

# *Constitution and Constitutional Principles in the EU*

The background is a dark blue gradient that transitions to a lighter blue at the bottom. A thin, light blue curved line starts from the left side and curves downwards towards the right. A semi-transparent blue spotlight effect is centered on the text, creating a gradient from dark blue to light blue.

# *Division of Powers*

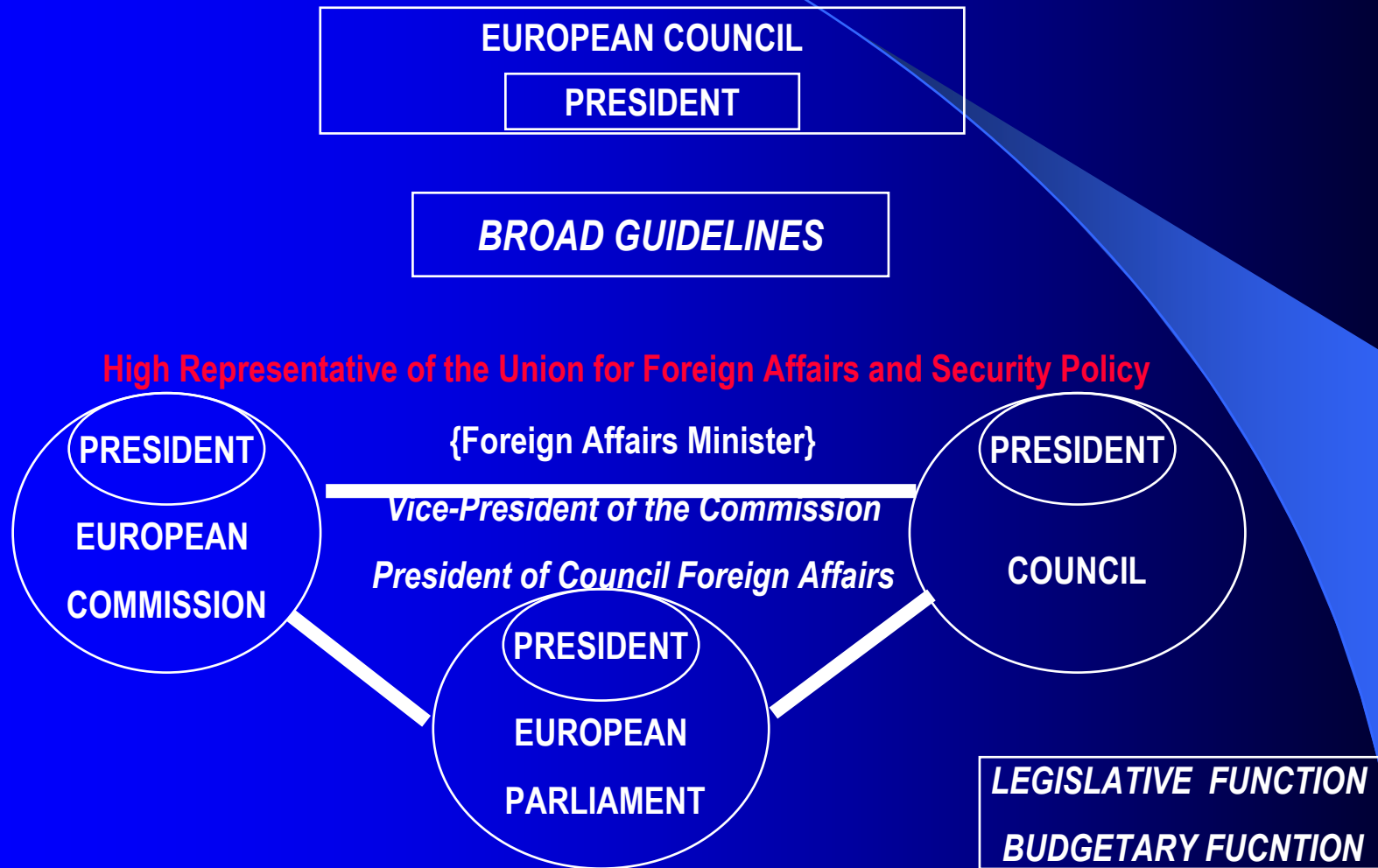
# Principle of division of powers

- Horizontal approach – separation of state powers (legislative, executive, judicial)
- Vertical approach - federalism
- Constitutional approach – separate constitution-making power

