b) Powers over the Executive
 - (c) Powers of litigation
 - (d) Financial powers of the European Parliament
- 6. The Court of Justice, the Court of First Instance, judicial panels, specialized tribunals: the judicial system of the European Union
 - (i) Jurisdiction of the Court of Justice – overview (reference to the specific teaching unit on the theme, as well as to the other specific passages of this Course)
 - (a) The preliminary reference procedure
 - (b) Enforcement actions
 - (c) Direct action for annulment
 - (d) Action for failure to act
 - (e) Liability, action for damages
 - (ii) Composition and working methods of the Court of Justice
 - (iii) The Court of First Instance
 - (iv) Judicial Panels
 - (v) The European Union Civil Service Tribunal
 - (vi) The reform of the judicial system of the European Union: an outstanding issue
- 7. Other institutions
 - (i) European Central Bank
 - (ii) Court of Auditors
 - (iii) Economic and Social Committee
 - (iv) The Committee of the Regions

Section IV. Laws and Law-making in the Community

- 1. Introduction
- 2. EU legislation
 - (i) Categories of acts
 - (ii) Legal effect
- 3. Soft law
- 4. Legal bases for Community legislation

5. Sources of law and the European legal order (a 'Community of law')
6. A revision of the system in the making? (rationale and outlook)
7. Community law-making procedures
 - (i) Council legislation without consultation of the Parliament
 - (ii) Consultation procedure
 - (iii) Co-decision procedure
 - (a) Central features of the co-decision procedure
 - (b) Legislative practice under the co-decision procedure
 - (iv) The budgetary procedure
8. Law-making and Enhanced Cooperation
9. Comitology
10. Expansion of Community competence and subsidiarity
11. Outstanding problems in the law-making process
 - (i) Efficiency - output legitimacy
 - (ii) The '*democratic deficit*' - input legitimacy
12. New ideas for old course? (reference to other passages of the course)
 - (i) Representative democracy and national parliaments(multi-governance issue)
 - (ii) Participatory democracy and republicanism, 'post-modern' deliberative democracy and the European public sphere (the governance issue)

Section V. From the Classic Community Method to New Governance?

1. Adaptation of the Classic Community method and "new, old" approaches to governance within the legislative procedures
 - (i) Other actors
 - (a) Comitology and experts
 - (b) Civil society
 - (c) NGOs
 - (ii) Flexibility in the setting of Community norms
 - (a) Standards
 - (iii) Proceduralization of Community law
 - (a) Information
 - (b) Consultation
 - (c) Participation
 - (d) Reporting
 - (e) Transparency
 - (iv) Mechanisms
 - (a) Civil dialogue throughout the policy chain
 - (b) Regulatory negotiations
 - (c) Voluntary agreements

2. Alternatives to the Classic Community method through new approaches to governance?: Multi-actor and multi-level governance

- (i) New actors
 - (a) Partners
 - (b) Epistemic communities
- (ii) New methods/ mechanisms:
 - (a) Partnerships
 - (b) Social dialogue
 - (c) Network-Policy integration
 - (d) Open method of coordination
 - (e) Closer co-operation
- (iii) Newer soft law- New instruments:
 - (a) Standards
 - (b) Guidelines
 - (c) Best practices
 - (d) Benchmarks
 - (e) Indicators

3. Characteristics and principles of new governance approaches:

- (i) Participation and power sharing
- (ii) Shared responsibility for decision-making
- (iii) Multi-level integration
- (iv) Diversity and decentralization
- (v) Deliberation
- (vi) Flexibility
- (vii) Revisability
- (viii) Experimentation and knowledge creation

4. Test-cases of the balance between the classic Community method and “new, old” as well as new approaches to governance:

- (i) EU environmental law
- (ii) EU structural funding
- (iii) EU employment strategy
- (iv) Other areas

Section VI. Sovereignty, supranationalism, federalism: the authority of European Union law and its limits

- 1. Introduction
- 2. Sovereignty of EU law: primacy and the Court of Justice
 - (i) Pre-emption and the allocation of competences
 - (a) Exclusive competence

- (b) Shared competence
- (c) Supporting, coordinating and complementary action
- (ii) Fidelity principle
- 3. The response from within the Member State's: contesting EU legal sovereignty
 - (i) Case law of the national courts (in particular, the *Bundesverfassungsgericht*)
 - (a) European constitutional "sovereignty"
 - (b) National constitutional sovereignty
 - (c) Constitutional accommodation ('*constitutional tolerance*')
 - (ii) Doctrinal resistance: main readings
- 4. The limits to EU law: the principles
 - (i) Principle of conferred powers
 - (ii) Principle of subsidiarity
 - (a) Subsidiarity: judicial review
 - (b) Subsidiarity: impact on the law making process
 - (c) Subsidiarity: the intervention of national parliaments

Section VII. Rethinking the relationship/ issue: constitutional re-arrangement/ post-national constitutionalism or multi-level governance?

