



**SUNICOP**

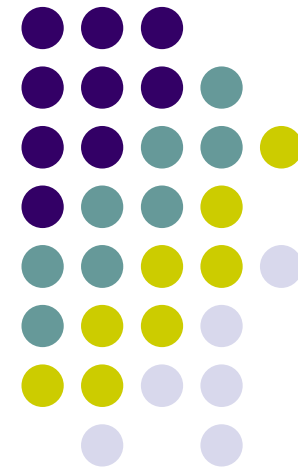
# EUROPEAN CONSTITUTIONAL LAW



**SUNICOP**

# *Division of Powers*

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# Principle of division of powers



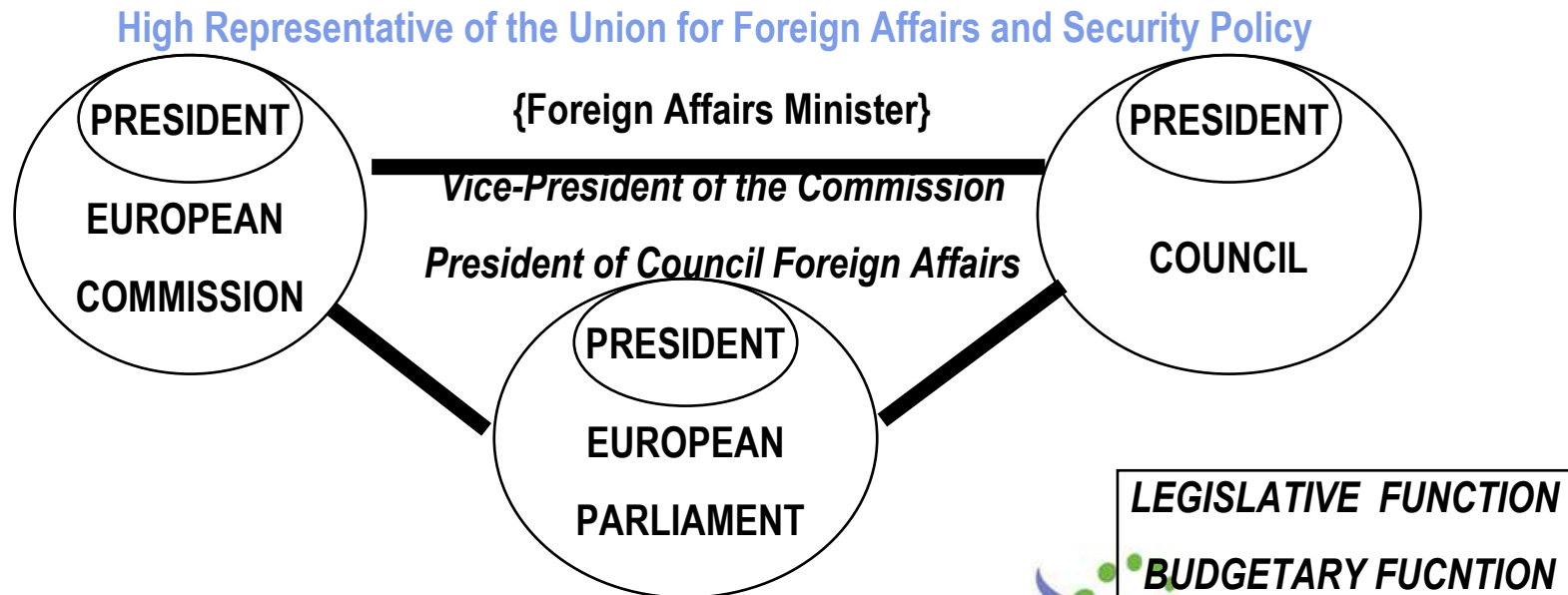
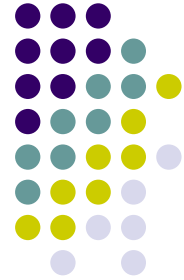
- Horizontal approach – separation of state powers (legislative, executive, judicial)
- Vertical approach - federalism
- Constitutional approach – separate constitution-making power



