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# BUSINESS LAW COURSE

## EUMOL LECTURES

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# BUSINESS LAW COURSE

## EUMOL LECTURES

### Course Programmes



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# Business Law.

## Course Organization

### Programme A

- European Company Law

### Programme B

- Law of payment instruments and services, blockchain and cryptocurrencies

# Business Law.

## Programme A

- **Main topics:** the outline of Company Law directives, the uniform company law and the modernising projects; companies' right of establishment; the formation process of a new company and of *societas europaea*; legal capital in general, rules on capital formation and capital maintenance, as well as annual and consolidated accounts; the EU-based approach to corporate governance, including systems options.
- **Textbook:** Nicola de Luca, *European Company Law.Text, Cases and Materials*, Cambridge University Press: 2017, from Chapter 1 to Chapter 14 (pp. 1- 289).
- **Final Exam:** (January, February, June, July, August, September): written test made up of 3 open questions

# Business Law.

## Programme B

- **Main topics:** money and other means of payment; contracts for payment services within the European legal framework; the antitrust law rules for payment systems, the regulatory challenges of fintech-based payments; blockchain and virtual currencies.
- **Textbook:** Study materials weekly uploaded on moodle (and on google drive).
- **Final Exam:** (January, February, June, July, August, September): written test made up of 3 open questions
- **Mid-terms:** different activities (written test; oral presentations; papers; soft skills and so on)

# Frequent Questions on Business Law Program B

- I want to improve final mid-term grade and I decide to do business law exam on January, but I do not pass the exam, what happens? Nothing, you still have your final mid-term grade (until September 2022) and you may try to do business law exam again and again in one of the following exam sessions (January, Feb., June, July, September). **However, if you decide to hand in an assignment and your grade is low, you cannot refuse the business law grade any longer;**
- I failed one of the mid-terms, what happens? You cannot enjoy a final mid-term grade any longer, so you must do regular business law exam since January;

# Frequent Questions on Business Law Program B

- I passed all mid-terms and I enjoyed final mid-term grade; I decided to accept final mid-term grade as final business law exam, what is the next step? In January, or in one of the other regular exam sessions, you will register for business law exam writing in the footnotes that you want to accept your final mid-term grade.
- Special case: I am Alf, a business law student, and I attended business law course during the Winter term; I passed all mid-terms. In the end, my final mid-term grade is 20 (out of 30). I decided to accept my final mid-term grade as final business law grade. Therefore, when I register online for January exam, I wrote in the footnotes that I want to accept my final mid-term grade as business law grade. Later on, in June, I think business law grade is too low and I have time to improve it, what can I do? Nothing! You cannot change your mind any longer: your final mid-term grade became final business law grade and...*game over!*

# Final exam

## (Winter and/or Summer exams)

Programme A or Programme B, the final business law exam is organized in the following way:

- 1) regularly: it is always a written exam (generally speaking);
- 2) regularly: during the exam, you cannot use the Internet and any book or study materials;
- 3) the written test is made up of three “open” questions.

With regard to “open” questions part of the exam, your answers will be better graded if they are precise, correct and detailed. Namely, (i) your answer must be consistent with the question, (ii) your answer should make cross-references among different study materials, (iii) your answer must be coherently structured: this means that the answer is easy to understand because its parts are connected in a clear and reasonable way. You will pass the exam, if your exam grade is at least 18 (out of 30).



# Useful Links

- <https://elearning.unisi.it/moodle/>
- <https://www.docenti.unisi.it/en/gimigliano>
- <http://www.eumol.com>
- <https://twitter.com/EumolM> EUMOL twitter profile: @EumolM

# Erasmus Plus Programme Jean Monnet Actions

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# University of Siena Business and Law Department



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# BUSINESS LAW COURSE

## EUMOL LECTURES

Course Programme B.  
Origin and contents



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# EUMOL Jean Monnet Chair: Aims and Objectives

EUMOL Jean Monnet Chair investigates the European framework for money and payments with a view to establishing whether blockchain, fintech, cryptocurrencies, may influence one's sense of community belonging.

