



UNIVERSITÀ  
DI SIENA 1240

# The State and the Supranational Orders

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# The State and the Supranational Orders

- 1. The sovereign power of the State and the supranational orders
- 2. The international global organizations
- 3. The international regional organizations
- 4. The European framework
- 5. International law and National law



## **4. The European framework**

# Two different organizations

- In the European continent there are 2 different organizations!!!!
- The EU and the CoE differ each others for the goals, for the extension and for the kind of organization
- As for the goals, the main aim of the EU is to promote political and economic integration, while the CoE deals with the protection of human rights
- As for the extension, the EU includes 28 [27 after Brexit] States, while the CoE includes 47 States
- As for the kind of organization, the UE is a supranational organization, while the CoE is an international organization

# Two different organizations

**Council of Europe**



**European Union**



# European Union



# ***Van Gend en Loos (1963) Case 26/62***

"The Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the community."

# The European integration: some evident consequences









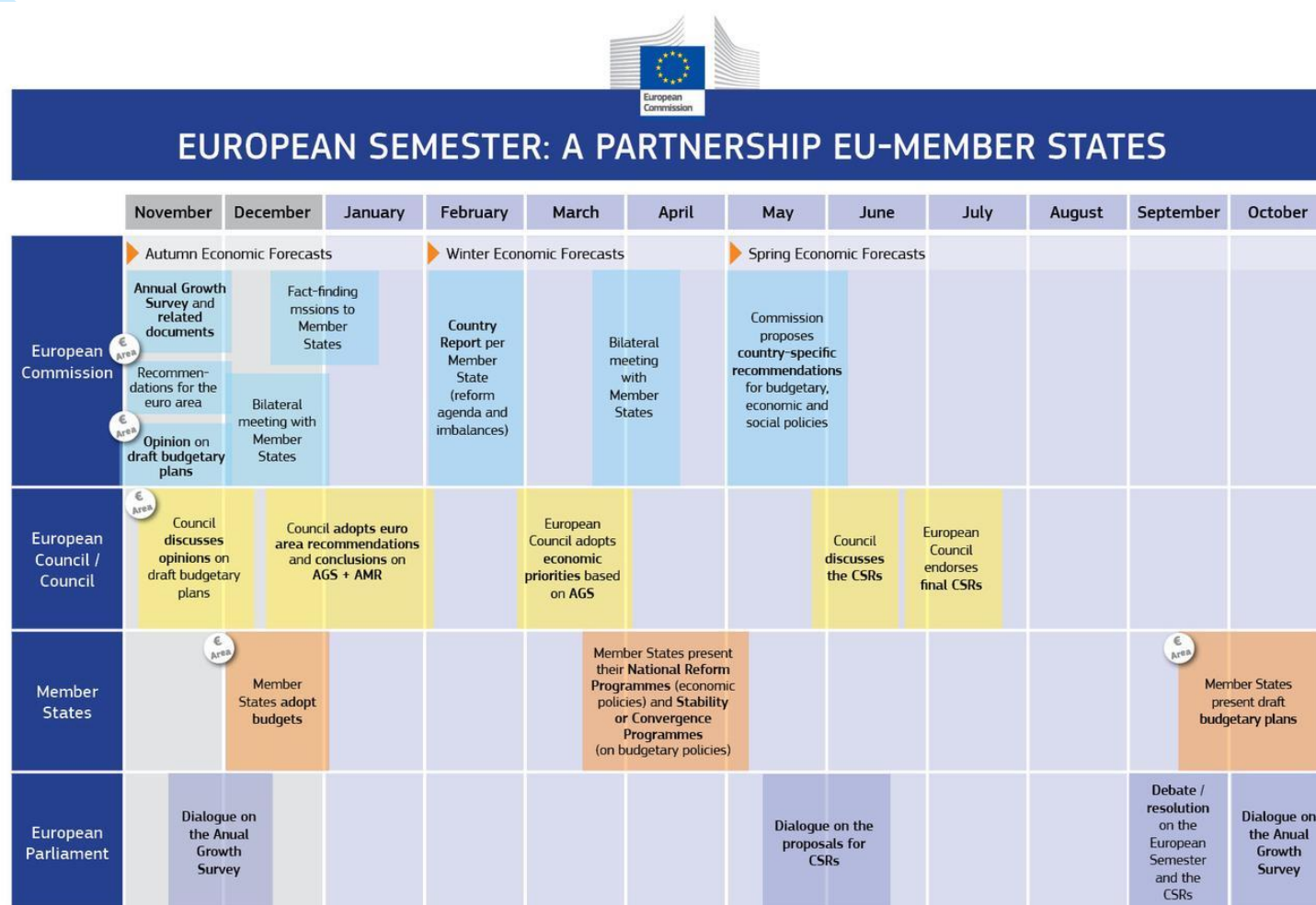
# erasmus



# The European integration: some evident consequences

- Some constitutional amendments have been approved in order to comply with EU obligations (Euro Plus pact): in Italy, constitutional law n. 1/2012 (amending arts 81, 97, 117, 119 Const.)
- States approve their budgets with the participation of the European institutions and observing EU constraints

# The European integration: some evident consequences



Glossary: **AGS**: Annual Growth Survey - **AMR**: Alert Mechanism Report - **CSR**: Country-Specific Recommendations - **EDP**: Excessive Deficit Procedure

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# The European integration: some evident consequences



*Al Ministro  
dell'Economia e delle Finanze*  
Prot. 720/R

Rome, 27 October 2016

*Dear Valdis, Dear Pierre*

Thank you for your letter dated 25 October, in which you seek clarifications concerning Italy's 2017 Draft Budgetary Plan (DBP).

In particular, you are enquiring about the revision of Italy's fiscal targets with respect to the commitments made last spring.