# Institutional balance

- Statehood: supranational, but not federation
- ECJ's interpretation (e.g. Roquette case 1980)
- Relations of Council, Commission and Parliament
- Balances (Ombudsman, Court of Auditors, national parliaments etc.)
- Safeguarding by ECJ

# BALANCED INSTITUTIONAL SYSTEM





# THE EUROPEAN PARLIAMENT

*Representation of European citizens*



A Constitution  
for Europe

**DIRECTLY  
ELECTED BY  
UNIVERSAL  
SUFFRAGE**

**5 YEARS**



**Election of the President  
of the Commission**



**Election of the President  
of Parliament**



**Vote to approve the  
Commission**



**Motion of censure against  
the Commission**



**LEGISLATIVE  
FUNCTION**

**SHARED WITH THE COUNCIL**

**BUDGETARY  
AUTHORITY**

**SHARED WITH THE COUNCIL**



**POLITICAL  
WATCHDOG**

**ADVISORY  
FUNCTION**



*European Commission*



## THE EUROPEAN COUNCIL

*The driving force behind EU policies*





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for Europe

PRESIDENT OF THE EUROPEAN COUNCIL  
HEADS OF STATE OR GOVERNMENT  
PRESIDENT OF THE COMMISSION



## EUROPEAN COUNCIL

### ROLE

- Provides the impetus needed to develop and define the EU's broad guidelines and general political priorities
- Has no legislative function

• *1 meeting per quarter*

- *The European Council takes decisions by consensus*

*The Presidents of the European Council and of the Commission do not take part in the vote*

PRESIDENT



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## EUROPEAN COUNCIL



ELECTION OF THE **PRESIDENT** OF THE COUNCIL FOR 2.5 YEARS, RENEWABLE ONCE

*Qualified majority*

*May not hold a national mandate*



- Representation on CSFP  
without prejudice to the  
Powers of the Union Minister for  
Foreign Affairs



- Preparation and continuity  
of Council work in cooperation with the  
President of the Commission, based on  
the work of the General Affairs Council
- Facilitates cohesion and consensus  
within the Council



- Presents a report to the EP  
after each meeting



**A Constitution**  
for Europe

# ***THE COUNCIL OF MINISTERS***



A Constitution  
for Europe

A representative of each  
Member State for each of  
its configurations



**COUNCIL OF  
MINISTERS**



The Council shall meet in public  
When it deliberates and votes  
on a draft legislative act.

**Foreign**

**Affairs Council**

• Chaired by the Union

Foreign Minister

- Elaborates the Union's external action on the basis of strategic guidelines laid down by the European Council
- Ensures that the Union's action is consistent.

**Configurations of the Council  
decided by the European  
Council by a qualified majority**

**Council**

**General Affairs**

- Ensure consistency in the work of the different Council

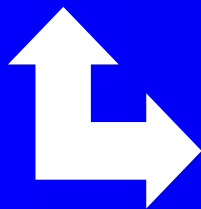
Configurations

- Prepare and ensures the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission

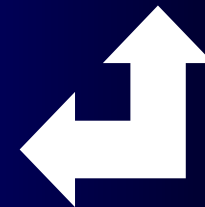
*European Commission*

# THE PRESIDENCY OF COUNCIL CONFIGURATIONS

- *Presidency of Council of Foreign Affairs held by par the Union Minister for Foreign Affairs*
- *Presidency of other configurations held by pre-established groups of 3 Member States on the basis of equal rotation*



- Presidency held for a period of 18 months
- Rotation system taking into account diversity and geographical balance of Member States within the Union
- Each Member State holds the Presidency for 6 months





