

The EU has existed for over half a century; since 1952, it has significantly grown both **geographically** and **thematically**. Having started with only 6 European States, today's EU is made up of 27 Member States and acts in almost all areas of contemporary life. Its structures have also dramatically changed in the past six decades.

The EU and the Council of Europe are two **DIFFERENT** international entities, as well as the EU Court of Justice and the European Court of Human Rights.

- Treaty of Paris (1951) → European Coal and Steel Community.
- Treaty of Rome (1957) → Three European Economic Communities (EEC).
- Single European Act (1986) → Unification of the three Communities into one European Economic Community.
- Treaty of Maastricht (1992) → Three pillars of the European Economic Community + the European Union.
- Treaty of Amsterdam (1997) → Modifying the three pillars and introducing new competences for the EU.
- Treaty of Nice (2001) → Modifying again the three pillars and adding a special competence in the field of fundamental rights with the Nice Charter.
- The Failure of the European Constitutional Treaty (2005).

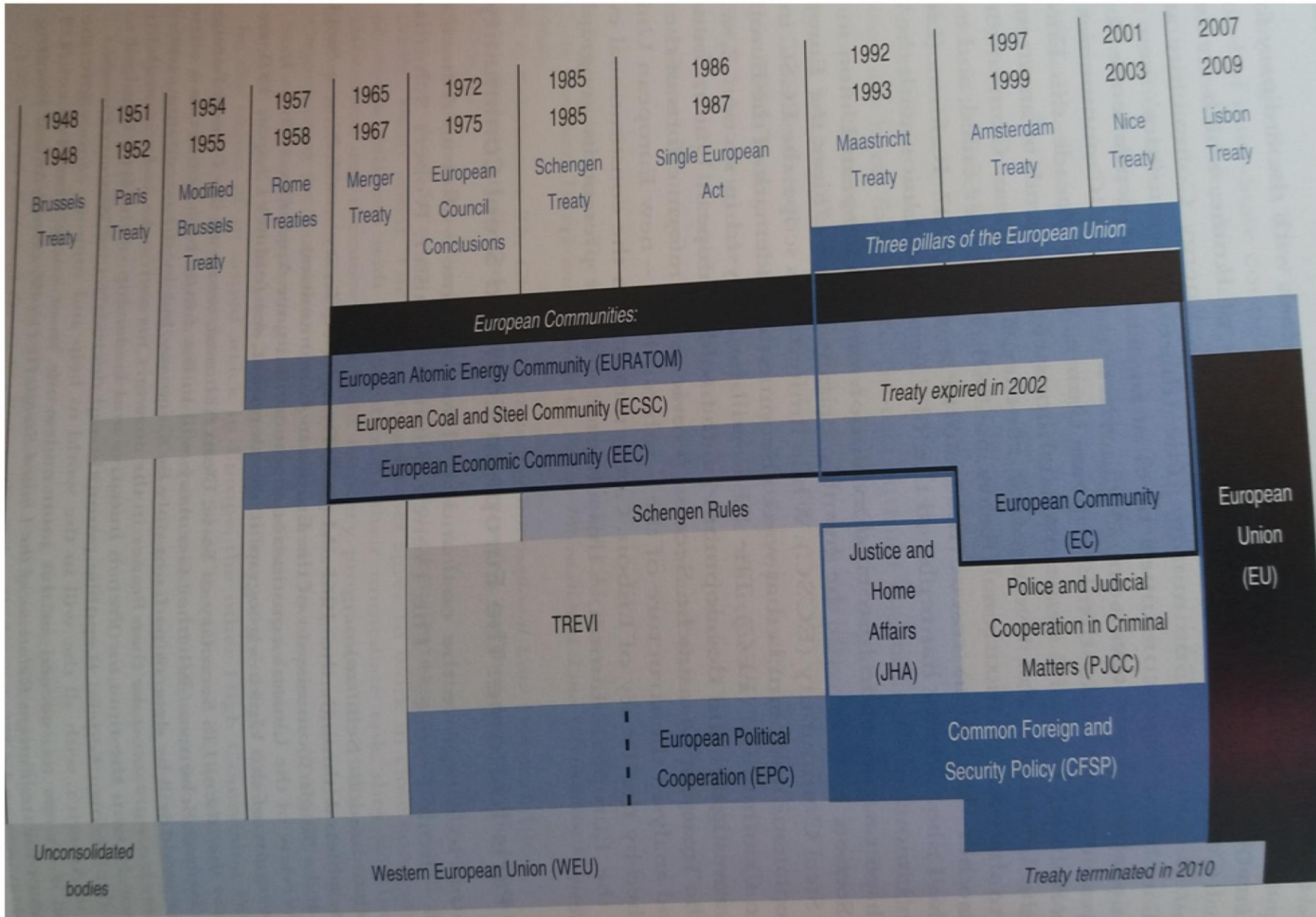


Figure 1.1 Historical Evolution of the Union

- The Treaty of Lisbon (2007) is the conventional instrument now into force and at the basis of the EU.
- The Treaty of Lisbon is a complex instrument made up of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- Just one European Union but two Treaties.

European Union

EU Treaty

FEU Treaty

Title I Common Provisions

Part I Principles

Title II Democratic Principles

Part II Citizenship (Non-discrimination)

Title III Institutions

Part III Union (Internal) Policies

Title IV Enhanced Cooperation

Part IV Overseas Associations

Title V External Action, and CFSP

Part V External Action

Title VI Final Provisions

Part VI Institutions & Finances

Part VII General & Final Provisions

Charter of Fundamental Rights

Protocols (37)★

Declarations (65)★★

- What is the European Union today according to International Law?
- Having started as an international organisation in 1952, should it still be described as such?
- Or should it occupy a place somewhere in between an international organisation and a State?
- Or should it be seen as a State-in-the-making?
- Or should it be considered a Federal State?



- Primary EU Law: the Treaties.
- Secondary EU Law:
