

京都大学法科大学院・公共政策大学院

2021年度後期

EU法【担当：濱本正太郎】

2021年10月5日講義資料

この資料は濱本ウェブサイトでダウンロードできます。

<http://www.hamamoto.law.kyoto-u.ac.jp>

第二次世界大戦後

- 仏 独の復興阻止
- 米 反共防波堤としての独
- ベネルクス3国
貿易相手国としての独
- 英
大陸との距離・米との「特別な関係」



Congrès de l'Europe de La Haye (1948)





COUNCIL OF EUROPE

The Council of Europe in brief

Who we are

What we do ▾

Our history ▾

Our member States ▾

How to distinguish us ▾

Videos

Official logo ▾

Visits ▾

You are here: COE en bref

Who we are



These builders of Europe were the people who launched the process of European construction by founding the Council of Europe in 1949



The Council of Europe
ABOUT US



See videos about us



PRACTICAL INFOS

🏛️ Visit the Council of Europe

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イギリス案




フランス案



→ ↺ 🏠 🔒 https://www.coe.int/en/web/about-us/structure


Structure

Secretary General



The Secretary General is elected by the Parliamentary Assembly for a five-year term at the head of the Organisation. She is responsible for the strategic planning and direction of the Council's work programme and budget. She leads and represents the Organisation.


[Visit Secretary General Website](#)



The Deputy Secretary General is also elected for a five-year term by the Parliamentary Assembly, in an election separate to the one held for the Secretary General.

[Visit Deputy Secretary General Website](#)


Committee of Ministers



This is the Council's decision-making body and is made up of the ministers of foreign affairs of each member state or their permanent diplomatic representatives in Strasbourg. The Committee of Ministers decides Council of Europe policy and approves its budget and programme of activities.


[Visit Committee of Ministers Website](#)

Parliamentary Assembly (PACE)



The Parliamentary Assembly consists of 324 members of parliament from the 47 member states; the Assembly elects the Secretary General, the Human Rights Commissioner and the judges to the European Court of Human Rights; it provides a democratic forum for debate and monitors elections; its committees play an important role in examining current issues.

[Visit Parliamentary Assembly Website](#)



The Council of Europe
ABOUT US

[See videos about us](#)

? Did you know?
Eurimages, set up in 1988, is the first European cinema support fund.

PRACTICAL INFOS

- [Visit the Council of Europe](#)
- [Visit the Strasbourg Lieu d'Europe](#)
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Achievements



Abolition of the death penalty

The Council of Europe played a pioneering role in the struggle for the abolition of capital punishment, which it regards as having no place in democratic societies. In April 1983 it adopted Protocol No. 6 to the European Convention on Human Rights abolishing the death penalty, followed in May 2002 by Protocol No. 13 on

abolition in all circumstances.

The Council of Europe has made abolition of the death penalty a precondition for accession. No executions have been carried out in any of the Organisation's 47 member states since 1997.

[European Day against the Death Penalty](#)



Strengthening of human rights

Every country which joins the Council of Europe agrees to be subject to independent monitoring mechanisms which assess its compliance with human rights and democratic practices.

One example is the Council of Europe's Committee for the Prevention of Torture, which regularly makes unannounced visits to places of detention in the 47 member states (prisons, police stations, holding centres for foreign nationals) in order to evaluate the way in which people deprived of their liberty are treated.

For its part, the European Committee of Social Rights verifies that the rights to housing, health, education, employment and freedom of movement guaranteed by the European Social Charter are implemented by the countries concerned.

Another example is the Group of States against Corruption (Greco), which identifies deficiencies in national anti-corruption policies and encourages states to carry out the necessary legislative, institutional or administrative reforms. Its evaluation is based on the relevant Council of Europe conventions.



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? Did you know?

In 1964, the Committee of Ministers of the Council of Europe declared 5 May [Europe Day](#).

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[Free resources](#)



COUNCIL OF EUROPE

The Council of Europe in brief

Who we are

What we do ▾

Our history ▾

Our member States ▾

How to distinguish us ▾

Videos

Official logo ▾

Visits ▾

You are here: COE en bref

Who we are



The Council of Europe is the continent's leading human rights organisation.