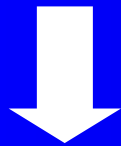
## **THE EUROPEAN COMMISSION**

*Safeguards the general European interest*



**A Constitution**  
for Europe

**External  
representation of EU**



- Except for CFSP and other cases provided for under the Constitution

**Safeguards the general  
European interest**



- Ensures application of the Constitution

**Right of initiative**



- Proposes legislation except where the Constitution provides otherwise

**Functions**

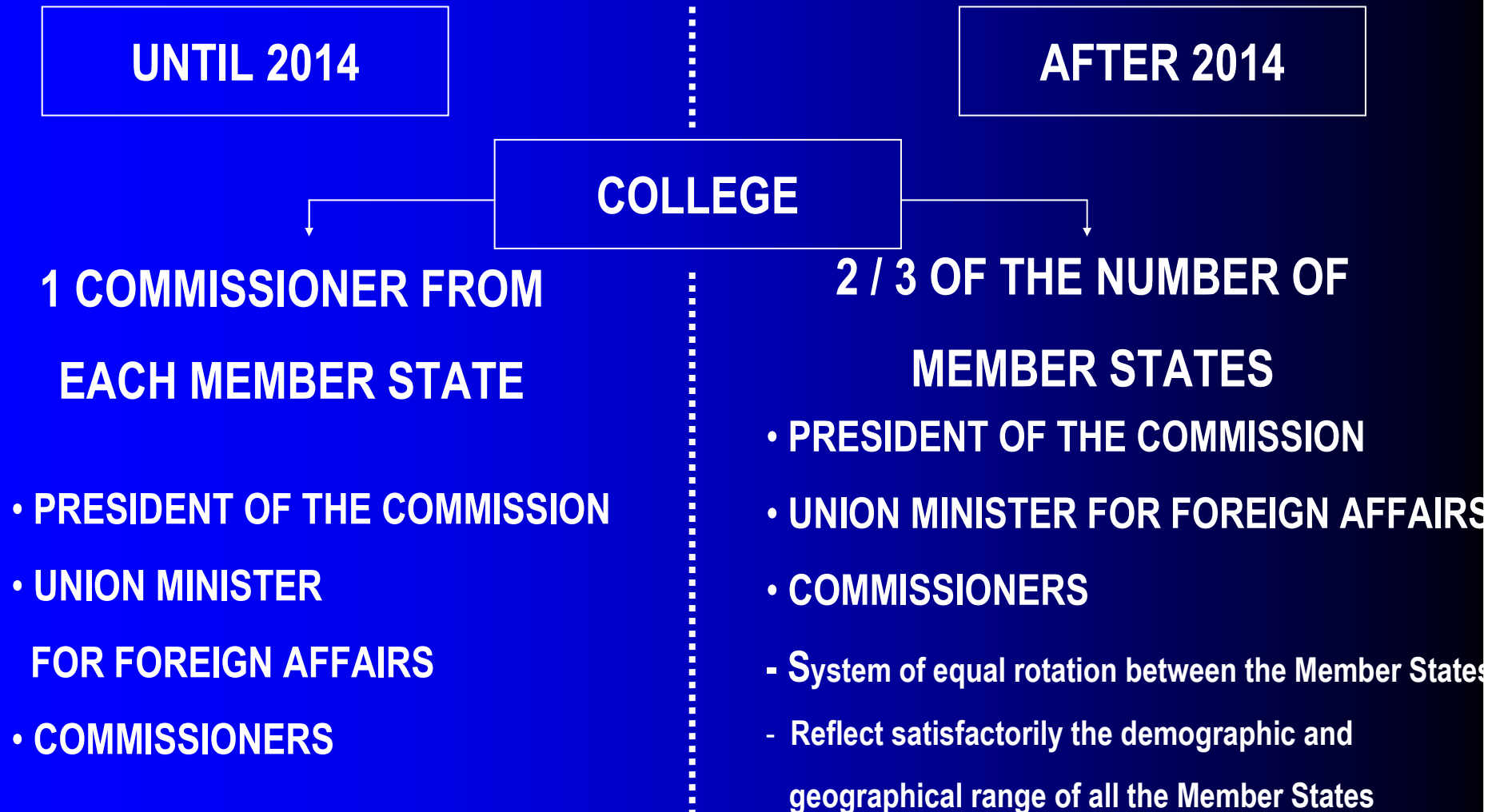


- Coordinating
- Executive
- Management

## **INDEPENDENCE**

***Takes no instructions from governments or other bodies***

# COMPOSITION OF THE EUROPEAN COMMISSION



# European Court of Justice



# The ECJ and Integration

- Represents central judicial authority
- Establishment of supremacy of EC law
- ECJ has acted in pro-integrationist manner
- ‚Supreme Court‘?
- ‚Constitutional Court‘?