 - regulations;
 - directives;
 - decisions.
- International Agreements.

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- The EU Treaties are a sort of Constitution but ... they are not a real Constitution!
- The EU Treaties are framework treaties.
- They establish the objectives of the EU and endow it with the powers to achieve these objectives.
- Many of the EU Policies in the TFEU thus simply set out the competences and procedures for future secondary law.
- But could this 'skeleton' itself have direct effect?

- The CJEU affirmatively answered this question in *Van Gend en Loos* judgment: it follows from the ‘spirit’ of the Treaties that EU law is no ‘ordinary’ international law and that it in itself is directly applicable in the national legal orders.
- The **direct effect test** set out in *Van Gend en Loos* was informed by three criteria. A provision has direct effects when it is:
 - i) **clear**;
 - ii) **unconditional** in the sense of being an automatic prohibition;
 - iii) **absolute**, that is to say that it has not to allow for any reservation.
- In its subsequent jurisprudence, the Court expanded the concept of direct effect on all three fronts.

- Where a EU Treaties provision is directly effective, an individual can invoke EU law in a national court or administration.
- That normally is against the State. This situation is called **‘vertical’ effect**, since the State is ‘above’ the individual.
- It can also happen that an individual invokes a Treaty provision before a national court against another individual. This is called **‘horizontal’ effect**.
- While there has never been any doubt that EU Treaties provisions can be invoked in a vertical situation, there has been some discussion about their horizontal direct effect.
- The discussion has been definitively clarified by the CJEU in the case *Familiapress v. Bauer*, where it stated that the EU Treaties provisions can have direct effects even in horizontal situations.

Regulations

- Pursuant to Art. 288(2) TFEU “a regulation shall have general application. It shall be binding in its entirety and directly in all Member States”.
- This definition demands three criteria, namely that regulations must be:
 1. **generally** applicable in all Member States;
 2. **entirely** binding;
 3. **directly** applicable (have a look at the topic of ‘incorporation’ in public international law).