**If we consider money as a social institutions, what should be improved in the European integration process for money and payments?**

**Leading Policy Priorities: sustainable growth, financial and social inclusion, cultural diversity, market competitiveness, social and regional cohesion**

# EUMOL Jean Monnet Chair: Aims and Objectives

## Research Questions:

- To which extent could a broader use of blockchain to finance, the fintech-based technology as well as the growth of cryptocurrencies, improve the European sustainable growth?
- To which extent may the common rules for payments improve the Europeans' sense of belonging to the European community?

# EUMOL Jean Monnet Chair: Tools and Devices

- Chair holder as Project Leader
- Key Teaching Staff Members
- Other Experts and Scholars
- Teaching activities (workshops, lectures, roundtables, book presentations)
- Research activities (books, papers, and so on)
- [www.eumol.com](http://www.eumol.com)

# EUMOL Jean Monnet Chair:

## Outputs

For example:

- New teaching methods
- New teaching courses and textbooks
- Papers, books, guidelines



# EUMOL Jean Monnet Chair: EUMOL WINTER SCHOOL

**2018, 2019, 2020**

- Teaching activity
- Three/four day event, held in December
- Interdisciplinary and informal approach
- Held in English
- Topics: Money, fintech, fintech and banking system, cryptocurrencies and blockchain, payment system

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# BUSINESS LAW COURSE

## EUMOL LECTURES

### Sources of Law



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# European Union (EU).

## Sources of Law

European treaties and primary law rules

Directives, regulations, decisions,  
recommendations – secondary law rules

Delegated acts and technical regulatory  
guidelines

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# BUSINESS LAW COURSE

## EUMOL LECTURES

### The Internal Market



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# The Internal Market.

## Art. 26 Treaty on the Functioning of the European Union (TFEU)

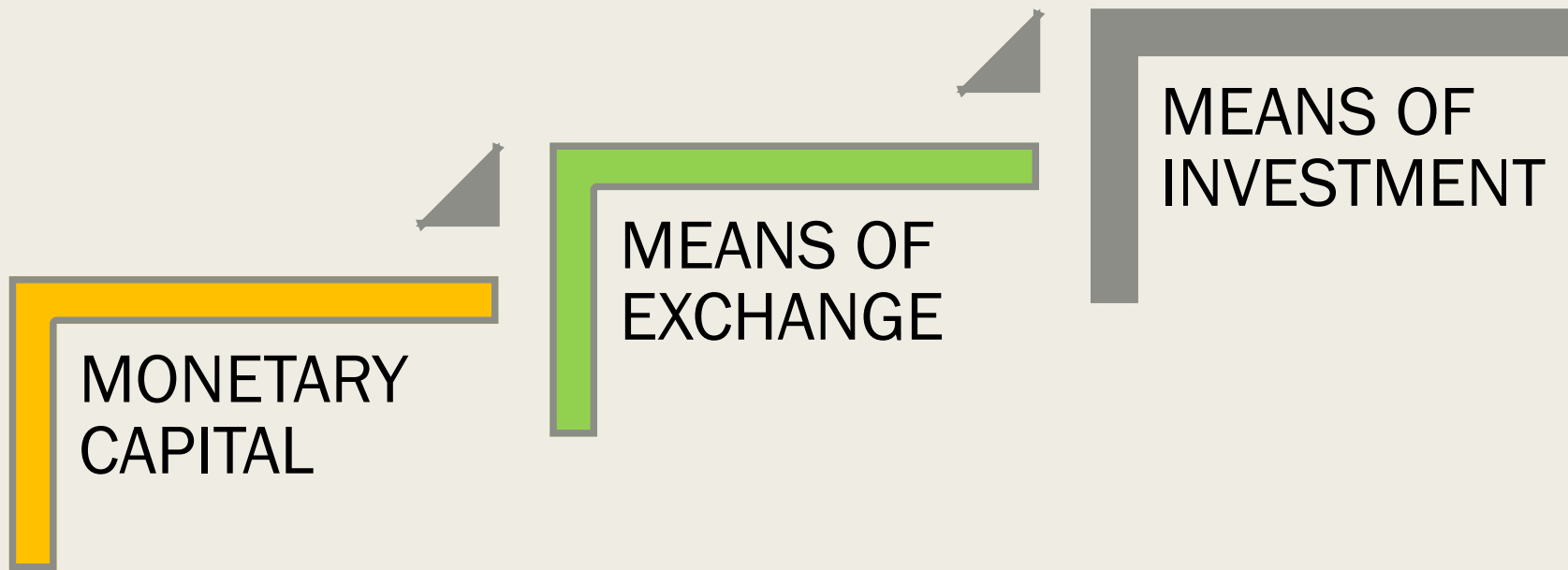
- 1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.*
- 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*
- 3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.*