The macroeconomic outlook has worsened since last spring due to external factors, including increased geopolitical risks, which have caused a slowdown in European growth and a lowering of projected global trade growth. Italy's official real GDP growth forecasts for 2016 and 2017 in the DBP have been reduced as a result. The output gap is now projected at -1.7 percent

# The European integration: some evident consequences

But also:

- European monetary union
- European citizenship
- Freedom of movement
- Right to vote
- ...



# The European Union: historical development- Treaties (part I)

The treaties (approval and amendments):

- 1951: the founding treaty setting up the European Coal and Steel Community (ECSC) is signed in Paris by France, Germany, Italy, Belgium, Netherlands and Luxembourg
- 1957: the six Countries sign in Rome the treaties creating the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM)
- 1985: the Schengen Agreement led the way toward the creation of open borders without passport controls between most member states and some non-member states



# The European Union: historical development- Treaties (part II)

- 1986: the Single European Act is signed, including new matters into the Community jurisdiction
- 1992: the Treaty of Maastricht create the European Union: 3 pillars, European citizenship; Monetary union
- 1997: Treaty of Amsterdam
- 1999: the European Charter of Fundamental Rights
- 2001: Treaty of Nice
- 2004: signing of the Treaty Establishing a Constitution for Europe, the latter will be never entry into force
- 2007: the Treaty of Lisbon is signed, it amends the two existing treaties (TEU and TFEU) and abolishes the 3 pillars; the European Charter of Fundamental Rights becomes binding. It entered into force in 2009.

# The European Union: historical development: Judgements

## The role of the Court of Justice

- Primacy: The European Law prevails on the national law, except for the fundamental principles set by the Constitution (so called «Controlimiti»)
- Direct effect: The European Law has direct effect in the national legal order, not only upon the member states, but also upon the subjects of the national legal order

# The European Union: historical development: Enlargements

## Geographical evolution

- 1951 France, Germany, Italy, Belgium, Netherlands and Luxembourg signed the founding treaty
- 1973: the Communities enlarged to include Denmark, Ireland, and the United Kingdom
- 1981: Greece joins
- 1986: Portugal and Spain join
- 1995: Austria, Finland and Sweden join
- 2004: with the biggest enlargement, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia join the EU
- 2007: Bulgaria and Romania join the EU
- 2013: Croatia joins the EU
- 2016: Brexit

