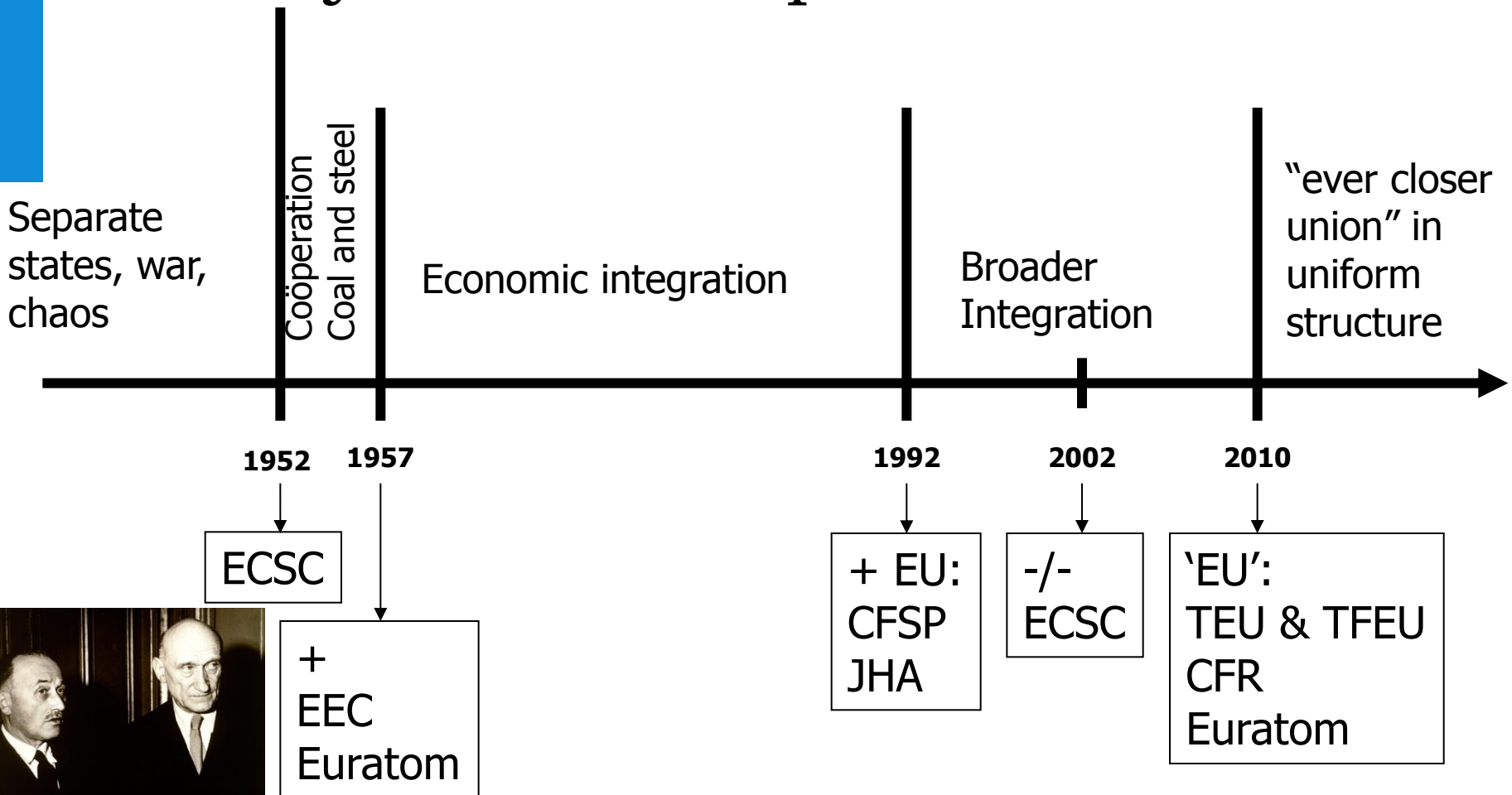


# Institutional Law

SPM4422  
Spring 2011

# 1. Evolution of the EU

# History of the European Union



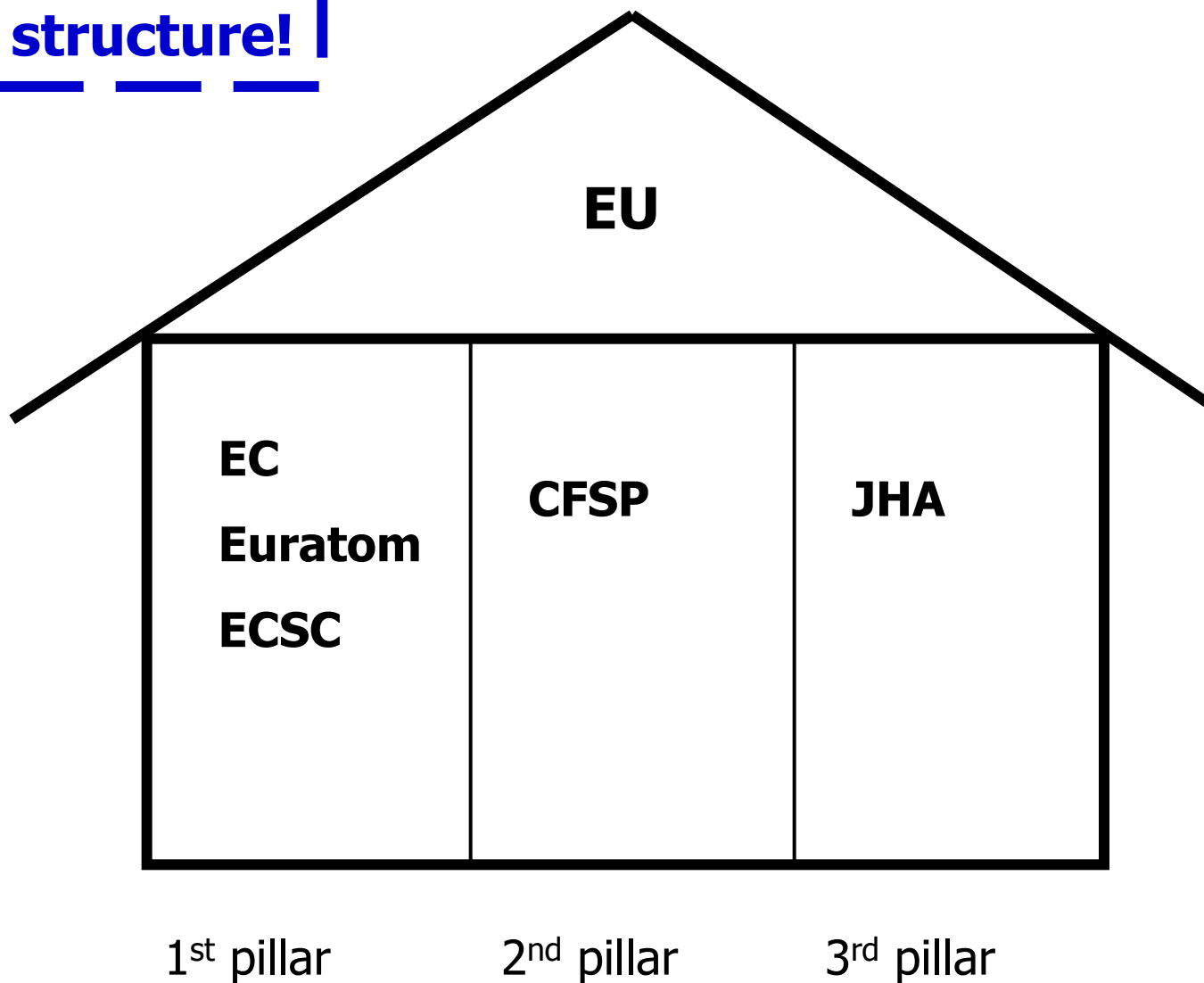
# Intergovernmental vs supranational

- Decisions of bodies composed of Heads of State or of Governments
- MS only legally bound by the decision when agreed to
- Execution and control of decisions by MS themselves
- Decisions of bodies composed of independent members
- MS also legally bound by decision when majority of MS agree, even when MS itself did not agree
- Execution and control of decisions by own bodies of organization

# Special features

- Strong supranational elements: Commission with independent members, Council with also (qualified) majority voting, European Parliament, Court of Justice → state like institutions
- Legal order of its own in which citizens participate (basic rule in international law is that treaties only confer rights and duties upon member states, not upon citizens)
- Direct applicability and direct effect of EU law
- Precedence over national law

# **[ Old structure! ]**



# Characteristics of the (old) EU house

- The EU does not have legal personality; the Communities have
- 1st pillar is mostly supranational; 2nd and 3rd are mostly intergovernmental
- 1st pillar consists of international organizations; 2nd and 3rd pillar consist of policy areas