# The Internal Market.

## Art. 26 Treaty on the Functioning of the European Union (TFEU)

- Internal Market = is only a geographical area?
- Internal frontiers? = What do they concern?
- Internal Market = is this an objective or a tool?
- There is no mention of «payments»!

# Freedom of payments & Freedom of capital. Payer-Payee Relationship



# Freedom of payments & Freedom of capital. Payer-Payee Relationship

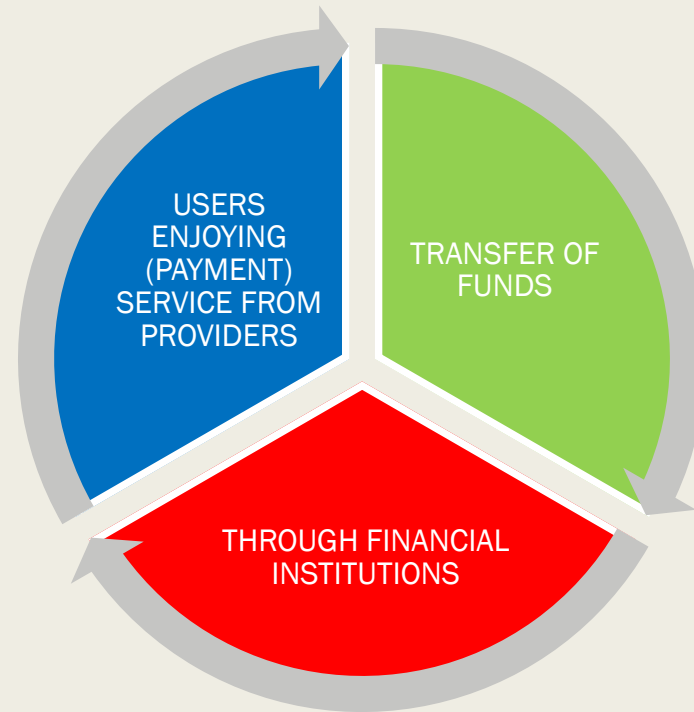
Art. 63 TFEU

*1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.*

*2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.*