# 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



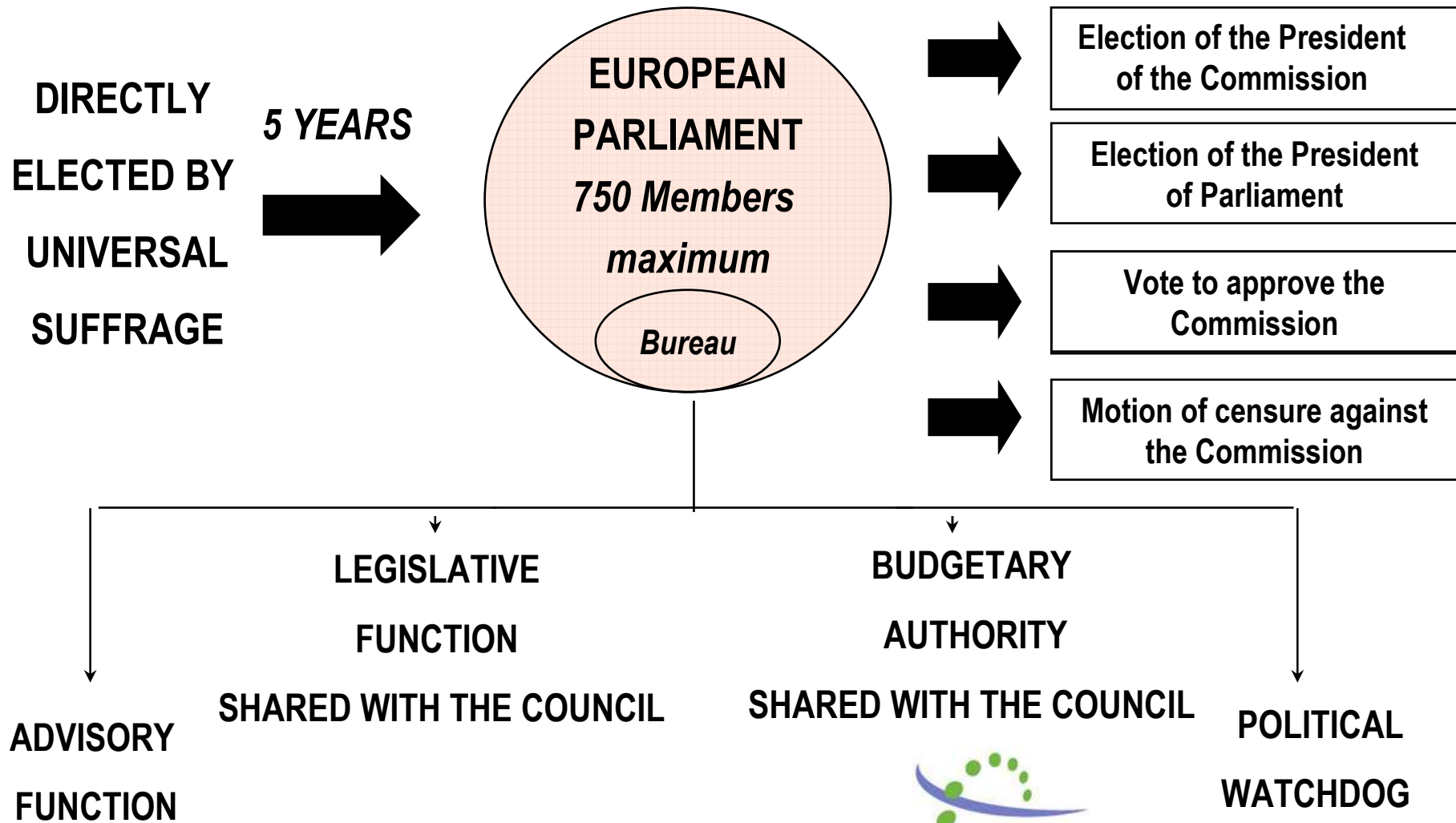


# **THE EUROPEAN PARLIAMENT**

***Representation of European citizens***



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# THE EUROPEAN COUNCIL

*The driving force behind EU policies*



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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*

PRESIDENT

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



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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



Hungary-Croatia  
IPA Cross-border Co-operation Programme

European Commission



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## ***THE COUNCIL OF MINISTERS***



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*European Commission*



**A representative of each Member State for each of its configurations**



**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**



**Hungary-Croatia**  
IPA Cross-border Co-operation Programme

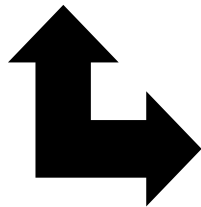
**SUNICOP**

**Council General Affairs**

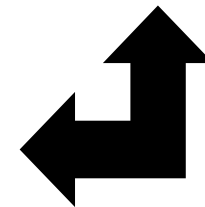
- Ensure consistency in the work of the different Council Configurations
  - Prepare and ensures the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission
- European Commission*

# 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





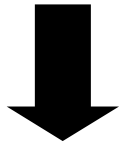
# THE EUROPEAN COMMISSION

*Safeguards the general European interest*



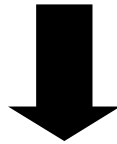
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**External  
representation of EU**



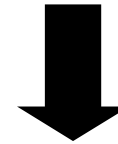
- Except for CFSP and other cases provided for under the Constitution