- 1. Rethinking the theories
 - (i) Intergovernmentalism
 - (ii) Supranationalism
 - (iii) Federalism
 - (iv) Functionalism
 - (v) Confederalism
 - (vi) Policy networks
 - (vii) Sites of governance
 - (viii) Multi-level governance
- 2. Principles of multi-level governance
- 3. Constitutionalism (*à nouveau*) : post-national constitutionalism in a heterarchical and flexible composite polity
 - (i) The inherently composite and contested polity
 - (ii) Constitutionalism as multi-polar dialogue

Section VIII. Fundamental rights

- 1. Introduction: characteristics of fundamental rights
- 2. Development of fundamental rights protection in the EC legal order
 - (i) The paradoxical '*lacuna*'
 - (ii) Incorporation of fundamental rights into EC law by the Court of Justice
 - (iii) EC fundamental rights: Taxonomies
- 3. Development of fundamental rights by the political institutions of the European

Union

- (i) Non-violation and fundamental rights
 - (ii) Fundamental rights and the external relations of the European Union
 - (iii) Development of an internal fundamental rights policy
4. The European Union Charter of Fundamental Rights
 - (i) Development of the Charter
 - (ii) The rights and freedoms recognised in the Charter
 - (iii) Interpretation of the Charter
 5. Fundamental rights and the institutional balance of the European Union
 - (i) Fundamental rights and the EU institutions
 - (ii) Fundamental rights and the Member States
 6. Fundamental rights in the Council of Europe and in the EU: clash or harmony?

Section IX. Judicial relations in the European Union

1. Introduction
2. Mechanics of the preliminary reference procedure
 - (i) EC Treaty provisions
 - (ii) The preliminary reference procedure
 - (a) Making of the reference
 - (b) Effects and interim measures
 - (c) Relation between the EC and the national judges
 - (d) Application of the ruling
3. Functions of the preliminary reference procedure
 - (i) Preserving the unity of EC law
 - (ii) Judicial review of EU institutions
 - (iii) Dispute resolution
 - (iv) Development of EC law
4. Preliminary references and the European judicial system
 - (i) Article 234 EC and the creation of the European judicial system
 - (ii) The control by the Court of Justice
 - (a) The binding effects of judgments on national courts
 - (b) Playing hard (1): Limiting the circumstances in which the Court of Justice will accept references
 - (c) Playing hard (2): Setting out the circumstances in which referral is obligatory
 - (d) Playing hard (3): The accountability of national judges

Part II Administrative law

Section I. Accountability in the European Union

1. Introduction

2. Nature and importance of accountability
3. Transparency
4. Responsibility
5. The European Ombudsman

Section II. New Governance: a major fresh development of European Union administrative Law?

Section III. The enforcement of European Union law

1. Introduction
2. Enforcement by the Court of Justice: Articles 226-228 EC
 - (i) Article 226 EC procedure
 - (ii) Complainants and Article 226 EC
 - (iii) Scope of Member States' responsibilities
 - (iv) Sanction: Article 228 EC
 - (v) Conclusions
3. Enforcement through the national courts: direct effect
 - (i) *Costa v. Enel*
 - (ii) Establishment of direct effect
 - (iii) Liberalisation and expansion of direct effect
 - (iv) Direct effect of Directives
 - (v) Vertical direct effect and the extension of the state
4. 'Indirect effect' or the duty of consistent interpretation
 - (i) Establishment of the duty
 - (ii) Extent of the duty
 - (iii) When does the duty arise?
 - (iv) Scope of measures national courts must take into account
5. State liability
 - (i) 'National procedural autonomy'
 - (ii) The erosion of national authority
 - (iii) Establishment of state liability
 - (iv) Expansion of state liability