# Treaty of Lisbon (2007)

- Successor of the European Constitution, also known as the Reform Treaty
- Signed on 13 December 2007
- Has been ratified (signed) by all the Member States



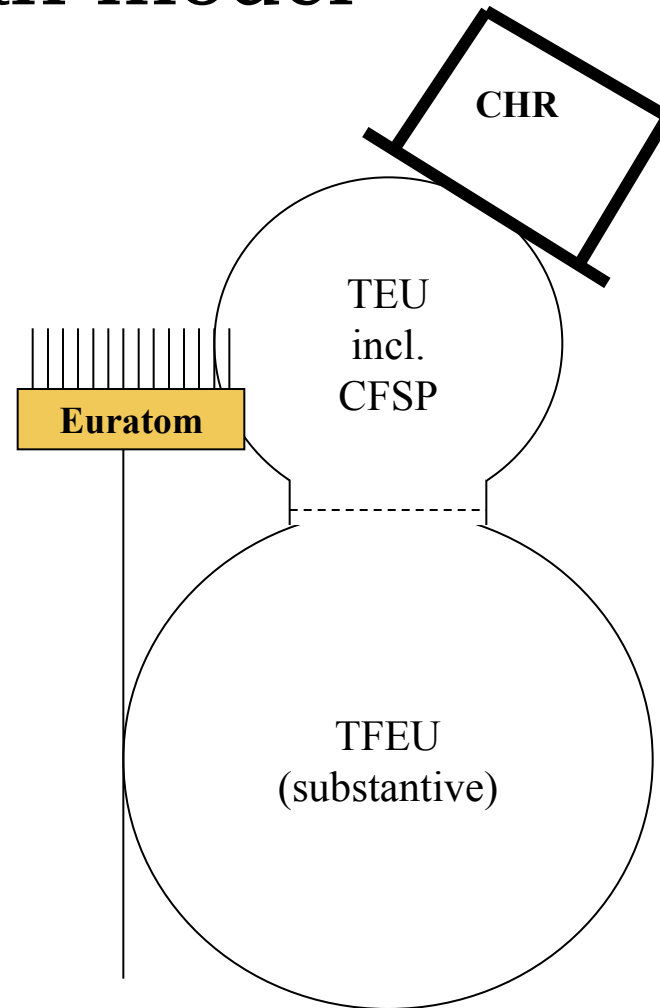
# What happened to the EU after Lisbon?

- The ToL amends the EU Treaty, the EC Treaty and the Euratom Treaty
- The EC Treaty is renamed: Treaty on the Functioning of the EU (TFEU)
- The ToL establishes a very strong connection between the TEU and the TFEU
- The EC ceases to exist; the whole organization is called 'EU' and the EU has legal personality
- The Charter on Human Rights is attached to the EU Treaty

# From old to new



# Snowman model



# Treaty on the European Union - Content

- Mission, goals and democratic principles
- Establishment of the institutions (European Council, European Parliament, Commission, Council of the EU, Court of Justice, Court of Auditors, European Central Bank)
- Common Foreign and Security Policy (still intergovernmental)

# Treaty on the Functioning of the EU

## - Content

- Competences of the EU (exclusive, shared or supporting)
- Tasks and powers of the institutions
- EU Citizenship
- Legal instruments
- Legislative procedures
- Judicial protection
- Substantive law (internal market, competition, climate change etc.)

# Extra's of the Treaty of Lisbon

- Citizen's initiative: 1 million citizens of a significant number of MS can file a petition for legislation on a certain topic
- Yellow and orange card procedure:
- a proposal for EU legislation has to be sent to all national parliaments
- these parliaments assess the proposal in the light of the principle of subsidiarity
- 1/3 votes against → Commission has to explain; 1/2 votes against → Council and EP decide with majority

## 2. Institutions

# Institutions

1. European Council (new)
2. European Commission
3. Council (of the EU)
4. European Parliament
5. Court of Justice
6. Court of Auditors ('accountant')
7. European Central Bank (new)



# European Council

## Task and powers

- Political umbrella – general political guidelines and conclusions
- No legislative powers!
- European Council minus the President of the Commission → enhanced co-operation between some MS, nomination of the Commissioners, determination of a clear risk of a serious breach of the fundamental principles of the EU

# European Council

## After the Treaty of Lisbon

- European Council is an Institution (not legislative)
- High Commissioner on Foreign Affairs included in Council
- A “European President” elected by European Council
- Coordination and representation of the European Council
- 2 ½ year term, up for re-election