# The European Union: accession (art. 49 TEU)



# The European Union: accession (art. 49 TEU)

- The applicant country must:
- A) be a state within geographical Europe
- B) respect and commit to the EU values (art. 2 TEU): respect for human dignity, freedom, democracy, equality and the rule of law; respect for human rights; respect for a pluralistic society and for non-discrimination, tolerance, justice, solidarity and equality between women and men.
- C) respect the EU eligibility criteria (Copenhagen criteria): stable institutions guaranteeing the EU values; a functioning market economy; the ability to take on and implement effectively the obligations of membership

# The European Union: accession (art. 49 TEU)

- The procedure:
- A) Application: formal application to the Council of EU
- B) Candidate status: country's status as a candidate country is granted by the Council of the EU following a favourable opinion from the Commission and European Council.
- C) Negotiations: are opened following a unanimous decision of the Council of the EU; the Commission monitors the candidate country's efforts to implement the *acquis* (the body of EU law, divided into 35 chapters)
- D) Screening process: consists of verifying whether individual items of the *acquis* listed in a given chapter have been transposed into the law of the candidate country. Only when the candidate country shows that it has already implemented a chapter can that chapter be provisionally closed.
- E) Accession: the accession treaty must be approved unanimously by the Council of the EU, must receive the consent of the European Parliament and must be signed by each of the EU countries and by the acceding country.