Decisions

- Pursuant to Art 288(4) TFEU “a decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them”.
- Like a regulation, a decision shall be **entirely binding**.
- Unlike a regulation a decision is **not directly applicable**.
- Unlike a regulation, a decision was originally **not designed to be generally applicable**.
- However, there has been a development in the practice and now Art 288(4) TFEU allows for two types of decisions:
 - i) a decision specifically applicable to those to whom it is addressed;
 - ii) a decision generally applicable because it is not addressed to anybody specifically.

Directives

- Pursuant to Art 288(3) TFEU “a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”.
- Directives are **externally binding on States but not within States**. In other words, a directive as such would have no validity in the national legal order. It happens because directives need to be **incorporated** through the national legislation.
- As a consequence, Member States are only bound as to the **result** to be achieved and not as to the methods and procedures.
- Directives are exclusively binding on the State to which they are addressed since they lack general application.
- Directives can have direct effects and thus entitle individuals to claim their application before domestic courts only after a Member State had failed to properly implement the directive into national law and only at the ‘vertical’ level.

- Since EU law can have direct effect, it might come into **conflict** with national law in specific situations.
- This situation entails two problems: pre-emption and supremacy.
- The problem of **pre-emption** consists in determining whether there exists a conflict between national law and EU law.
- The problem of **supremacy** concerns the manner in which such a conflict can be resolved.
- According to EU perspective, EU law always prevails on national law.
- According to Member States perspectives, the supremacy of EU law is relative.
- That has led in some national orders (first of all, in Italy) to the theory of counter-limits.



Article 13 TEU

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness, and continuity of its policies and actions. The Union's institutions shall be:
 - the European Parliament,
 - the European Council,
 - the Council,
 - the European Commission,
 - the Court of Justice of the European Union,
 - the European Central Bank,
 - the Court of Auditors.
2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.
3. The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the TFEU.
4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

- Not a total separation of powers but a cooperation of functions among the EU Institutions.

Table 5.2 Union Institutions Correlating to Governmental Functions

Legislative	External	Executive	Judicial	Financial
Parliament	(European) Council	European Council	Court	Central Bank
Council	Parliament	Commission	Commission	Investment Bank

The Parliament

- *Directly* elected by the European citizens, Parliament is the most EU *democratic* institution.
- The Parliament shall not exceed 750 members in number, plus the President. Representation of citizens shall be *digressively proportional*, with a minimum threshold of 6 members per State. No Member State shall be allocated more than 96 seats.
- In any case, that composition can change: it is the European Council that shall adopt by unanimity, on the initiative of the Parliament and with its consent, a decision establishing the composition of the Parliament.
- The members of the European Parliament shall be elected for a term of 5 years by direct universal suffrage in free and secret ballot.



- The Parliament constitutes – with the Council – a chamber of the EU legislature.
- The Parliament shall exercise functions of political control and consultation.
- The Parliament shall approve the budget of the EU.
- The Parliament elects the President of the Commission and approves with a vote of consent the whole Commission.

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The European Council

- The European Council originally developed outside the institutional framework of the EU.
- The European Council has formally become an EU Institution in 2007 with the Lisbon Treaty.
- The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.
- It shall not exercise legislative functions.



- The European Council shall consist of the Heads of State or Government* of the Member States, together with its President, and the President of the Commission.
- The EU High Representative for Foreign Affairs and Security Policy shall take part in its work.
- The European Council shall meet twice every six months.
- Except where the Treaties provide otherwise, deliberations of the European Council shall be taken by *consensus*.

* Which difference?

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- The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once.
- The President of the European Council:
 - a) shall chair it and drive forward its work;
 - b) shall ensure the preparation and continuity of the work of the European Council, in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
 - c) shall endeavour to facilitate cohesion and consensus within the European Council;
 - d) shall present a report to the European Parliament after each of the meetings of the European Council;
 - e) shall ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the EU High Representative for Foreign Affairs and Security Policy.

The Council

- The Council shall, jointly with the Parliament, exercise legislative functions: it is one of the two chambers of the legislative power.
- The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.
- The Council shall meet in different configurations. The General Affairs Council shall ensure consistency in the work of the different Council configurations.
- The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.
- The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation.