# The Council (of the European Union)

- Not: European Council!
- Not: Council of Europe!
- Representatives of Member States at ministerial level – (qualified) majority voting; sometimes unanimity – different councils on different topics (economics, foreign affairs, etc)
- Rotating presidency; current presidency: Denmark, succeeded by Cyprus in July 2012

# Tasks and powers

- It is the most important Community legislator, but it can only act when the Commission puts forward a proposal
- Can delegate powers to the Commission
- It has power to conclude international agreements on behalf of the EC

# Voting mechanism in the Council

- System of weighed votes is replaced with qualified majority voting:
  - 1/2 of MS (or 2/3 of MS)
  - 255 votes (of a total of 345)
  - Representing at least 62% of the people of the Union
- Blocking minority at least 4 Council members → decision is not adopted
- In some areas still unanimity

# Votes

Duitsland, Frankrijk, Italië, Verenigd Koninkrijk	29
Spanje, Polen	27
Roemenië	14
<b>Nederland</b>	<b>13</b>
België, Tsjechische Republiek, Griekenland, Hongarije, Portugal	12
Oostenrijk, Bulgarije, Zweden	10
Denemarken, Ierland, Litouwen, Slowakije, Finland	7
Cyprus, Estland, Letland, Luxemburg, Slovenië	4
Malta	3
<b>TOTAL</b>	<b>345</b>

# The European Commission

## Composition

- 2/3 of the MS shall deliver 1 Commissioner each, unless the European Council unanimously decides otherwise → done, so one Commissioner per MS
- Commissioners act independently of their Member State
- Commissioners have their own portfolios, e.g. competition, internal market, transport, agriculture and fisheries
- Serve a five-year term

# Tasks and powers

- Responsible for the enforcement of Community law
- Exclusive right to put forward a proposal for legislation; Council can only act upon a proposal of the Commission
- Decision making powers (administrative of character)
- Opinions/Recommendations
- EU representation



# European Commission

## After the Treaty of Lisbon

- Vice president of the Commission will be the High Representative for Foreign Affairs and Security Policy
- Appointment of the Commission: "Taking account of elections for the EP"

# European Parliament Composition

- Representatives of the peoples of the Member States (no instruction of their governments)
- Elected according to national election procedures
- All elected members with the same political color form a European political group, e.g. the Socialist Group, Group of Liberals and Democrats, Group of the Greens
- 750 + 1 members
- Members are elected for 5 years

# Tasks and powers

- Role of EP has been strengthened over the years
1. Legislative powers: depends on policy area, most powers in the ordinary procedure (co-decision)
  2. Controlling powers: right to question Commissioners, approve/disapprove Commission, or issue/adopt a motion of censure.
  3. Budgetary powers: right to amend/reject draft budget and granting discharge to the Commission
  4. Power to bring an action before the Court of Justice

# The Court of Justice

- Consists of the Court of Justice, the General Court and the Civil Service Tribunal
- Institution as a whole is referred to as ECJ but ECJ is also 1 of the Courts!
- Court of Justice: preliminary rulings, infringement actions, actions for annulment, appeals (GC judgments)
- General Court: actions from natural and legal persons against the institutions, cases on competition law

# 3. Legal Instruments

# Community law

1. Primary legislation: constituting treaties (EU, EC, Euratom), International Treaties, General Principles
2. Secondary legislation (big influence on national law depending on policy area)

# EU instruments

“To exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.”

- Regulations, directives and decisions are legally binding
- Recommendations and opinions are not
- Soft law: resolutions, guidelines, communications, notices, ....

# Common requirements

- Correct legal basis
- Correct legislative procedure
- Referral to required opinions, of e.g. EcoSoc
- Adequate motivation
- Date of adoption
- Date of coming into force (when not explicitly stated: 20 days after publication)
- Publication in the Official Journal (L- or C-series)



# Regulations

“A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.”

- Implementation of the regulation itself is not allowed, regulating further details is
- Clear and unconditional provisions have direct effect, without further conditions

# Directives

“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.”

- Binding upon MS, not on individuals or companies
- Implementation required, so it becomes national law with a European origin
- No timely implementation → MS can be taken to Court
- Used mainly to harmonize national legislation

# Decisions

“A decision shall be binding in its entirety. A decision that specifies those to whom it is addressed shall be binding only on them.”