# The European Union: withdraw (art. 50)



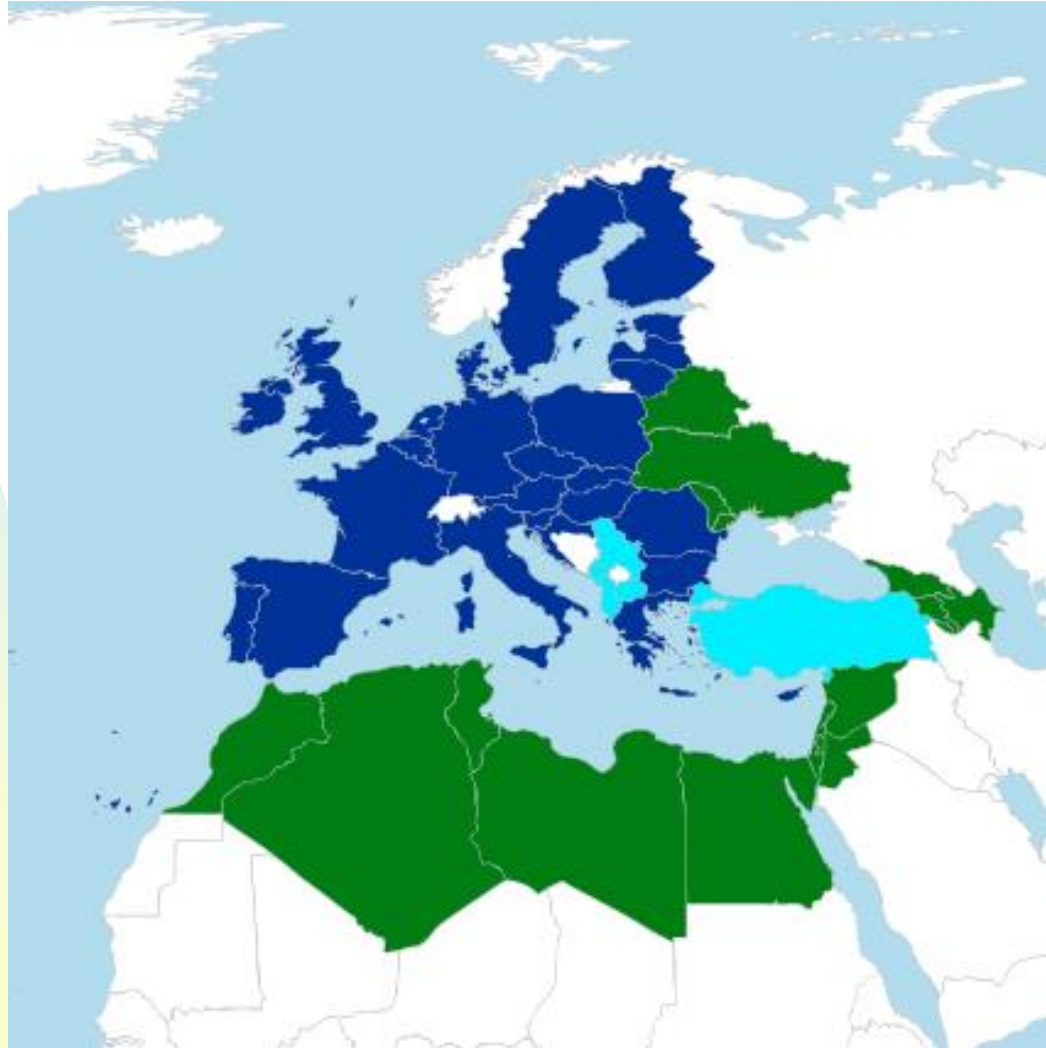


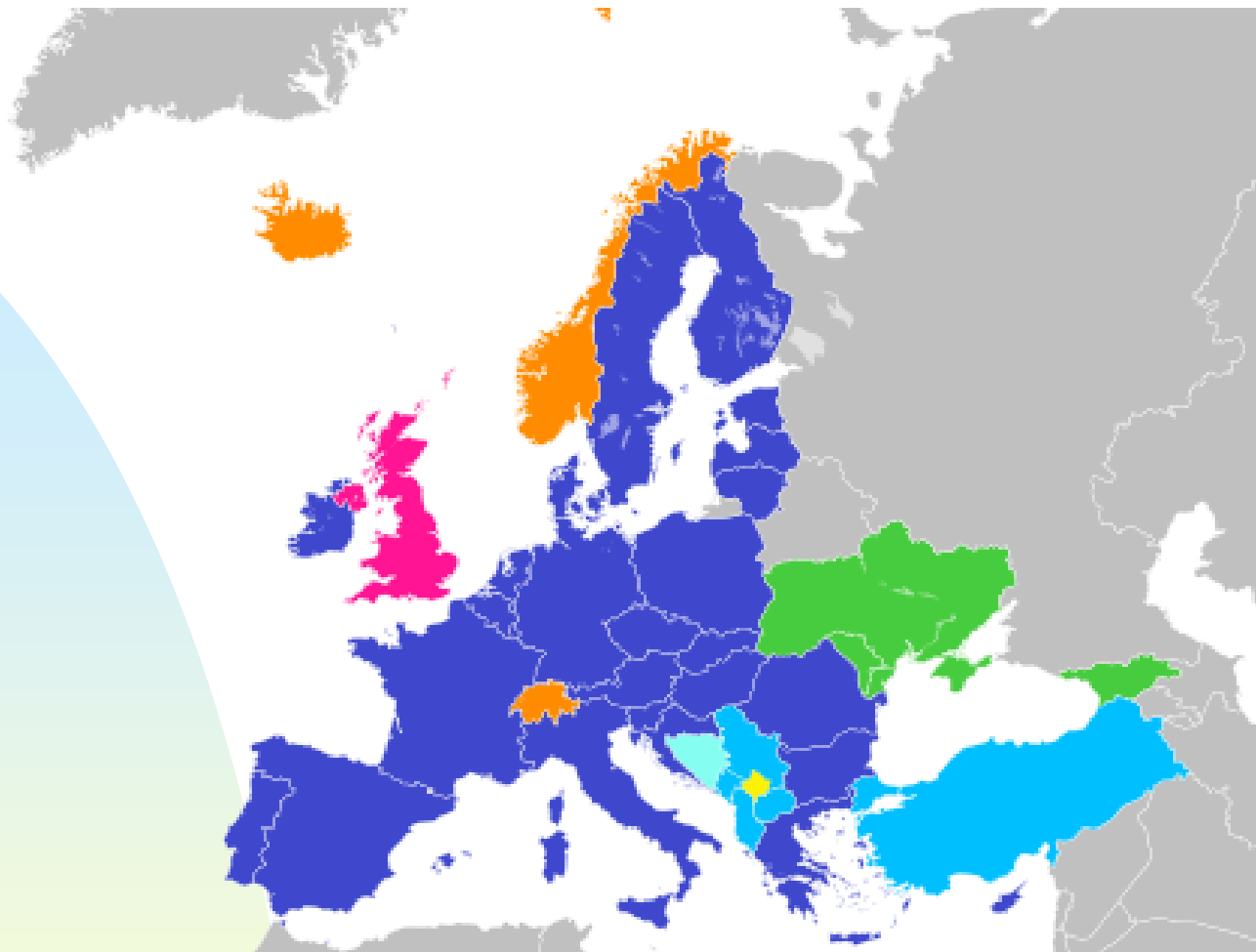
# The European Union: withdraw (art. 50)

