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The concept and main features of the primary sources of law of the European Union

ABSTRACT: The European Union's (EU) sources of law, which fall under the generic definition of a source of law, each have unique characteristics. This article examines the dual nature of the EU law and addresses the issues with its concepts and features. The sources of EU law are classified as primary and secondary. The primary sources include constituent agreements and general principles of law, while the secondary sources comprise regulations, directives, and framework decisions.

KEYWORDS: European Union law, sources of law, form of law, primary law.

1. Introduction

The statement that the sources of law of the European Union (EU), as well as any other legal system, fall under the general understanding of the source or form of law, would have both common generic characteristics and features and their own characteristics if it did not take into account the following facts: first, the literature has not developed a stable idea of the general features and characteristics that form the concept of "source of law," and second, it is in the features of each source of law that its specific essence and content are "laid down."[274]

Thus, when considering the sources of EU law, to avoid confusion, it is theoretically and methodologically important to first determine the initial, general theoretical provisions and, based on them; consider the features of the sources of law of the legal system in question.

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[274] Shebanov, 1968.

2. Forms of law

Among jurists and state scholars, questions such as "What is a form of law and what is a source of law?" and "Are these identical phenomena and concepts?" have traditionally not reached a consensus.

Therefore, in some cases, the form of the law was considered identical to that of the rule of law. It was assumed that the "legal norm" appeared in the form of an internal form of law "imparting general binding to it" and the "normative acts of the state" in the form of an external form of law.[275]

In other cases, the main directions (theories) of law and its approaches, such as positive and natural law, were considered "two basic forms of law," to which the norms of the law were reckoned and with the help of which they were ordered.[276]

In the third case, the form of law is understood as the internal organization of law (internal form) and 'the form of expression of the normative state will of the ruling class adopted in a given society.'[277]

Contradictory opinions dominate not only in relation to the "form of law," but also in relation to the "source of law," as well as their relationship with each other.

Noting the ambiguity and simultaneous failure of the term "source of law," introduced into scientific circulation by Titus Livius,[278] "source" is generally understood by researchers as including the forces that create law, the materials "underlying this or that legislation," the historical monuments "which once had the meaning of the current law," and the means of cognition of the current law.[279]

Some authors, often without analyzing the definition of the term "source of law," consider it in two manifestations: formal and material.

For Western jurists, such as Professor Ian Brownlee of Oxford University, it is "generally accepted to distinguish between formal and material sources of law."[280]

In contrast, for post-Soviet authors, formal (or, more precisely, formal legal) sources include methods (techniques, means) of internal organization

[275] Ioffe and Shargorodskij, 1961, p. 134.
[276] Trubeckoj, 1998, pp. 73–74.
[277] Shebanov, 1968, pp. 23–24.
[278] Hearn, 1883, pp. 31–32.
[279] Shershenevich, 1911, p. 5.
[280] Crawford, 2012.

and external expression of law and material sources—economic, social, and other living conditions that necessitate adoption or change, canceling, or supplementing certain legal acts.[281] Western researchers understand the concepts of “formal" and “material" sources very differently. For Western researchers, formal sources are the ‘legal procedures (procedural rules) and methods used in the process of developing and adopting general rules that are legally binding on everyone to whom they are addressed,’[282] while the material sources include ‘evidence (proof) of the existence of general norms adopted in accordance with the established procedure, which are of a mandatory nature.’

The lack of a unanimous opinion among post-Soviet and Western jurists on issues related to the concepts of "form of law" and "source of law" is complemented by a variety of judgments concerning the problems of their correlation.

The fact that ‘the sources of the European law system are distinguished by their originality’[283] and that ‘the division of European law into its constituent parts is largely predetermined by the nature of its sources’ identifies the source with the form of law and draws a dividing line between them in other cases.[284]

Without going into the reasons for the discrepancy in opinions regarding the concepts of "source of law" and "form of law," (which are both subjective and objective generated by the complexity and often-contradictory nature of the subject under study), let us only address the following.

