

Compatibility/ Consistency of EU and National Legislation

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Supreme Administrative Court

EU law and the Supreme Administrative Jurisdictions

- ❑ EU law is still mainly public law
 - ❑ It regulates the legal relations between the authorities and private operators and individuals
 - ❑ In dual systems the national judicial application of EU law mainly takes place in the administrative courts
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EU law and the Supreme Administrative Jurisdictions (*cont.*)

- ❑ In many Member States the Supreme Administrative Jurisdictions act in an advisory capacity in the legislative process (*Conseil d'État function*)
 - ❑ Since long the quality and quantity issues of Community law have raised the interest of Supreme Administrative Jurisdictions
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EU law and the Supreme Administrative Jurisdictions (*cont.*)

- The Hague Conference of 2004
 - **Co-actorship in the Development of European Law-making.** The quality of European Legislation and its Implementation and Application in the National Legal Order, (eds. Ballin – Senden, T.M.C.Asser Press, 2005)
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EU law in the Supreme Administrative Court

- ❑ About 1/3 of cases has a European dimension = application directly applicable EU law or harmonised national legislation
 - ❑ Intensity of EU influence varies:
 - ❑ Customs, agriculture, VAT, public procurement, competition, trades and professions, pharmaceutical products, environmental law, direct taxation, aliens
 - ❑ Over one third of the Finnish requests for preliminary rulings
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Problems of EU legislation

- ❑ Quantity !!!!! (97 000 pages by 2002)
 - ❑ Legislative process – negotiated, not drafted texts – getting something done more important than the quality of the end-result
 - ❑ EU quality vs national quality – even technically good EU Acts may lead to miserable effects at the national level
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Problems of EU legislation

- ❑ Unclear legal effects and normative hierarchy – directly applicable directives and regulations that require transposition
 - ❑ Changing directives, frame-work decisions or conventions into regulations without drafting changes
 - ❑ Jungle of references between acts (what is an animal in EU law??)
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Problems of EU legislation (*cont.*)

- ❑ Unintended normative results (annexes with mutually non-exhaustive positive and negative lists)
 - ❑ National transposition defective and/or not in conformity with good legislative practice and constitutional requirements
 - ❑ Unclear powers of authorities and opaque regulative environment for economic operators and individuals
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