- The Council acts by a qualified majority except where the Treaties provide otherwise.
- A qualified majority is defined as at least 55% of the votes in the Council, comprising at least 15 Member States and representing at least 65% of the population of the Union.
- A blocking minority must include at least 4 Council members, failing which the qualified majority shall be deemed attained.
- An implicit blocking minority could be also build by Germany, France and Italy together: without at least one of them, the limit of 65% of European population cannot be reached.

Table 5.6 Weighted Votes System within the Council (abolished)

Member States	Votes
Germany, France, Italy, United Kingdom	29
Spain, Poland	27
Romania	14
Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Croatia, Denmark, Ireland, Lithuania, Slovakia, Finland	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3
Qualified Majority: 260/352	

Table 5.7 Member State Population Sizes

Member State	Population ($\times 1,000$)	(Potential) Blocking Minority	Population Majority (Potential)
Germany	80,523.7		
France	65,633.2		
United Kingdom	63,730.1		
Italy	59,685.2		
Spain	46,704.3		
Poland	38,533.3		
Romania	20,057.5		
Netherlands	16,779.6		
Belgium	11,161.6		
European Union (65%)	328,622.1		
European Union (35%)	176,950.4		

The European Commission

- Taking into account the elections to the Parliament and after having held appropriate consultations, the European Council, acting by a qualified majority, shall propose to the Parliament a candidate as President of the Commission.
- This candidate shall be confirmed by the Parliament by a majority of its component members.
- The Council, by common accord with the President *in pectore* of the Commission, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission.
- The President, the EU High Representative for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a whole body to a vote of consent by the Parliament.
- On the basis of this consent, the Commission shall be appointed by the European Council, acting by a qualified majority.

- EU legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties otherwise provide.
- The Commission shall promote the general interest of the Union and take appropriate initiatives to that end.
- It shall ensure the application of the Treaties, and of measures adopted by the Institutions pursuant to the Treaties.
- It shall oversee the application of EU law under the control of the CJEU.
- It shall execute the budget and manage programmes.

- The Commission's term of office shall be five years.
- The members of the Commission shall be chosen on the ground of their competence and European commitment from persons whose independence is beyond doubt.
- In carrying out its responsibilities, the Commission shall be completely independent. The members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.
- The members of the Commission shall be selected from among the nationals of the Member States.
- Notwithstanding the transitional provisions in TEU, and regardless of any political connection with Member State, the Commission continues to be made up of one member for each Member State.

The President of the Commission shall:

- a) lay down the guidelines within which the Commission has to work;
- b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently, and as a collegiate body;
- c) appoint Vice-Presidents.

- A member of the Commission shall resign if the President so requests.
- The Commission, as a body, shall be responsible to the European Parliament.
- The European Parliament may vote on a motion of censure of the Commission.
- If such a motion is carried, the members of the Commission shall resign as a body.
- That is the result of the scandal concerning the Santer Commission in 1999 because of the refusal to resign by French Commissioner Édith Cresson.

The Court of Justice of the European Union (CJEU)

- The CJEU shall include the Court of Justice, the General Court and specialised courts.
- The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.
- The General Court shall include at least one judge per Member State.
- Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who satisfy certain other conditions to be verified by a special committee of jurists.
- They shall be appointed by common accord of the Governments of the Member States for six years.



- The CJEU shall:
 - a) rule on actions brought by a Member State, an Institution or a natural or legal person;
 - b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of EU law or the validity of acts adopted by the Institutions;
 - c) rule in other cases provided for in the Treaties.
- The CJEU shall ensure that in the interpretation and application of the Treaties the law is observed.

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The European Central Bank (ECB)

- The ECB came into formal existence in 1998 and assumed its functions in 1999, when the euro currency was introduced.
- The legal status of the ECB in the EU remained unclear for a long time but Art 13(1) of the Lisbon Treaty now clarifies that it is a EU Institution.
- Nonetheless, the ECB remains an Institution with a special status and special tasks.