Considering the sources of law inherent in the EU from a general theoretical standpoint and from the perspective of theoretically and methodologically important universal provisions developed by legal doctrine and confirmed by legal practice, it should be noted that their features are more crucial to understanding the nature and character of the sources of EU law.[285]

Among them, it is necessary to first highlight the features associated with the peculiar legal nature and the nature of the sources of the EU legal system. The essence of this peculiarity lies in the fact that, unlike the

[281] Marchenko, 2019, p. 29.
[282] Crawford, 2012.
[283] Abashidze, 2001, p. 49.
[284] Badin, 2001, p. 67; Luchin and Mazurov, 2000, p. 11.
[285] McCormick, 1999, pp. 32–46; Shaw, 2000, pp. 240–243.

sources of national law, whose initial principle and basis are the will and interests of the people living within the jurisdiction of the national state, the sources of EU law are based on the aggregated interests of European peoples and the consistency of their wills.

This directly concerns sources of the EU legal system, such as the constituent treaty acts, on the basis of which all three European Communities (the European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community) were originally formed, and later the European Union was formed. By their legal nature and character, these treaty acts have always been and remain nothing more than international legal acts, in which, as in any other international legal act, the will and interests of not one state but all those participating in the data are expressed and reflected.[286]

If the agreed will and interests of the EU member states are expressed directly in the Constituent Treaty Acts, they will be manifested indirectly in the legal acts emanating from the supranational institutions formed by them, represented by the European Parliament, the Council of the EU, the European Commission, and other bodies.

By their nature and characteristics, these acts are neither national nor international. In the spatial-territorial relation, regional acts, in their essence, content, and purpose, occupy an intermediate place between national and international legal acts.

The main reason for the legal uncertainty and, in some way, the duality of the acts under consideration lies not in themselves or even in the legal system of the European Union that is being formed and constantly replenished due to its norms, but in the EU itself, and more precisely, in the duality of its legal nature.

3. Types of sources within the legal system of the EU

The question regarding the types of sources in the EU's legal system, as well as in any other legal system, is not so much a matter of theory as it is of the practical efficiency of their use. The vitality and effectiveness of the legal system depend largely on what theoretically and practically significant acts are recognized and used as sources of law and how they are classified.[287]

[286] Dinnage and Murhy, 1996, pp. 3–18; Snyder, 2001, pp. 1–9; Hoaben, 2005, pp. 11–29.
[287] Badin, 2001, pp. 65–70; Lejst, 2002, pp. 152–166; Berzhel', 2003, pp. 96–104.

Despite the fact that the problems concerning various types of sources of the EU legal system (presented in scientific research as "unique" and different from Romano-Germanic and Anglo-Saxon law, the regional legal system)[288] have been studied since the inception of this system, numerous issues within these studies still remain unresolved.

One of them concerns the list of legal phenomena that belong to the category of "sources of the legal system of the European Union."

By defining the sources of EU law as 'external forms of expression (manifestation), consolidation of legal norms adopted by the EU institutions within the framework of their powers and in accordance with established procedures',[289] some authors limit themselves to listing only the founding treaties of the European Communities and acts specified in Article 249 of the Treaty on the European Economic Community (later the European Community), which entails the legally significant acts emanating from the bodies of the EU authorized for their publication, namely, the regulation, directive, decision, recommendations, and conclusion.

However, the range of EU law sources includes a much larger number of phenomena than those officially recorded in the aforementioned article,[290] such as the general principles of EU law, including the rule of law, the principle of democratic government, and the principle of freedom of the transnational market.[291]

Some of these and other similar principles are enshrined in legislation, whereas others are developed and applied by the court. They are recognized and viewed as sources of law, which in the context of judicial law-making, according to some experts, 'mean even more than written law generated by the founding treaties.'[292] This is because the principles discovered and developed by the European Court of Justice are general principles of law inherent to each individual and all combined national legal systems of the EU member states. These principles were traditionally divided and used within national legal systems in the form of law sources "long before the appearance of written law that arose on the basis of constituent agreements."