▶ See videos about us ▶

PRACTICAL INFOS

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📖 Free resources

📚 Online bookshop

You are here: [Conventions](#)

Complete list of the Council of Europe's treaties

No.	Title	Opening of the treaty	Entry into Force	E.	N.	U.
223	Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	10/10/2018		E.	N.	
222	Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons	22/11/2017		E.	N.	
221	Council of Europe Convention on Offences relating to Cultural Property	19/05/2017		E.	N.	
220	Council of Europe Convention on Cinematographic Co-Production (revised)	30/01/2017	01/10/2017	E.	N.	U.
219	Protocol amending the European Landscape Convention (*)	01/08/2016	01/07/2021	E.		
218	Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events	03/07/2016	01/11/2017	E.	N.	

012A	Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	11/12/1953	01/10/1954	E.	N.	
012	European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors	11/12/1953	01/07/1954	E.	N.	
010	Protocol to the General Agreement on Privileges and Immunities of the Council of Europe	06/11/1952	11/07/1956			
009	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	20/03/1952	18/05/1954			
005	Convention for the Protection of Human Rights and Fundamental Freedoms	04/11/1950	03/09/1953			U.
002	General Agreement on Privileges and Immunities of the Council of Europe	02/09/1949	10/09/1952			
001	Statute of the Council of Europe	05/05/1949	03/08/1949			

225 treaties found



European Court of Human Rights Cour européenne des droits de l'homme

Council of Europe | Search HUDOC

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- 📖 Case-Law Information Notes
- 👤 Information visits

Grand Chamber hearing concerning France



29/09/2021

The Court held a Grand Chamber hearing in the case of **H.F. and M.F. v. France** and **J.D. and A.D. v. France**.

The case concerns unsuccessful requests by the applicants for the repatriation by the French authorities of their respective daughters and grandchildren, who are being held in the al-Hol camp in north-eastern Syria run by the Syrian Democratic Forces.

Numerous third parties were given leave to intervene in the procedure, including seven States Parties to the Convention, the Commissioner for Human Rights of the Council of Europe, and several NGOs.

- 📄 Press release 📡 Webcast of the hearing
- 🇫🇷 Country profile - France

Decision

Inadmissibility decision

30/09/2021



The Court has declared the application in the case of **Demokrat Parti v. Turkey** inadmissible. ...

Interim Measures

Interim measure concerning Lithuania will not be extended

29/09/2021

In the case of **A.S. and Others v. Lithuania** the Court has decided not to extend interim measure in respect of five Afghan nationals blocked at the Lithuanian Belarusian border...

Events


René Cassin competition 2021

30/09/2021



The University Savoie Mont Blanc have been declared the winners of the 2021 René Cassin advocacy ...

Treaty list for a specific State

> State or International Organisation:  Japan

> Status as of 04/10/2021

No.	Title			Opening of the treaty	Entry into Force
208	Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters			27/05/2010	01/06/2011
	Signature: 03/11/2011	Ratification: 28/06/2013	Entry in force: 01/10/2013		
185	Convention on Cybercrime			23/11/2001	01/07/2004
	Signature: 23/11/2001	Ratification: 03/07/2012	Entry in force: 01/11/2012		
127	Convention on Mutual Administrative Assistance in Tax Matters			25/01/1988	01/04/1995
	Signature: 03/11/2011	Ratification: 28/06/2013	Entry in force: 01/10/2013		
112	Convention on the Transfer of Sentenced Persons			21/03/1983	01/07/1985
		Ratification: 17/02/2003	Entry in force: 01/06/2003		