**Safeguards the general  
European interest**



- Ensures application of the Constitution

**Right of initiative**



- Proposes legislation except where the Constitution provides otherwise

**Functions**

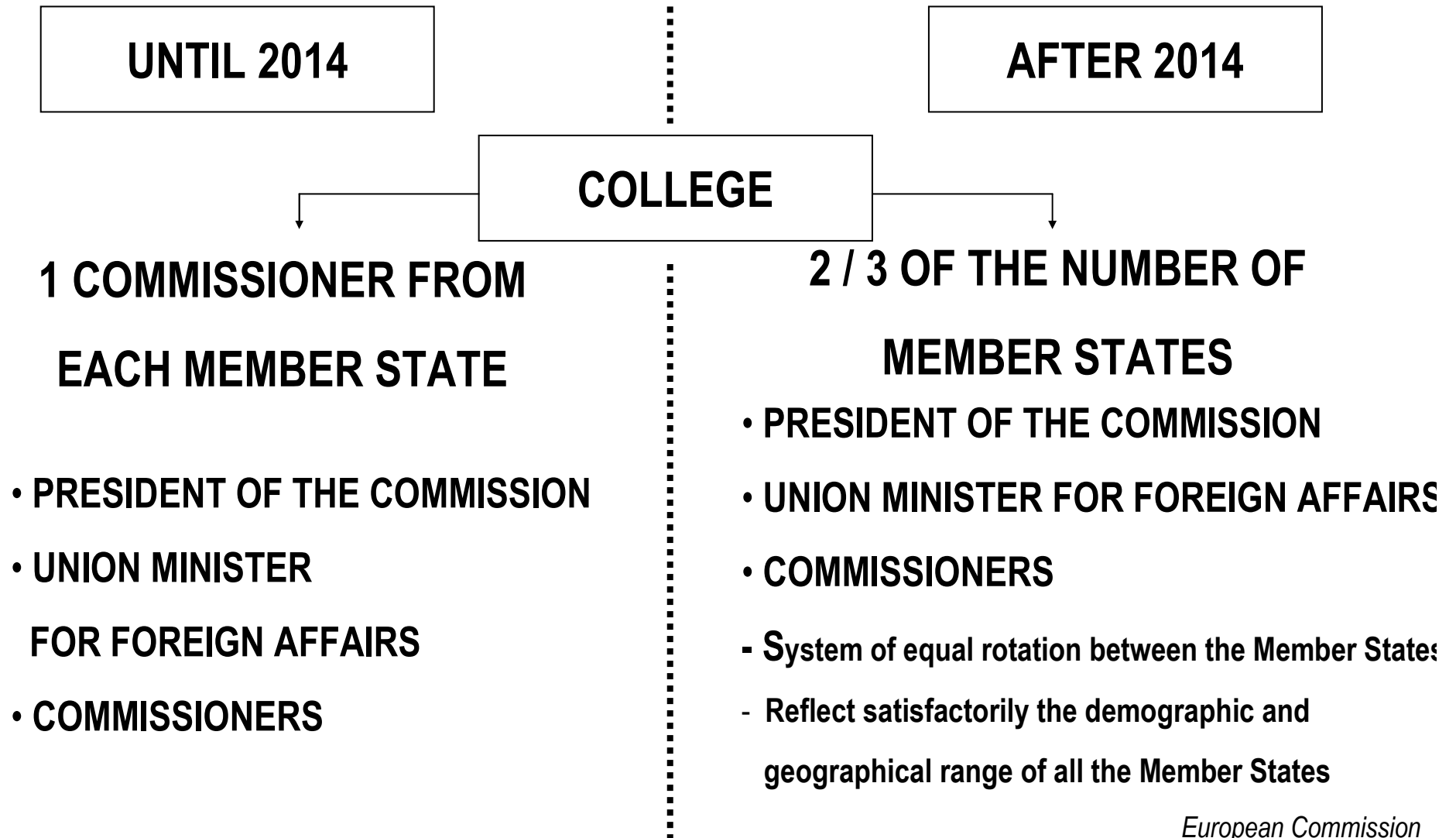


- Coordinating
- Executive
- Management

## **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

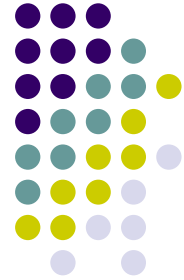
- 'direct effect' and 'supremacy of EC law' established
- in early cases and subsequently reaffirmed