In addition to the above, the EU system of law sources also includes judicial precedents and legal doctrines; emerging legal customs, for which,

[288] Cruz, 1993, p. 123.
[289] Shvecov, 2007, pp. 22–23.
[290] Topornin, 1998, pp. 284–287.
[291] Petersmann, 1995.
[292] Edward and Lane, 1995, p. 64.

however, the status of an independent source of law is not always recognized; the so-called acts of a "special category" or kind (sui generis acts) recognized by the court, related to the internal organizational and other activities of the EU institutions; as well as acts that are part of the so-called "soft law," defined as 'a system of rules of conduct that, in principle, do not have any officially recognized legal force' but nevertheless have "significant practical effect" within various EU bodies in the field of legal activity.[293]

"Soft law" (as opposed to "hard law" - the usual substantive and procedural) in the Western legal literature is considered subsidiary and, accordingly, is called "subsidiary" law.[294]

Its sources also include legally significant acts, such as declarations, communiqués, and resolutions of various EU institutions, official answers to questions addressed to the European Parliament, the Commission's statements on the policy pursued by the EU in a particular area, and others.

In trying to bring all EU law sources into a single system and classify them for deeper study and more effective use, post-Soviet and Western authors were guided by a variety of criteria.

Depending on the scope and direction of the action of certain sources, they are divided into internal and external.[295] Internal sources include articles of association, current EU legislation, and general principles of law, while external sources are international treaties.

Based on various criteria, such as the method of formation and adoption of certain acts, and depending on the form of their expression, all law sources are divided into the following categories:

- Founding treaties, "comparable in meaning to national constitutional laws," and "other acts regulating the most important issues of the organization and functioning of the European Union";
- Acts adopted by the EU institutions "comparable to ordinary laws and bylaws of national law";
- Decisions of the European Court of Justice, 'based on the legal norms of the constituent acts of the European Union and other sources of law (general principles of EU law and international law, legal doctrine).'[296]

[293] Snider, 1993, p. 32.
[294] Edward and Lane, 1995, p. 52.
[295] Shaw, 2000, p. 240.
[296] Shvecov, 2007, p. 17.

In addition to the above, there are other criteria for classifying sources of EU Law but the most common and well established is the criterion according to which the sources of the law under consideration are classified depending on their legal force. According to it, all sources of EU law are divided into two main groups: primary law and secondary law. In the scientific literature, they are sometimes called primary and secondary sources,[297] with the latter not always of fundamental importance. It is only important that no confusion be allowed with the classification of law sources according to "material" and formal legal criteria. The material sources are vital (economic, social, etc.) conditions affecting the process of formation and development of law and are considered primary sources of law, while the formal legal sources, being the forms (methods, means) of expressing legal norms outside, are the secondary sources of law.[298]

4. Sources of primary law

Without touching on other criteria for the classification of EU law sources and the characteristics of their individual types, this section examines only the sources of primary law.

Initially, however, we should analyze which types of legal acts belong to the category of primary law sources. The research on the topic refers to the sources of the primary law of the European Union as 'all constituent treaties on the formation of communities, customary law and general legal principles.'[299]

In other cases, this category of sources, in addition to the founding agreements, includes all agreements that amend and supplement them 'with all provisions, protocols, declarations, and other accompanying documents,' as well as legal customs, traditions, general principles recognized and proclaimed in the constitutions of the member states of the EU, and legal doctrines, the essence of which is seen in the fact that 'the norms of the law of communities are contained not only in the constituent treaties and other legal acts, but also in unwritten law,(and) are consistently reflected in the decisions and conclusions of the court (of the) European Communities'.[300]

[297] Borhardt, 1994, pp. 32–33; Shaw, 2000, pp. 241–243.
[298] Marchenko, 2019, pp. 55–58.
[299] Gornig and Vitvickaya, 1998, p. 282.
[300] Topornin, 1998, p. 145.

Third, the range of primary EU law sources is limited to the list of constituent acts and treaties introducing amendments and their additions.[301] Along with that, there are different ideas about the types of sources that should be attributed to the sources or forms of primary law.