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- 2. A Member State which decides to withdraw shall notify the European Council of its intention. The Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded by the Council of the EU, acting by a qualified majority, after obtaining the consent of the European Parliament.
- 3...
- 4...
- 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.



# EU neighbouring countries





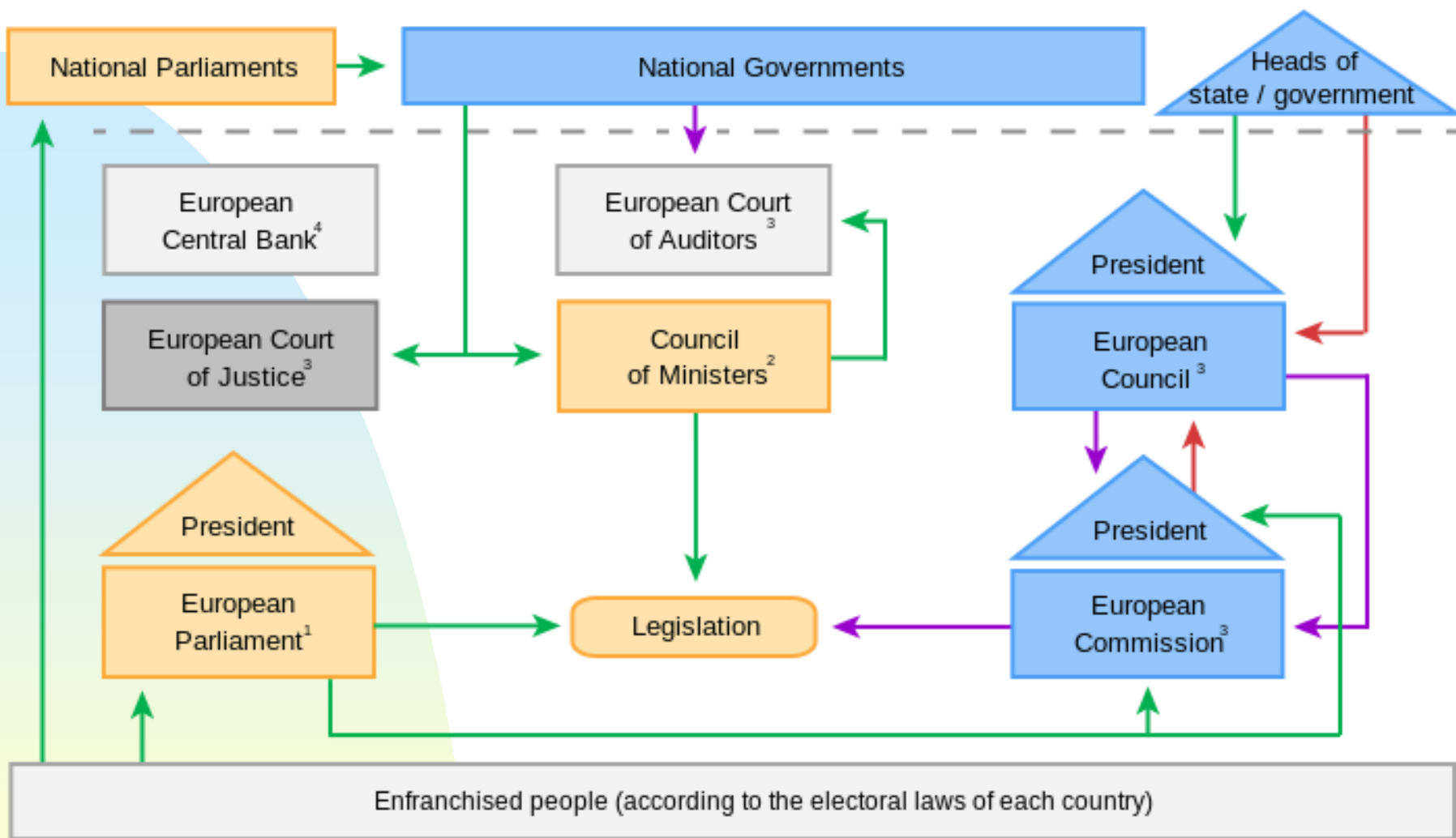
## Future enlargement of the European Union ?