# 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



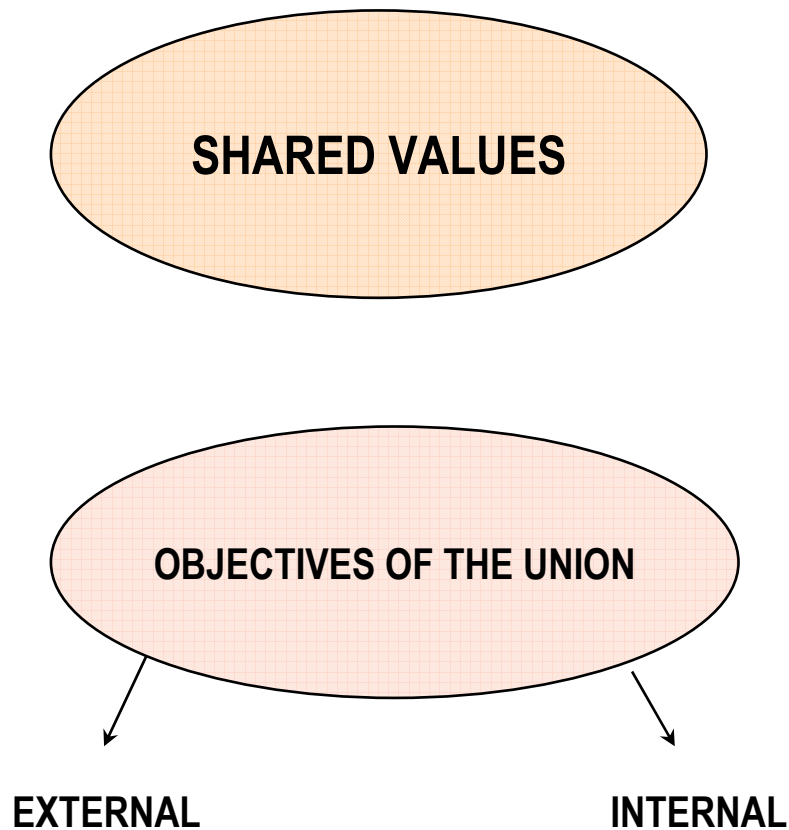
## UNION / MEMBER STATE RELATIONS

- 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

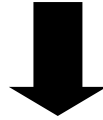


## CLARIFICATION OF THE UNION'S POWERS



- **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



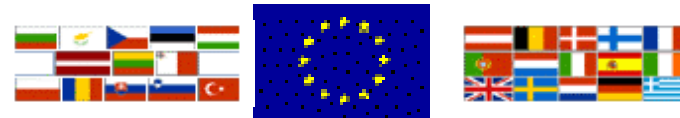
- **Protection and improvement of human health**
  - **Industry**
  - **Culture**
  - **Tourisme**
- **Education, Vocational training, Youth, Sport**
  - **Civil protection**
- **Administrative cooperation**



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## 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*



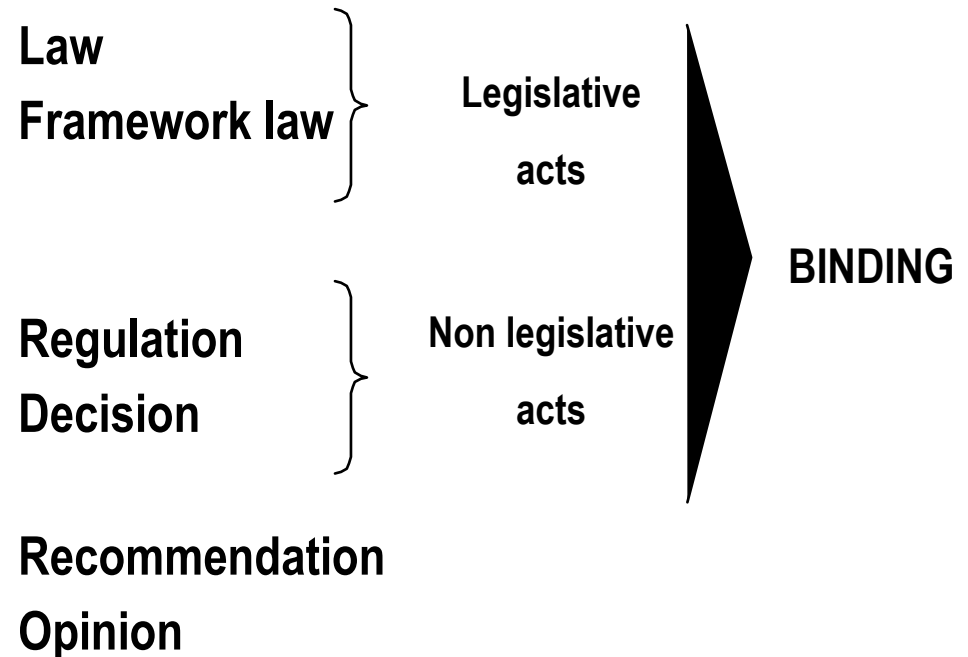
## BEFORE THE CONSTITUTION

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



Lisbon 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