Analyzing various approaches to the structure and other aspects of primary law, it is obvious that, with all their diversity, the authors express unanimity in direct or indirect forms that the primary law of the EU is an analog of national constitutional law and the founding agreements are analogous to the national constitution.[302]

The legal literature on this matter correctly states that 'the division of European law into its constituent segments is largely predetermined by the nature of its sources' and that 'the special significance of the constituent acts for the creation and functioning of Communities and the Union served as the basis for their qualification as acts of constitutional significance'[303] on the basis of which—a kind of constitution—various legislative acts are issued and applied to form the secondary law.

Based on this thesis (and the assumption that the constituent treaty acts are essentially a kind of aggregate European constitution—the forerunner of the unified supranational constitution currently under discussion within the EU—and that the primary law formed on their basis is a very close analogue of constitutional law), all issues related to the classification by legal force of sources of law in the EU in general and its primary law, in particular, should be resolved.

According to this approach, the system of primary law sources is undoubtedly constituted by the treaty acts of the European Communities and the EU as a whole, with the main subsystem of sources of primary law as an integral part of their common system. This is on the one hand, and on the other hand, all other contractual acts are included in the general system of primary law sources, with the help of which amendments and additions are made to the constituent agreements, as well as all documents accompanying the adoption and development of the constituent agreements in the form of protocols, declarations, and other supplements that develop and explain certain provisions contained in contractual acts.[304] They form a second

[301] Cruz, 1995, pp. 172–173.
[302] Edward and Lane, 1995, pp. 51–54; Freestone and Davidson, 1988, pp. 11–12; Sieberson, 2004, pp. 993–1040.
[303] Entin, 2004, p. 83.
[304] Topornin, 1998, p. 280.

subsystem, dependent on the first subsystem of primary law sources, and are an integral part of the general system of sources of this law.

As for all other EU law sources, such as legal custom, tradition, judicial precedent, international treaties of the European Communities with third countries (states that are not members of the EU), as well as other legal acts that, for all their importance and social significance, cannot be considered as basic, "constitutional" acts. Logically, they should be classified as sources of secondary law.[305] They are entirely dependent on the sources of primary law on the basis of which the secondary sources are created, developed, and applied.

Having the highest legal force in the system of law sources in the EU is the main, but not the only, distinctive feature of the primary law sources.

4.1. Distinctive features of sources of primary law

Among the distinguishing features of the primary law sources—constituent treaties—it should also be noted that, by their nature and character, international legal acts have a direct purpose and focus on the formation and regulation of intra-institutional (within the European Communities and the EU as a whole) relations.

If, in the way of elaboration, conclusion, and implementation of the constituent treaties, they reproduce the corresponding order and procedures usually adopted when concluding international treaties and agreements, and in a way ‘resemble an ordinary international treaty,’ then, in terms of their focus and the range of subjects to whom the instructions contained in these acts are addressed, from the point of view of their content and significance, ‘they are in many respects close to such a legal source of national law as the constitution.’[306]

Assessing the legal nature and character of the constituent treaty acts, Western authors emphasize ‘the more than classical nature of this kind of international treaties, establishing mutual obligations between the high contracting parties.’[307]

Last but not least, the "more than classical character" of these acts lies in the fact that being international legal acts, they nevertheless:

- "create quasi-state bodies (institutions), independent of national state authorities" endowed with "sovereign rights" in the field of

[305] Craig and Harlow, 1998; Hartley, 1999; Hanlon, 2003.
[306] Topornin, 1998, p. 85.
[307] Mathijsen, 1990, p. 304.

legislative, administrative, and judicial activities, which are transferred to them from the member states of the EU;

- "lay down the basic principles" in accordance with which these quasi-state institutions function.[308]

Moreover, the founding agreements, as sources of primary law, establish a "special legal order" in the European Communities and the EU as a whole and create the constitutional and legal foundations for their existence and functioning.