Section IV. Judicial review: the accountability of the Community institutions

1. Introduction
2. Scope of judicial review under Article 230 EC
3. Standing to seek judicial review under Article 230 EC
 - (i) Privileged and semi-privileged applicants
 - (ii) Non-privileged applicants: direct concern
 - (iii) Non-privileged applicants: individual concern
 - (a) The '*Plaumann*' formula

- (b) Individual concern and Regulations
 - (c) A more generous approach?
 - (d) Reform?
 - (e) Nature of applicants: private parties and interest groups
 - (f) A never ending reform? Outstanding misgivings
4. Grounds of review under Article 230 EC
- (i) Intensity of review
 - (ii) Lack of competence
 - (iii) Infringement of an essential procedural requirement
 - (a) Right to be heard
 - (b) Duty to give reasons
 - (iv) Infringement of the EC Treaty or of any rule of law relating to its application
 - (a) Proportionality
 - (b) Legal certainty and legitimate expectation 454
 - (v) Misuse of powers
 - (vi) Consequences of annulment
5. Liability under Article 288(2) EC

Part III. The Personal Status: 'we' and 'the others'

Section I. 'We': Union citizenship

1. Introduction
2. Distinctive nature of EU citizenship
 - (i) Composite nature of EU citizenship
 - (ii) Complementary nature of EU citizenship
3. Citizenship and civil rights
 - (i) Right to diplomatic protection
 - (ii) Right to move, reside and remain within the territory of the Member States
 - (a) Administrative formalities
 - (b) Grounds for excluding the citizen from the host state's territory
 - (iii) Equality before the law
 - (iv) Family rights
4. Political citizenship and representation rights
 - (i) Rights to vote and hold office
 - (ii) Right to petition and hold the administration accountable
5. Citizenship and social rights

Section II. 'The others': EU law and non-EU nationals

1. Introduction
2. Fundamental issues
 - (i) Mercantilism and Humanism

- (ii) National security and European security
- (iii) Humanitarianism
- (iv) The ‘inclusive’ approach
- 3. Institutional balance for non-EU nationals
 - (i) Legislative competencies
 - (ii) National competencies
 - (iii) Fundamental rights
- 4. The non-EU nationals whom the EU “covets”: the Long-Term Residents Directive
 - (i) Acquisition of long-term resident status
 - (ii) Rights acquired against the host state
 - (iii) Rights of long-term residents in other Member States
- 5. The non-EU nationals whom the EU suspects: the EU regime on asylum seekers
 - (i) Allocation of responsibilities between Member States for asylum seekers
 - (ii) Reception of asylum seekers
- 6. The non-EU nationals whom the EU may protect: refugees and subsidiary protection

Section III. Governance and Citizenship

- 1. Beyond the market
 - (i) The significance of the establishment of an area of freedom, security and justice
 - (ii) Citizenship and the European social model
- 2. Citizenship beyond the state?
 - (i) ‘*Demos*’ or citizenship?
 - (ii) Multi-level citizenship

Part IV Social and economic law

Section I. Nature and types of economic integration in Europ

- 1. Introduction
- 2. Integration as a means to pursue a political goal
- 3. Types of integration
 - (i) Negative integration
 - (ii) Positive integration
 - (iii) Mixed: de-regulation plus re-regulation
- 4. Types of economic integration
 - (i) Free trade area
 - (ii) Custom union
 - (iii) Common market
 - (iv) Economic union
 - (v) Monetary union
 - (vi) Political union

5. Models of procedural and institutional implications of economic integration

(i) Flanking procedural obligations

- (a) Information
- (b) Consultation
- (c) Coordination
- (d) Mutual recognition
- (e) Harmonization
- (f) Unification

(ii) Institutional consequences

Section II. The single market

1. Introduction

2. From the early stages of economic integration to the single market

(i) Customs union

- (a) Common custom tariff
- (b) Prohibition between Member States of customs duties
- (c) Prohibition of all charges of equivalent effect
- (d) Prohibition of discriminatory taxation

(ii) Elimination of quantitative restrictions on imports and exports and all measures of equivalent effect (overview and reference)

(iii) Prohibition on quantitative restrictions

3. Nature of the single market

4. Reach of the single market

5. Harmonisation

(i) The nature of harmonization

(ii) Article 95

(iii) Approaches to harmonisation: the 'old' approach and the 'new' approach compared

(iv) Harmonisation and plural interests

(v) Harmonisation and government by expertise

6. European standardisation

(i) European standardisation bodies

(ii) European standardisation and the Community legislature

(iii) Evaluating the European standardisation process

- (a) Efficiency of the standard-setting process
- (b) Representation
- (c) Accountability