[https://en.wikipedia.org/wiki/Future\\_enlargement\\_of\\_the\\_European\\_Union](https://en.wikipedia.org/wiki/Future_enlargement_of_the_European_Union)

# To check the enlargement process

- [https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status\\_en](https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en)

# **The European Union: organization**



- |  |   |
|--|---|
| <span style="background-color: orange; border: 1px solid black; padding: 2px;"> </span> Legislative branch | <span style="color: green;">→</span> elects / appoints / decides on |
| <span style="background-color: blue; border: 1px solid black; padding: 2px;"> </span> Executive branch     | <span style="color: red;">→</span> membership                       |
| <span style="background-color: grey; border: 1px solid black; padding: 2px;"> </span> Judicial branch      | <span style="color: purple;">→</span> proposes                      |

- 1: Elections are every 5 years. The right to vote may be different depending on the country.
- 2: State chamber. Convenes in varying composition depending on the policy area. Each country is represented by one member per department.
- 3: Each country is represented by one member.
- 4: The European Central Bank is composed of representatives of the national central banks. Its Board is elected by the European Council on the proposal of the Council of Ministers.

# The European Council

- The European Council is the institution of the EU that comprises the heads of state or government of the member states.
- It includes the President of the European Council and the President of the European Commission. The High Representative of the Union for Foreign Affairs and Security Policy also takes part in its.
- It defines the EU political direction and orientation
- It convenes at least four times a year and decides with consensus system
- It is a formal institution from 1993 and an European institution from 2009.

# The Council of the European Union

- The Council of the European Union (also called the Council of Ministers) consists of a government minister from each member; it has different compositions depending on the matter discussed
- It shares with the European Parliament some functions, such as the approval of the legislation and of the budget
- Its decisions are made by qualified weighted majority voting or by unanimity voting

# The European Parliament

- The European Parliament is composed by 751 Members (MEPs) directly elected by EU citizens every five years on the basis of proportional representation (last elections: 2014).
- Each country has a different number of seats and a different electoral system.
- The Parliament shares some functions with the Council of the European Union and its approval is necessary for the European Commission to take office.



# The European Commission

- The European Commission has 28 Commissioners, one for each member state, which manage different areas of policy and represent the interests of the EU as a whole rather than their home state.
- The Commission is the executive body of the EU, it is responsible for initiating legislation and the administration of the EU.
- The Commission President and the High Representative of the Union for Foreign Affairs and Security Policy (who is *ex-officio* Vice-President of the Commission) are appointed by the European Council. The other 26 Commissioners are appointed by the Council of the European Union in agreement with the nominated President. The entire Commission is subject to a vote of approval by the European Parliament.