4.2. Special legal order in the European Communities

Back in the early 1960s, the European Court of Justice stated that the founding treaties created a "new legal order in the field of international relations" that served every member state of the European Community, which "voluntarily limited its sovereign rights in some areas." The subjects of this legal order are not only the member states of this Community (Communities), but also their citizens, who receive certain duties associated with their "common European" citizenship, and who are at the same time granted certain rights as part of their legal status.[309]

In 1964, returning to the issue of the "special legal order" laid down by the constituent treaties in the European Communities, the Court reaffirmed its previous position on the uniqueness, independence, and self-sufficiency of this legal order[310] and explained that it manifested itself primarily in the creation of such a Community, which "is not limited by any period of its existence," "has its own person, its own legal capacity, and the right to represent in the international arena," Most importantly, it has "real power arising from the voluntary limitation of its sovereignty" by the member states of the European communities in some areas and the transfer of its respective powers to supranational institutions that have acquired the right to "adopt generally binding acts both for the states themselves and for their citizens."[311]

Of course, this "special legal order" was not created and approved immediately, even after a number of court decisions supporting it at the European level. It took years ‘until all national courts and tribunals recognized the legal order created by the European founding treaties as a

[308] Ibid.
[309] Edward and Lane, 1995, p. 55.
[310] Mathijsen, 1990, p. 305.
[311] *Flaminio Costa v E.N.E.L.* C-6/64, 15 July 1964.

special, independent legal order',[312] despite the fact that some of them, such as the German Supreme Administrative Court, immediately expressed support for the idea that the law of the European Communities creates 'a separate legal order, the main provisions of which do not relate to either international law or to the national law of the Member States of these Communities.'

Establishing a special legal order in Europe, the constituent treaty acts as the backbone of both the primary and the rest of the European law, simultaneously laying the constitutional and legal foundations for the process of formation and development of the structural elements of the European Community—various supranational institutions, their powers, the main goals of their creation, the tasks they face, as well as their relationships with each other and with the relevant bodies of the national states forming the European Community.[313]

In addition, the founding agreements formulate and consolidate the basic principles of the relationship of common European law (more precisely, the law of the European Union, supranational in nature) with national and international law, and supranational European legal order with a national and international legal order.

In other words, despite the fact that the constituent treaty acts are in some cases only very conditionally equated with national constitutional acts,[314] they nevertheless establish and secure the EU's main fundamental provisions and characteristics within the framework of its legal system; in their essence and meaning, they fulfill sterling constitutional roles.

This process is not impeded by the fact that having the same legal force, each constituent treaty—the Paris Treaty of 1951 on the European Coal and Steel Community and the two Rome Treaties of 1957 on the European Economic Community and Euratom—has its own special area of application, pursues its strictly defined, specific goals, and regulates a range of certain social relations.

Scientific and educational literature correctly notes that the Treaty on the European Coal and Steel Community and the Treaty on Euratom were aimed "at specific, narrow areas of integration, the special nature of which required a separate settlement," as evidenced by their names. By contrast,

[312] Mathijsen, 1990, p. 305.
[313] Polland and Ross, 1994, p. 168.
[314] Topornin, 1998, p. 86.

the Treaty of the European Economic Community covers almost the entire sphere of economics and politics.[315]

When characterizing this treaty and defining its place and role in the system of primary law, researchers call it not only the largest in volume (over 300 articles plus 2 annexes and 35 protocols) but also the most important source of the primary law of the European Union as a whole.[316] This treaty, the authors emphasize, is 'the main international legal act in the system of European law,' creating 'a unique in many respects legal regime in the European region.'[317]

In the mid-1980s, the European Court of Justice highlighted its importance by recognizing it as a kind of "constitutional charter." In the early 1990s, the Court consolidated its assessment of this treaty: "although it was concluded in the form of an international treaty, it nevertheless constitutes a constitutional charter for a Community based on the rule of law." At the same time, the court stated that 'the essential characteristics of the Community's legal order, which were thus established, were, in particular, its primacy over the law of the member states and the direct effect of a number of provisions that apply to their citizens and to the member states themselves.'[318]

Distinguishing the Treaty on the European Economic Community from other constituent treaty acts by objective indicators does not diminish the role and significance of these acts, but only emphasizes one of the features of primary law in the general system of European law, the essence of which is that the constituent treaties that form it, being equal to each other legally, are by no means, such in fact.