# Freedom of payments & Freedom of Services. Payment Service User-Payment Service Provider Relationship



# EU MONEY LAW

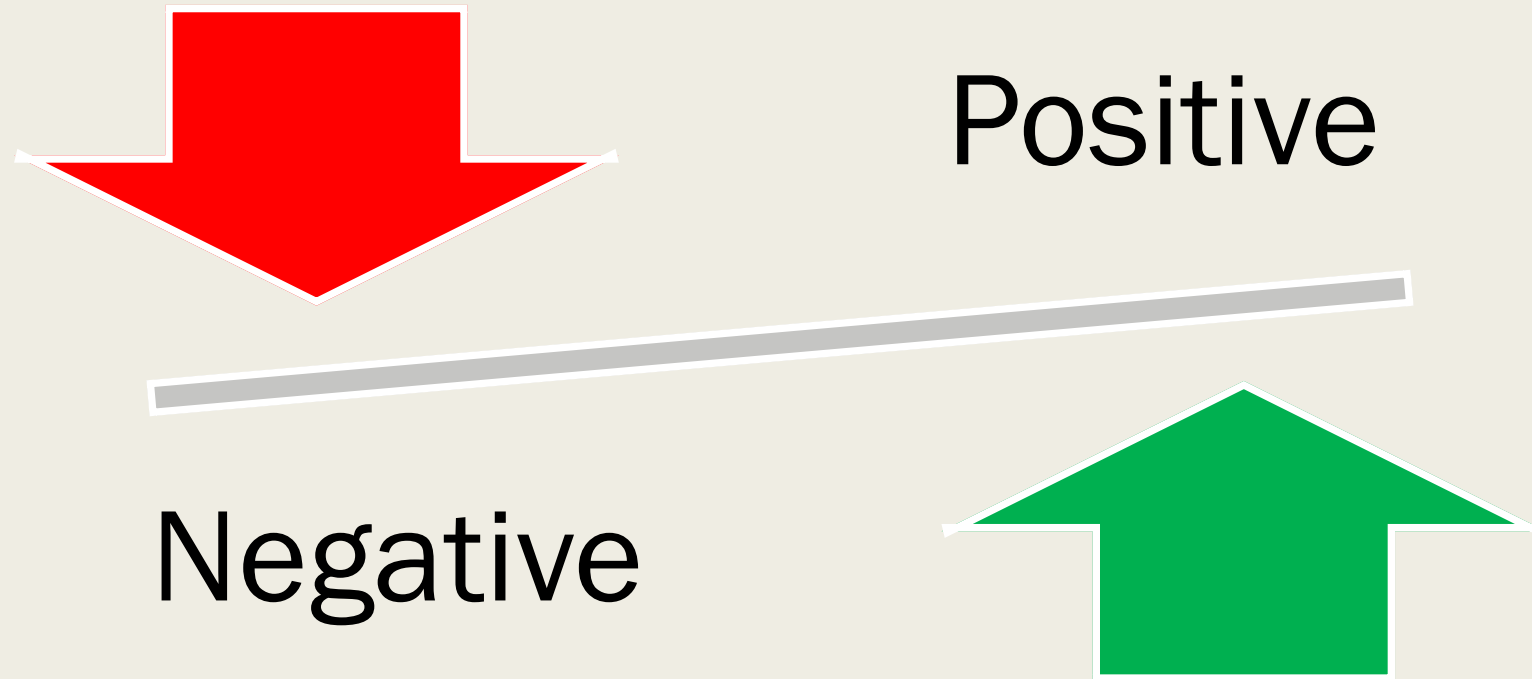
# JEAN MONNET CHAIR

Harmonisation Process:  
Positive and Negative

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# The Construction of an Internal Market for Payments. **Harmonisation process**



# The Construction of an Internal Market for Payments. Positive Harmonisation

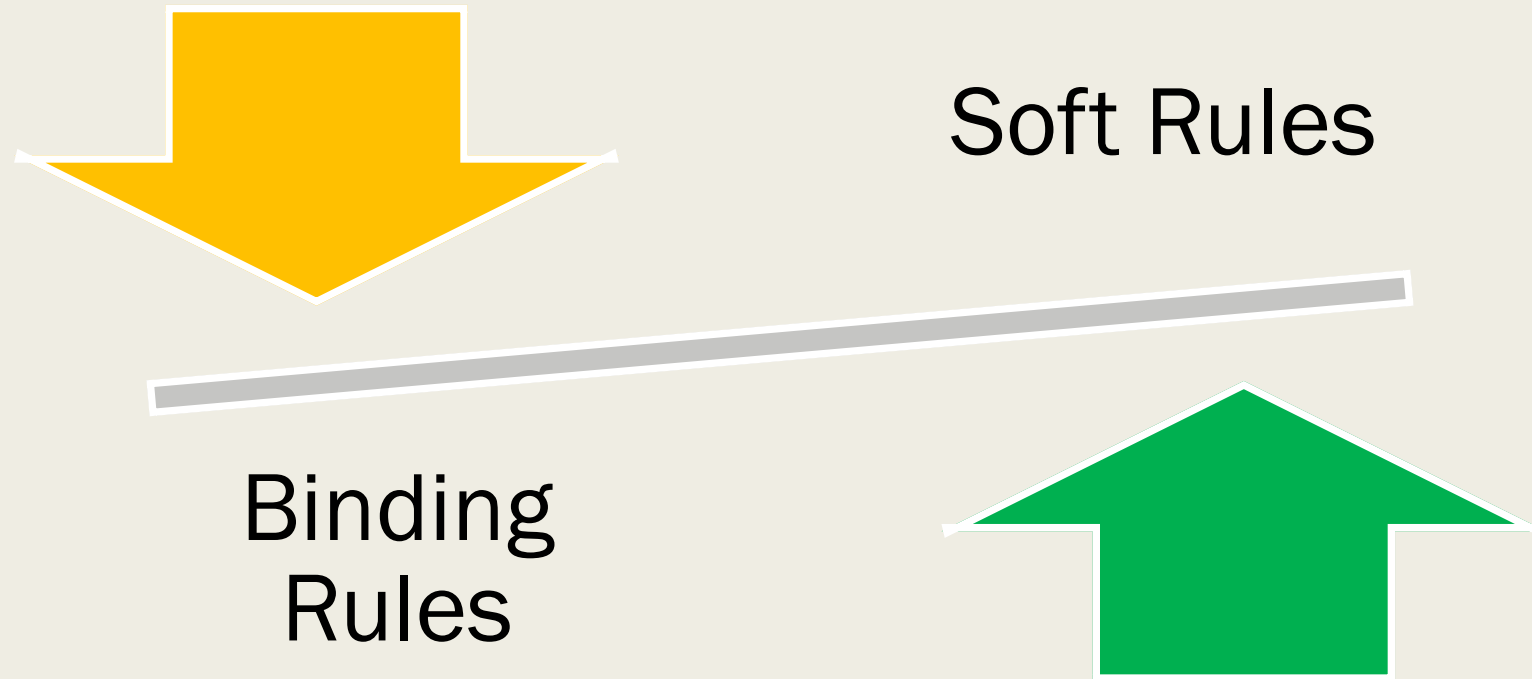
## APPROXIMATION OF LAWS. *Article 114 TFEU*