# Functions

- to ensure the legal functioning of the EU
- interpretation and application of EU law in the TEC and parts of the TEU (TEC, ECSC, EURATOM)
- Directly applying the law in certain types of case (,direct action‘)
- Interpreting the provisions of EU law (,preliminary rulings‘)

## Different roles

- **(i) a constitutional court:** clarification of the rights and obligations of the European institutions vis-à-vis each other
- **(ii) a legislative watchdog:** verification of the compatibility of secondary legislation
- **(iii) an administrative court:** ruling on actions brought by natural or legal persons against EU measures
- **(iv) a civil court:** establishment of non-contractual liability and examination of claims for damages
- **(v) an arbitration court:** subject to agreement between two parties

# Court of First Instance

- Result of constantly increasing workload (1989)
- Growing competence across range of EC business
- CFI Rulings can be appealed to full ECJ

# Competences and Tasks

- member-state infringements of treaty obligations (failure to fulfil an obligation)
- unlawful acts by the Council or the Commission
- failure of EU institutions to act
- ‘opinions’ on international agreements
- preliminary rulings (most cases):
  - disputes between individuals or corporate bodies and the Community
  - court is called to give a judgment in a dispute between two parties

# Rulings on the Powers of the Institutions

Roquette v. Council (1980) (the 'Isoglucose' case) Case 138/79: Consultation no formality

Parti Écologiste, 'Les Verts' v. Parliament (1986). Case 294/83: EP can be brought to court

European Parliament v. Council (1988) (the Comitology case). Case 302/87: no provisions in the treaties - EP granted standing anyway

European Parliament v. Council (1990) (the Chernobyl case). Case C-70/88: EP may challenge act adopted by other institutions

- EP has been a major beneficiary
- Court has occasionally found against EP, but has also reversed these decisions subsequently
- Court has used principle of 'institutional balance' to extend EP's prerogatives

# Rulings on Nature of EC Law

Van Gend en Loos (1963). Case 26/62

Costa v. ENEL (1964). Case 6/64

Van Duyn v. Home Office (1974). Case 41/74

R. v. Secretary of State for Transport, ex parte Factortame (1991). Case C-221/89

Francovich v. Italy (1991). Cases C-6, 9/90

- 'direct effect' and 'supremacy of EC law' established
- in early cases and subsequently reaffirmed

# Vertical approach

- Division of legislative power between EC and Member States
- Execution and enforcement by Member States
- Jurisdiction of ECJ and national courts – preliminary ruling
- Subsidiarity as political and legislative guideline

# CLARIFICATIONS in the Constitution

SHARED VALUES

OBJECTIVES OF THE UNION

EXTERNAL

INTERNAL

## UNION / MEMBER STATE RELATIONS

- Principle of loyal cooperation
- Respect of the equality of Member States before the Constitution by the EU
- Principle of attribution of competences

*Protocol on the application of the principles of subsidiarity and proportionality*

- Primacy of Community law

## CLARIFICATION OF THE UNION'S POWERS

- **Exclusive competences** → *Only the EU may legislate*
- **Shared competences** → *The EU or Member States may legislate*
- **Supporting, coordinating and complementary actions** → *The EU cannot harmonize*
- **Coordination of economic and employment policies**
- **Common foreign and security policy**

## EXCLUSIVE COMPETENCES OF THE UNION



- Customs union
- The establishing of the competition rules necessary for the functioning of the internal market
- Monetary policy for € Member States
- Conservation of marine biological resources
  - *In the context of the common fisheries policy*
- Common commercial policy
- International agreement when :
  - *Is provided for in a legislative act of the Union*
  - *Is necessary to enable the Union to exercise its internal competence*
  - *Insofar as its conclusion may affect common rules or alter their scope*

## SHARED COMPETENCES OF THE UNION



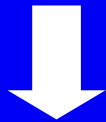
- Internal market
- Social policy for aspect defined in part III
- Economic, social and territorial cohesion
- Agriculture & fisheries
- Environment
- Consumer protection
- Transport
- Trans-European networks
- Energy
- Area of freedom, security and justice
- Common safety concerns in public health matters, for aspect defined in part III
- Research, technological development and space
- Development cooperation and humanitarian aid

## SUPPORTING, COORDINATING AND COMPLEMENTARY ACTIONS



- **Protection and improvement of human health**
  - **Industry**
  - **Culture**
  - **Tourisme**
- **Education, Vocational training, Youth, Sport**
  - **Civil protection**
- **Administrative cooperation**

## COORDINATION OF ECONOMIC AND EMPLOYMENT POLICIES



### Coordination of economic policies



- Establishing of broad guidelines
- Common interest and implementation of the EU's objectives
- Specific provisions for MS in the euro zone



### Coordination of employment policies



Guidelines



### Coordination of social policies



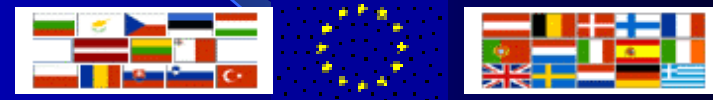
EU initiatives



## A Constitution for Europe

### Characteristics of the legislative procedure

- The Commission consults and proposes
- The Council of Ministers and the European Parliament legislate
- The Court of Justice ensures that the law is observed
- *National Parliaments can have their say*
- *The European Economic and Social Committee and the Committee of the Regions become involved*



## BEFORE THE CONSTITUTION

More than 15 legislative instruments....