The Treaty on the Establishment of the European Economic Community (now the European Community) has always held the leading position in this respect. However, after the formation of the European Union in 1992, the Treaty on the European Union (Maastricht Treaty) was singled out in the legal literature along with the Treaty on the Establishment of the EU as the main constituent treaty due to its economic and socio-political

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[315] Topornin, 1998, p. 114.
[316] Gornig and Vitvickaya, 1998, p. 233.
[317] Freestone and Davidson, 1988, p. 11.
[318] *Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the Treaty - Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area* Opinion 1/91, 14 December 1991, p. 124.

significance.[319] However, this did not in any way affect the perception of the de facto status of the Treaty on the European Economic Community as the leading constituent treaty.

Considering the primary law sources from different angles, it is noticeable that along with the possession of supreme legal force, a constitutional character in relation to all sources of EU law, and differentiated character in relation to each other, these sources also possess other features.

Among them, we can single out their direct action in relation to national law and the rule of law, which is examined in more detail below.

4.3. Direct action of sources of primary law in relation to national law and order

According to the legal doctrine and conclusions of the European Court of Justice, a number of provisions in the constituent treaties have direct effects, both on various domestic authorities, legal entities, and individuals. In particular, this concerns the rights and freedoms of citizens, as well as directly related provisions of treaties, with respect to which the court has repeatedly emphasized that they can be implemented without the additional adoption of any other legislative acts in court and that national courts are obliged to respect general European legislation.

However, analyzing the direct action of the primary law sources, it should be noted that the doctrine of the so-called "direct effect"[320] guided by the judicial authorities in the process of applying European legislation as well as the established judicial practice, proceeds from the fact that not all provisions of the constituent agreements can be directly applied by national courts.[321]

Subject to the direct application are only those provisions of constituent legal acts that: a) are distinguished by their "clarity and concreteness;" b) have a "pronounced character;" c) "do not need any additional measures for their application" (acts) on the part of national and supranational authorities; and d) do not leave for the national, as well as for

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[319] *Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the Treaty - Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area* Opinion 1/91, 14 December 1991, pp. 125–126.

[320] Pescatore, 1983, pp. 153–158.

[321] Mathijsen, 1990, pp. 307–308.

the supranational authorities, applying certain provisions of the constituent treaties, "any significant alternatives or discretion."[322]

By establishing such requirements for the directly applicable provisions of the constituent agreements, the legal doctrine of "direct effect" and the corresponding jurisprudence, on the one hand, completely exclude the possibility of the direct action of such very abstract legal phenomena as norms-goals, norms-general attitudes, or norms-tasks. On the other hand, they recognize a number of articles contained in the constituent legal acts as subject to direct application.[323]

This includes, in particular, clearly stating and not allowing any ambiguity in the understanding and interpretation of articles, such as Article 39 (in the original version of Article 48) of the treaty establishing the European Community, according to which "the free movement of workers within the Community is guaranteed" and "presupposes the abolition of any discrimination on the basis of the citizenship of workers of the member states with regard to recruitment, remuneration, and other conditions of work and employment"; Article 56 (former Article 73-B), according to which "all restrictions on the movement of capital between the Member States and third countries, carried out within the framework of the provisions set out in this chapter, are prohibited," i.e., in Chapter 4, this includes the contracts entitled "Capitals and Payments."

4.4. The principle of priority of the later act in relation to the previous one and the procedure for making amendments and additions to the constituent agreements

Regarding characterizing the sources of primary law, in addition to their noted features, evolutionary constituent agreements are made according to somewhat different standards compared to other sources of EU law and, above all, legislative acts, the development of which is carried out in accordance with the principle of priority of a later act in relation to a previously adopted one. That is, not by replacing one outdated treaty act with another updated act, but by introducing amendments to the constituent agreements that meet the spirit of the times as well as the interpretation of the court.