*1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

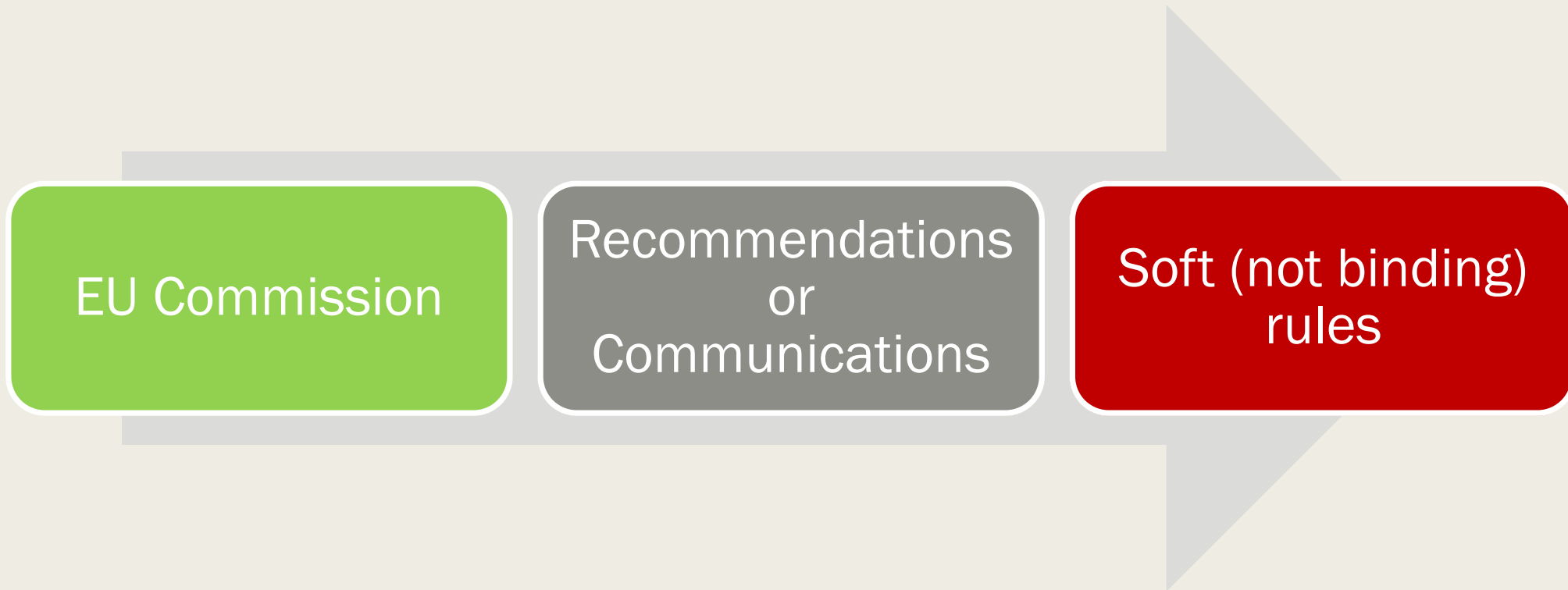
# The Construction of an Internal Market for Payments. **Positive Harmonisation**