# Other European Institutions

- The European Court of Justice oversees the uniform application and interpretation of European Union law and resolves legal disputes between national governments and EU institutions.
- The European Court of auditors checks if the budget of the European Union has been implemented correctly.
- The European Central Bank is the central bank for the Eurozone: it administers the monetary policy in order to maintain the price stability.

# The Council of Europe

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# The Council of Europe: historical development

- 1949: Ten States (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom) sign the Treaty of London establishing the Council of Europe.
- 1950: the ten States sign the European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms).
- In these decades, many States have joined (now 47) and other treaties and protocols to the ECHR have been signed.

# The Council of Europe: organization

- The Parliamentary Assembly includes national parliamentarians from all member states and elects its President for a year; it is a representative body.
- The Committee of Ministers, includes the Ministers of Foreign Affairs of the member states; it is the decision making body.
- The Secretary General is elected for a five years terms by the Assembly on the recommendation of the Committee; he is responsible for the activities of the Council.
- The Congress of Local and Regional Authorities comprises political representatives from local and regional authorities in all member states.

# The Council of Europe: the European Court of Human Rights



# The Council of Europe: the European Court of Human Rights

- The most important body is the European Court of Human Rights
- It includes 47 judges (one for each State) elected for a non-renewable nine-year term by majority vote in the Parliamentary Assembly from the three candidates nominated by each member State
- It can work in Committees (3 judges), Chambers (7 judges) or Grand Chamber (17 judges); the plenary court has no judicial, but electoral and administrative functions

# The Council of Europe: the European Court of Human Rights

- Its main function is to hear applications by individuals, non-governmental organisations, groups of individuals or a State against a member State, alleging a violation of the rights recognized by the European Convention on Human Rights
- The Court decides cases by majority (separate opinions are admitted)
- It may order the member state to redress violations or to pay material and/or moral damages and the legal expenses
- It can also deliver advisory opinions on the interpretation of the European Convention on Human Rights





## **5. International law and national law**

# The relationship between national and international law

- The dualistic approach
- More ancient
- Only partial limitation to the sovereignty
- The national legal system, by accepting some form of limitation of its sovereignty, provides concurrent recognition of the international norms
- Distinction between internal and external norms
- The State recognizes the existence of two separate legal orders

# The relationship between national and international law

- The monistic approach
- More recent
- Unconditional limitation to the sovereignty
- The national legal system automatically accepts the entry of the international norms into the system
- Source of law produced by international organizations automatically migrate into the national one
- The State recognizes a single legal order

# The position of international law in Italy

- The customary international law is automatically part of the Italian legal system; it includes the norms and the principles of international law that are generally recognized.
- Italian Constitution, **art. 10**: Italian laws conform to the generally recognized norms of international law.
- The conventional international law is not automatically part of the national legal system, it needs a ratification.
- Italian Constitution, **art. 80 and 87**, provides the procedure of ratification

# The position of European law in Italy

- Due to the particular character of the European Union, the European Law has a particular force in the member states of the EU
- Primary Sources of Law: the founding Treaties and their amendments
- Secondary Sources of Law: regulations, directives and decisions (binding); recommendations and opinions (non binding)
- The European Law prevails on the national law and has direct effect in the national legal order
- Conflict between European and Italian law are to be resolved by the non-application (if European source is self executing) or by the declaration of unconstitutionality (if European law is not self executing) of the latter

# The position of European law in Italy

- Regulations establish general and abstract rules, which are directly binding for all European Union citizens. They are directly applicable within the national legal system. They do not have to be implemented by national law to become effective, but are immediately binding for all citizens
- Directives are binding as to the result to be achieved, but leave their implementation to the discretion of the Member States. It is up to the Member States to put the directives into effect and to choose the most suitable legislative instrument for attaining the results.