For the sake of objectivity, it should be noted that in the process of developing the primary law, attempts were made to completely replace one

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[322] *Public Prosecutor v Tullio Ratti* C-148/78, 5 April 1979.
[323] Edward and Lane, 1995, p. 55.

constituent agreement with another, new agreement. For example, in February 1984, a proposal to replace the Treaty of Rome with a new treaty on the EU was supported by the European Parliament but did not receive approval from a number of member states of the European Community and was therefore not implemented.[324]

The need to make changes and additions to constituent agreements, as well as to any other legal acts, always arises as social relations develop and new circumstances emerge that require appropriate adjustments. However, this often happens far from the same conditions, with the manifestation of varying degrees of novelty and radicalism of the changes and additions introduced in compliance with different requirements for the changes and additions made, as well as the corresponding procedures.

Regarding the constituent contractual acts, the legal basis for their revision and the introduction of certain amendments and additions is Article 48 of the Treaty on the EU, according to which 'the government of any member state or the Commission may submit to the Council proposals to amend the treaties on which the Union is based.'[325] And further, in procedural terms:

> If the Council, after consulting the European Parliament and, if necessary, the Commission, gives an opinion on the need to convene a conference of representatives of the governments of the member states, then such a conference shall be convened by the President of the Council in order to determine, by common agreement, the amendments that should be made to these treaties.[326]

The adopted amendments become effective upon ratification by all member states 'in accordance with their constitutional procedures.'[327]

The procedure for introducing amendments and changes to constituent agreements, in which practically all legislative and executive bodies of the EU are involved is generally accepted and standardized.

However, in addition to it, there is also a simplified procedure for revising some articles of the constituent acts. For example, a procedure in

[324] Freestone and Davidson, 1988, pp. 7–8.
[325] Art. 48 of the Treaty on European Union.
[326] Ibid.
[327] Ibid.

which the possibility of amending the treaty is allowed only by the decision of the Council, without the participation of other EU bodies in this process, and without the subsequent ratification of the amendments by the Member States of the Community. This procedure is used, in particular, when solving issues that relate to the quantitative composition of certain supranational bodies.

A simplified procedure for amending articles of association was used in other cases.[328] In addition to amending the constituent agreements as a way to improve them, the European Court of Justice plays a huge role in this process, which ensures, in accordance with Article 220 of the Treaty on the European Community, the 'application of Community law through the uniform interpretation and application of this treaty.'

5. Conclusion

Having considered the sources of law, the increasingly clear tendency toward the unification of constituent treaty acts and the creation, on their basis, of a single basic constitutional document is clearly highlighted.

This trend does not arise on its own but is instead based on a number of objective and subjective reasons reflecting the internal integration processes taking place within European Communities and external global processes worldwide.

The most striking manifestation of the tendency toward the unification of constituent agreements, "their revision" and "the creation on their basis of a single codified act," which would replace the current constituent acts[329] and, moreover, would be 'a simpler and shorter document',[330] was received during the preparation and attempts to adopt at present the draft of a single Constitution of the EU.

Supporters of the idea of creating a pan-European federation note that the proposed draft constitution is still "not yet a constitution of a federal state with a unified legal order that arose on the basis of pan-European and national law. The presented pan-European constitution is only a basic act that 'stands in the same row (alongside) with the national constitutions' of the EU member states, which are 'the supreme sources of law in their national legal order.

[328] Gornig and Vitvickaya, 1998, pp. 126–130.
[329] Sieberson, 2001, p. 994.
[330] Petersmann, 1995.

However, even in this version, the discussed constitution (draft) testifies, according to the authors, to the development of the founding law of the European Union, as well as of this quasi-state entity itself, toward the formation of a single constitutional act and the creation of the "United States of Europe," an all-European federation.[331]

Regarding the prospects for quasi-state and state development of the EU, the question remains open. However, it is indisputable that, together with the supranational development in modern Europe, under the influence of internal and external factors, the process of constitutional development is gaining momentum toward the unification of constituent treaty acts as the basis of primary law and adoption, instead of accumulating and systematizing the main provisions of a single constitutional act.

[331] Sieberson, 2004, p. 995.

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