- Binding on those to whom the decision is addressed; no addressees → binding on all
- Positive decisions, e.g. consent to form a cartel
- Negative decisions, e.g. prohibition to give a certain subsidy
- Often administrative of character

## 4. Legislative procedures

# Actors in the legislative process

1. Commission: exclusive right to initiate legislation
2. Council: can amend the proposal and has to adopt the proposal; legislation is not valid unless it bears the signature of the Council (apart from delegated legislation)
3. EP: is either advisor or co-legislator, depending on the applicable procedure

# Legislative procedures

- Which procedure depends on the legal basis; which legal basis depends on the subject of legislation
1. ordinary procedure (co-decision): European parliament is full legislator and can veto
  2. special procedure (consultation): European parliament gives its opinion
  3. special procedure (consent): EP can accept or reject (only in case of accession or treaties with third countries or organizations)

# Ordinary procedure

1. Proposal is not only sent to the Council (who then consults EP) but is sent to both Council and EP
2. EP can propose amendments (like the Council)
3. When Council and EP cannot agree after 2 rounds, a Conciliation Committee is set up
4. When either EP or Council still cannot agree, the proposal will not be adopted

# Court of Justice

1. Preliminary rulings
2. Action for infringement
3. Action for annulment (MS vs. EP or Council; institution vs. institution)
4. Action for failure to act
5. Appeals
6. Interim measures



# General Court

1. Action for annulment (natural and legal persons and MS vs. Commission)
2. Action for failure to act (natural and legal persons)
3. Competition and state aid law
4. Community trade mark law
5. Liability of institutions
6. Appeals

# Preliminary rulings

- Not a 'real' legal procedure, but a form of co-operation between the ECJ and a national court
  - No dispute (at European level), no parties, but questions from a national court and answers from the ECJ
  - Note: there is an underlying national dispute between parties before a national court!
  - Judgment has the character of an advice to the national court
- ➔ very powerful tool to set the agenda!!!!

# Subject of the preliminary questions

1. Interpretation of the EC Treaty and
  2. Validity and interpretation of secondary legislation
- Not: delivering advisory opinions on general or hypothetical questions → only 'real' questions
  - Not: solving problems of Community law which do not correspond to an objective requirement inherent to the resolution of a dispute → answer has to be necessary in order to solve the dispute

# Who may ask questions?

- When a question of interpretation is raised in a case pending before a national court,
  1. that court may ask the ECJ to give a ruling if it considers an answer necessary to solve the case
  2. that court must bring the matter before the ECJ when there is no judicial review of its decisions (if it is the highest court)

# Action for infringement

- When a MS does not fulfill its Treaty obligations or violates the Treaty provisions, the Commission may bring an action before the ECJ
  1. First, the Commission gives the MS the opportunity to submit its observations on the supposed violation
  2. Then, the Commission gives a reasoned opinion to which the MS concerned can react
  3. If the MS does not comply with the opinion, the Commission may bring the matter before the ECJ

# Consequences

- MS is obliged to take measures in order to comply with the judgment (e.g. amending national law)
- When the Commission is of the opinion that a MS did not sufficiently comply with the judgment → reasoned opinion to the MS concerned
- If the MS does not follow this opinion → Commission brings action before the ECJ
- ECJ can impose a lump sum and/or a penalty payment

# Action for annulment

- ECJ and CFI examine the legality of Community acts
- Application should be filed (by MS, natural or legal person) within 2 months after publication of the act
- Grounds:
  1. Lack of competence
  2. Infringement of an essential procedural requirement
  3. Infringement of primary or secondary legislation
  4. Misuse of powers

## 6. Direct effect and Directive compliant interpretation



# Problem: inactivity of MS when it regards (the transposition of) directives

- Definition:  
“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.”
- ➔ Citizens cannot invoke the rights given to them by a directive

# Direct effect?

- As a basic rule, provisions of a Directive do not have direct effect (not needed, because when correctly implemented, individuals can invoke national law)
- Direct effect when
  - a) no/wrong implementation after transposition date
  - b) provision contains rights for individuals
  - c) provision is sufficiently clear and precise
  - d) rights do not depend on further measures by MS
- Only vertical direct effect; not vis-à-vis other individuals (horizontal relationship) and not for MS to impose obligations on individuals

# Directive compliant interpretation (indirect effect)

- What if a provision of a Directive is not unconditional or not sufficiently precise?
- Then Directive compliant interpretation

# Limits to directive-compliant interpretation

- There has to be a national provision
- That is suitable for directive-compliant interpretation (you cannot turn blue into red)
- Using this method should not infringe general principles of law (e.g. legal certainty)