7. Mutual accommodation of national regimes

(i) 'Ex ante' measures

- (ii) 'Ex post' measures

Section III. Economic and monetary union

1. Introduction
2. Liberalising payments and the movement of capital
3. The move to economic and monetary union
 - (i) Early attempts
 - (ii) The Delors vision for EMU and its implementation
 - (iii) The Maastricht convergence criteria
4. Policy coordination in the eurozone: The Excessive Deficit Procedure and the Stability Pact
5. Institutions of monetary union: the ECB and the ESCB
 - (i) Institutional framework of the ESCB
 - (ii) Central bank independence and accountability
 - (iii) Decentralised structure of the ESCB
 - (iv) Monetary policy in the eurozone

Section IV. Free movement of goods and the economic constitution

1. Introduction
2. Material reach of Articles 28 to 30 EC
3. Function of Article 28 EC: Economic constitutionalism
4. Prohibition on discrimination
5. 'Cassis de Dijon' and market integration
 - (i) 'Cassis de Dijon' and a new institutional settlement for Article 28 EC
 - (ii) 'Cassis de Dijon' and 'Keck'

Section V. Free movement of persons

1. Introduction : Pursuit of occupation in another Member State
2. Taking up and pursuit of an occupation in another Member State
 - (i) Employment and self-employment
 - (ii) Taking up an occupation in another Member State
 - (iii) Performance of significant economic activity in another Member State
 - (iv) Enjoyment of the rights and limits of EU citizenship
 - (v) Towards an overarching right to pursue an occupation in another Member State
3. Restrictions on the taking up of an occupation
4. Restrictions on the pursuit of an occupation

Section VI. Free movement of establishment

1. Discrimination and foreign companies
2. Relocation of company activity from one Member State to another

Section VII. Free movement of services

1. Introduction
2. Concept of a service
3. The scope of Article 49 EC
4. Article 49 EC and the market society
5. Discrimination and the provision of services
6. Restrictions on the provision of services

Section VIII. Financial services

1. Introduction
2. Significance of financial services for the European economy
3. Creating a single market for financial services: an overview
4. Institutional reform

Section IX. Trade restrictions and public goods

1. Introduction
2. Public goods protected under EC law
3. Principles applicable to conflicts between the economic freedoms and public goods
4. Consumer protection
5. Environmental protection
6. Public policy, public security and public morality

Section X. Discrimination Law

1. Introduction
2. Development of EC discrimination law
3. Equality grounds
4. Discrimination: meaning, defences and remedies
5. Towards a wider scope of EC discrimination law?

Part V Competition law and policy

Section I. European Community's competition law: functions and enforcement

1. Introduction
2. The aims of EC competition law
3. Enforcement by the Commission (procedure)
 - (i) First stage: investigation
 - (a) Requests for information and interviews
 - (b) Inspections
 - (ii) Second stage: adjudication
 - (a) Statement of objections and access to the file
 - (b) Oral hearing
 - (iii) Penalties for infringement
 - (a) Fining policy

- (b) Leniency policy
- (iv) Settlements
- 4. The resettlement of competition regulatory authority
 - (i) The Commission's new role
 - (ii) Network of national competition authorities
- 5. Private enforcement
 - (i) The role of individuals
 - (ii) The role of national authorities
 - (iii) Commission cooperation with national courts enforcement

Section II. Restrictive practices

- 1. Introduction
- 2. Scope of application of EC competition law
 - (i) Undertakings
 - (ii) Effect on trade between Member States
 - (iii) Excluded agreements
- 3. Agreements, decisions and concerted practices
 - (i) Cartels
 - (ii) Tacit collusion
 - (iii) Distinguishing between agreement and unilateral action
- 4. Substantive assessment
 - (i) History of the controversy
 - (ii) The procedural solution
 - (iii) The role of Article 81(3) EC
- 5. Vertical restraints

Section III. Abuse of a dominant position

- 1. Introduction
- 2. Market definition
- 3. Dominance
- 4. Abuse of dominance
- 5. Exploitative abuse
- 6. Exclusionary abuse

Section IV. Merger policy

- 1. Introduction
- 2. Jurisdiction
- 3. Procedure
- 4. Substantive assessment
- 5. Merger defences