- **Level 1:** Commission, Council, EU Parliament. Directives and Regulations. Ordinary legislative activity.
- **Level 2:** *Commission and the technical implementing measures with the help of consultative bodies composed mainly of EU countries representatives.*
- **Level 3:** *committees of national supervisors are responsible for advising the Commission in the adoption of level 1 and 2 acts and for issuing guidelines on the implementation of the rules.*
- **Level 4:** *the Commission, ESAs and the correct enforcement of EU rules by national governments («comply or explain» approach)*

# The Construction of an Internal Market for Payments. **Harmonisation process**



# The Construction of an Internal Market for Payments. **Positive Harmonisation**



# The Construction of an Internal Market for Payments. **Binding Rules**

Directive

Regulation

Decision



# The Construction of an Internal Market for Payments. **Harmonisation process**

Art. 114 (4) TFEU: DEROGATION FROM HARMONISED SET OF RULES

- *maintain national provisions on grounds of major needs*
- ***major needs:*** *grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.*
- Notification to the Commission applying for authorisation.

# The Construction of an Internal Market for Payments. **Harmonisation process**

Art 114 (5) TFEU

- *introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure.*
- Notification to the Commission applying for authorisation.

# The Construction of an Internal Market for Payments. **Harmonisation process.**

Harmonisation

Minimum

Total/Full

Optional Regime

# The Construction of an Internal Market for Payments. Harmonisation: EU v. MSs

## Duty of cooperation (Art. 4 Treaty on the European Union or TEU)

*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*

*The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*

*The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.*

# The Construction of an Internal Market for Payments. **Harmonisation and ECJ**

*Article 267 TFEU* – COURT OF JUSTICE OF THE EU

(a) the interpretation of the Treaties: bottom-up process from the national courts to the ECJ

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

# EU MONEY LAW

# JEAN MONNET CHAIR

The evolution of the harmonisation  
process for payments in the EU

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# The Construction of an Internal Market for Payments. **Harmonisation.**



# Negative Harmonisation.

## ECJ Preliminary Rulings

Regina v Ernest George Thompson et Al.  
(1978)

*Court of Bolzano v Guerino Casati* (1981)

*Graziana Luisi and Giuseppe Carbone v  
Ministero del Tesoro* (1984)



# Positive Harmonisation. Principle of Conferral.

- **principle of conferral** (art. 5 TEU), the Union “*shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out in therein. Competences not conferred upon the Union in the Treaties remain with the Member States*».
- **Principle of conferral – legal basis** (harmonisation process for payments) – Art. 114 TFEU

# The Construction of an Internal Market for Payments. **Harmonisation process**

## **APPROXIMATION OF LAWS. *Article 114 TFEU***

*1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

# Positive Harmonisation. Legislative Competence common to EU and MSs

- **Principle of subsidiarity** : “(...) *in areas which do not fall within its exclusive competence, the Union shall act only if and in so far the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or of the effects of the proposal action, be better achieved at Union level*”.
- **Principle of proportionality** “*the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties*”.

# Harmonisation process for payments.

## Crossing Features.

- A close link between the international regulatory standards and the construction of the internal market for payments;
- Neutrality principle
- Pro-competitive approach.
- Hybrid governance structure. “Governance” means the process of governing, covering all processes of social organization and social coordination.

# Harmonisation process for payments.

## Crossing Features. Models.

- Hierarchical Structure: abstract rules and formal relationships. **System of legal acts and Positive harmonisation for payments.**
- Market Structure: decentralization, prices convey information. **Competition rules fully applied to payment services providers.**
- Network Structure: mutual trust and mutual advantages, independent players, risk of free riders. **The role of payment systems.**