- Regulation
- Convention (EC Treaty)
- Convention (EC Treaty)
- Directive
- Framework Decision
- Decision
- Decision (Title V, EU Treaty)
- Decision (Title VI, EU Treaty)
- Principles and general approaches
- Joint strategy
- Action
- Common position (Title V, EU Treaty)
- Common position (Title VI, EU Treaty)
- Recommendation
- Opinion

## CONSTITUTION

6 legislative instruments

Law  
Framework law

Legislative  
acts

Regulation  
Decision

Non legislative  
acts

Recommendation  
Opinion

**BINDING**

**Reform Treaty  
keeps the old  
terminology**

# Constitution making power

- Autonomy of constitution making power in the Member States ('Lord of Treaties')
- Significance of authorising article
- Material limits of conferring state powers
- Formal rules limiting the participation in European integration process

# *Democracy*



# Meaning of democracy

- Components:
  - pluralism
  - majority in decision making
  - representation
  - political rights (participation)
  - publicity
- TEU Art. 6
- European peoples?

# Democracy deficit

- Distance
- Dominance of executive power
- Evading democratic mechanisms in decision making
- Lack of transparency
- Weakening of judicial control

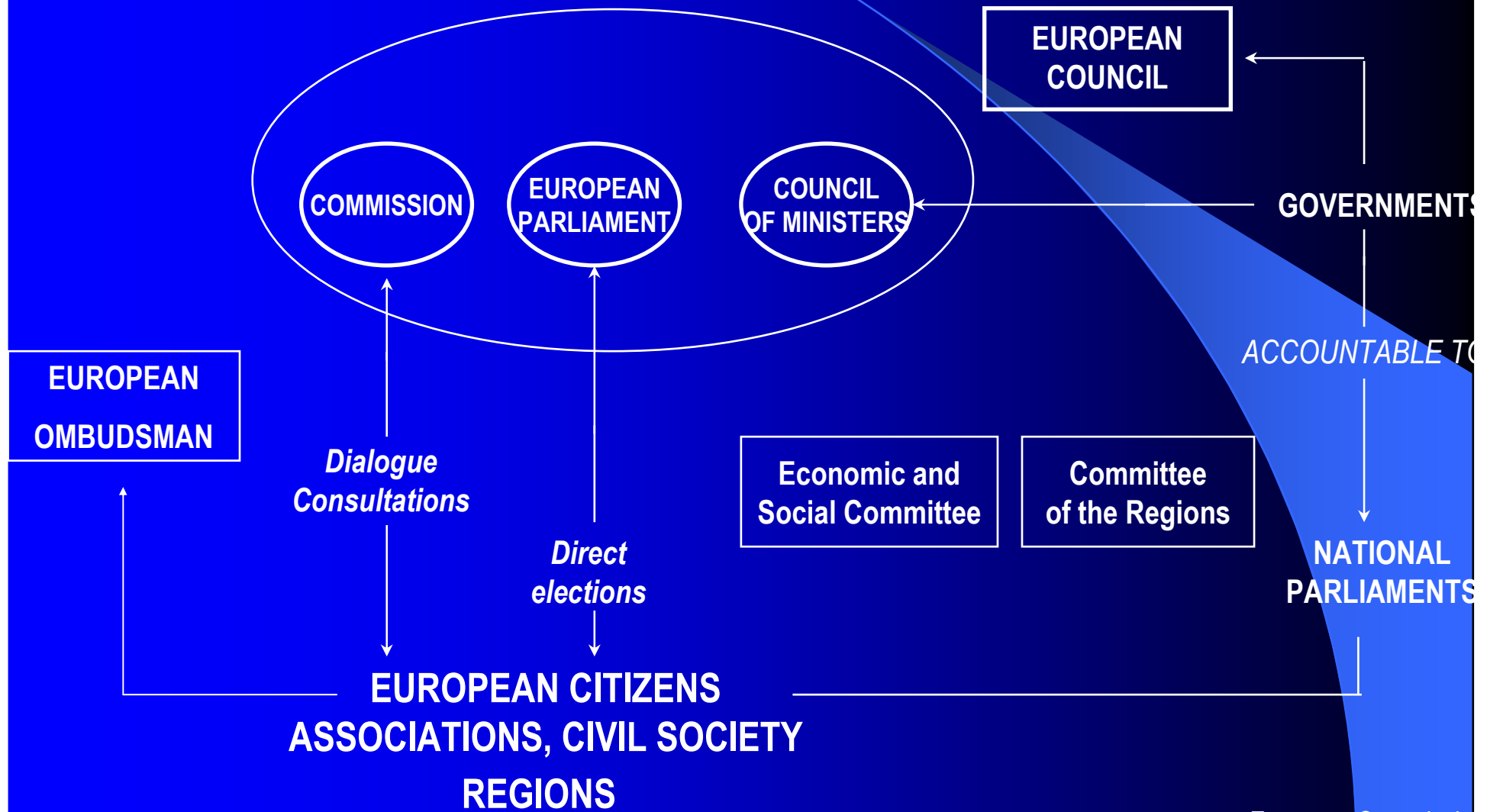
# Possible solutions

- Analogy (European parliamentary methods)
- Decision making (majority voting)
- Material (emotional) attachment  
(corporative integration, social rights, union citizenship)
- OR indirect legitimacy (by Member States)

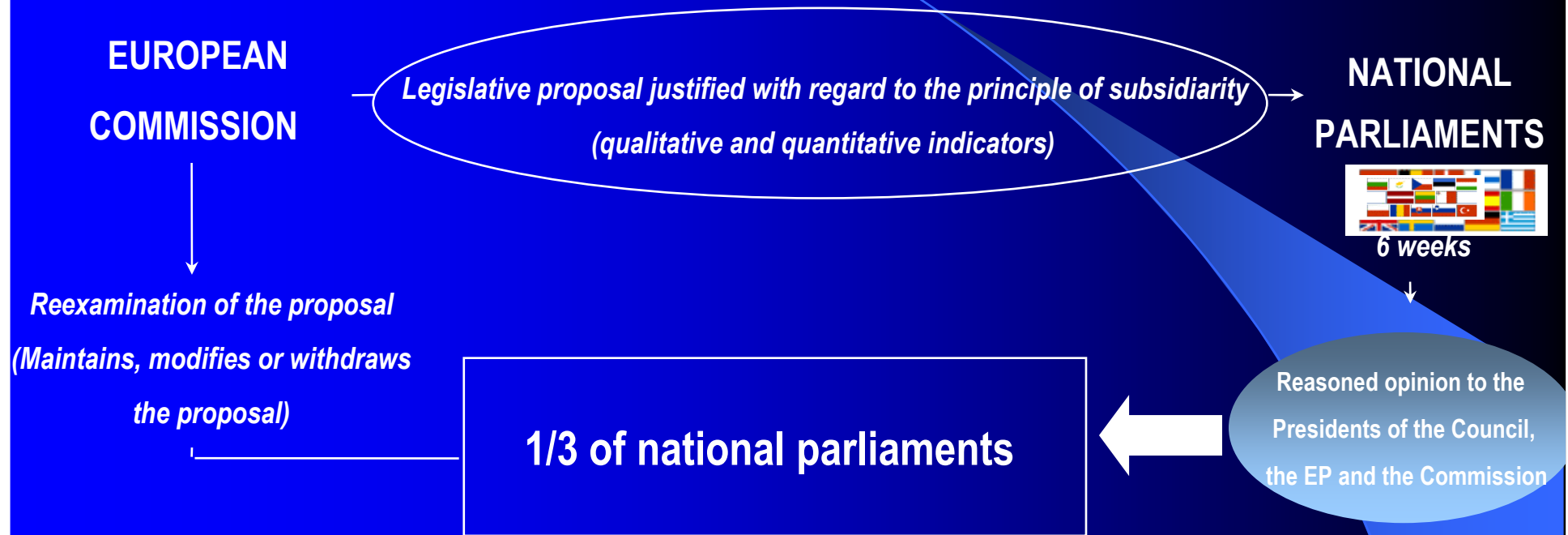
# Levels of EU governance

- Intergovernmental level
- Supranational level – community model
- Supranational centralist / ‘infranational’
- New guaranties in European Constitution
  - Equality of citizens, democratic participation, Ombudsman, parties, churches
  - Transparency, data protection, unified rules for EP elections, role of national parliaments

# THE EUROPEAN UNION AND DEMOCRACY



# INVOLVEMENT OF NATIONAL PARLIAMENTS



**•Reform Treaty changes!**

**•More time for discussion, no efficient objection**