Section V. State regulation and EC competition law

1. Introduction
2. Anti-competitive state regulation
3. Services of general economic interest: Community approach?
4. Positive integration: the liberalisation Directives

Concluding Remarks

1. Common concern, common problems, the magnitude thereof; common principles, shared values, a shared identity, a growing citizenship, a more demanding European civil society, all seem to recommend some constitutional audacity and, in any event, pursuing of the discussions on the European constitutionalism.
2. Diversity of conditions, identities, stakeholders, perceptions, aspirations and the regulation of newer problem areas - the environment, social issues, employment, retirement, pensions - paradoxically resulting from the success of former stages of European integration, mainly of an economic nature, seem to recommend new thinking, enhanced intellectual and operational investment on the heuristic tool “governance” and on the identification of relevant normative principles.
3. The two former moves are complementary and mutually reinforcing.
4. European Union Law may be facing a paradigm-shift.

Methodological considerations and orientations

The proposed teaching activity would be premised on the following main abbreviated methodological considerations and teaching methods:

- Teaching should be a reflection of deep research and convey it to the public;
- Teaching should be focused or call the attention to major issues of our times, convey burning debates to the students;
- Teaching of European Union Law in the current circumstance demands more and more that a less positivistic approach be followed and focus instead on issues and applicable principles;
- Teaching of European Union Law in the current circumstance requires that a

more theoretical and critical thinking is pursued, one which presents law and its problems in a political, social and economic context and simultaneously showing sensitivity to other cultures and experiences;

- Teaching of European Union Law in the current circumstance and in particular when dealing with topics such as the ones of constitutionalism and governance demands more and more a constructivist approach, the inculcation of the idea that law is a social (re)construct;

- Teaching should be appealing and engaging, and this is a function of not only the update nature of the subject-matters dealt with and the opening to particular interests of the Students (the queries on the prospects of the constitutional and governance debates should work as a catalyst thereto) but also of the presentation means and methods;

- it follows that the orientation should be eminently interactive, not of the “*magister dixit*”-type but rather an engaging communication;

- for that, adequate materials are required, such as reading materials and resort to cases;

- Indeed, because of the historical relevance of the European judicial system in the development, implementation and enforcement of European Union Law, ample resort shall be made to case-law through the reading and discussion of the most interesting and leading rulings;

- Extensive use of powerpoint slides shall equally be made, a tool which is even more needed in a context where there are different linguistic backgrounds and levels and most of the students (originating in Mainland China) have had a scarce or no prior exposure to European Union Law and its concepts;

- Reading materials: a list will be provided in the first session. If most of the reading materials consist of judicial decisions, EU legislation as well as policy

documents shall also be used. Almost all of the listed reading materials are available on the Internet and the relevant web addresses shall be provided. The Treaty establishing the European Community, the Treaty on European Union and the relevant reading materials are to be brought to class;

- In addition to legal materials, the reading shall occasionally also draw on materials from other social sciences (particularly economics, political science and international relations), so as to highlight the particular outlook of the course;

- A list of major topics of burning actuality to be discussed in specially devoted sessions and to be addressed in the requisite Master's papers or theses shall equally be provided, with reference to the Professor most prepared to possibly supervise the pertinent works.

- A general bibliography of major works available in the Library shall equally be provided.

- More than teaching, it is learning which is paramount;

- Active participation in class is encouraged and expected;

- Learning is a highly dynamic process requiring unabated attention on the part of the Professor to the Students needs (thus the powerpoints to meet their linguistic difficulties, thus the reading materials made available prior to the actual lectures);

- Because learning is a dynamic process and teaching should be engaging, a lot of knowledge experimentation through moot exercises shall be made;

- For instance, one or two sessions shall be devoted to "games" whereby students shall act as legal advisors for different institutions, Member States and civil society in mock situations of both the classic Community method and proposed governance mechanisms;

- The Course corresponding to the Jean Monnet Chair meets for 40 sessions of three hours each. Three or four sessions shall be exclusively devoted to discussions of major topics and the aforementioned moot exercises – hypothetical problems, moot courts, negotiation and decision-making games. The other sessions (“normal” sessions) shall be divided into three parts. The first part will consist of lectures, where the topic will be introduced, background and detailed information provided and some advanced themes explored. The second part will be devoted to group analysis of documents, such as judicial rulings, legislation, reports by the Commission, other documents. The third part, at the end of the session, shall provide an introduction to the documents to be read prior the following session where a discussion thereof shall take place.