4 treaties found

平成十六年二月

サイバー犯罪に関する条約の説明書

外務省

一 概説

1 条約の成立経緯

- (1) 情報技術分野の急速な発達、コンピュータ・ネットワークの発展によって、世界中で電子メールの幅広い利用、インターネットを通じて各種サイトへのアクセス、電子商取引等が可能となった。このような情報技術の発展は、社会の一層の発展のための大いなる可能性を秘めているが、一方で、コンピュータ・システムを攻撃するような犯罪及びコンピュータ・システムを利用して行われる犯罪（いわゆるサイバー犯罪）が出現するようになった。
- (2) サイバー犯罪は、犯罪行為の結果が国境を越えて広範な影響を及ぼし得るという特質を備えていることから、その防止及び抑制のために国際的に協調して有効な手段をとる必要性が高く、そのために法的拘束力のある国際文書の作成が必要であるとの認識が欧州評議会において共有されるようになった。
- (3) このような状況の下、欧州評議会において、サイバー犯罪を取り扱う専門家会合が設置され、平成九年（千九百九十七年）以降、同会合においてこの条約の作成作業が行われてきた。その結果、平成十三年（二千一年）九月に行われた欧州評議会閣僚委員会代理会合においてこの条約の案文について合意が成立し、同年十一月八日に行われた欧州評議会閣僚委員会会合において正式に採択された。
- (4) この条約の署名式典は、平成十三年（二千一年）十一月二十三日にハンガリーのブダペストにおいて開催され、我が国は、この条約に署名した。

Do not get confused



Council of Europe



European Council

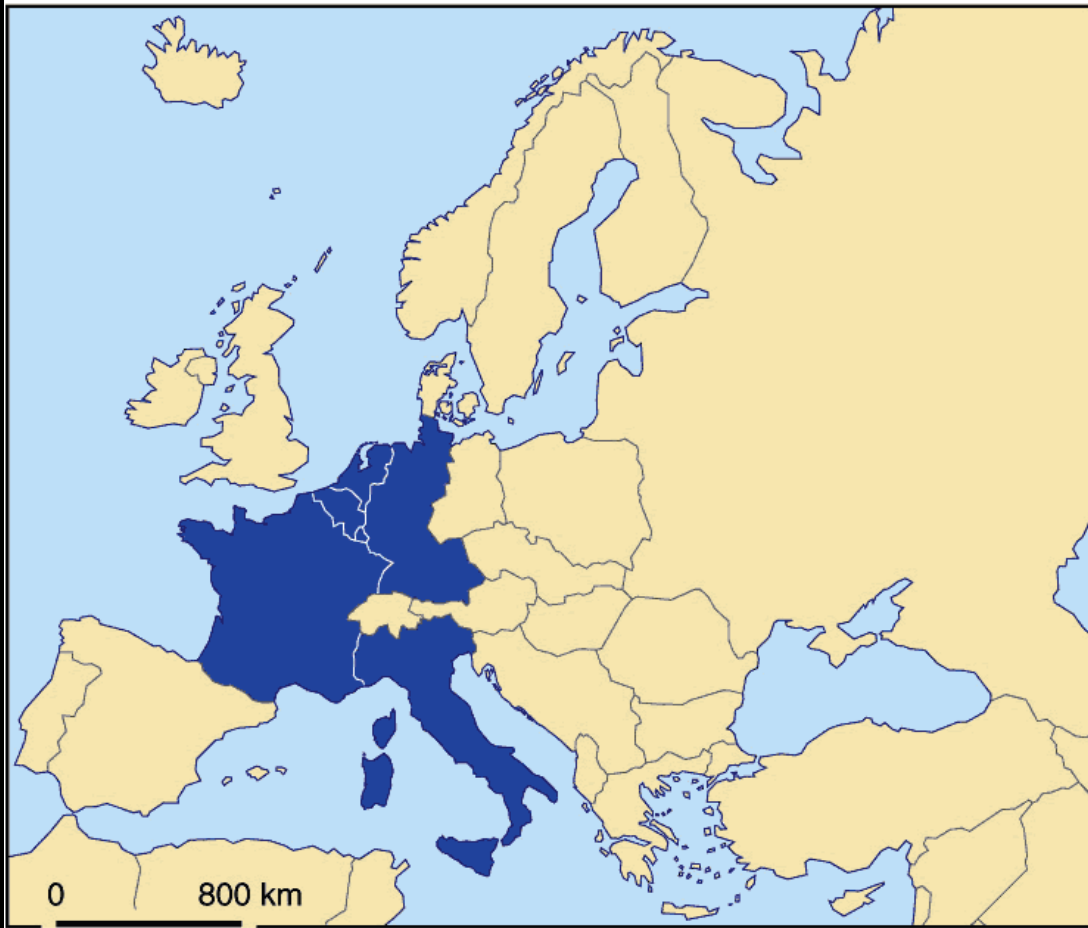


European Union (EU)

La Communauté Européenne du Charbon et de l'Acier (CECA) en 1951

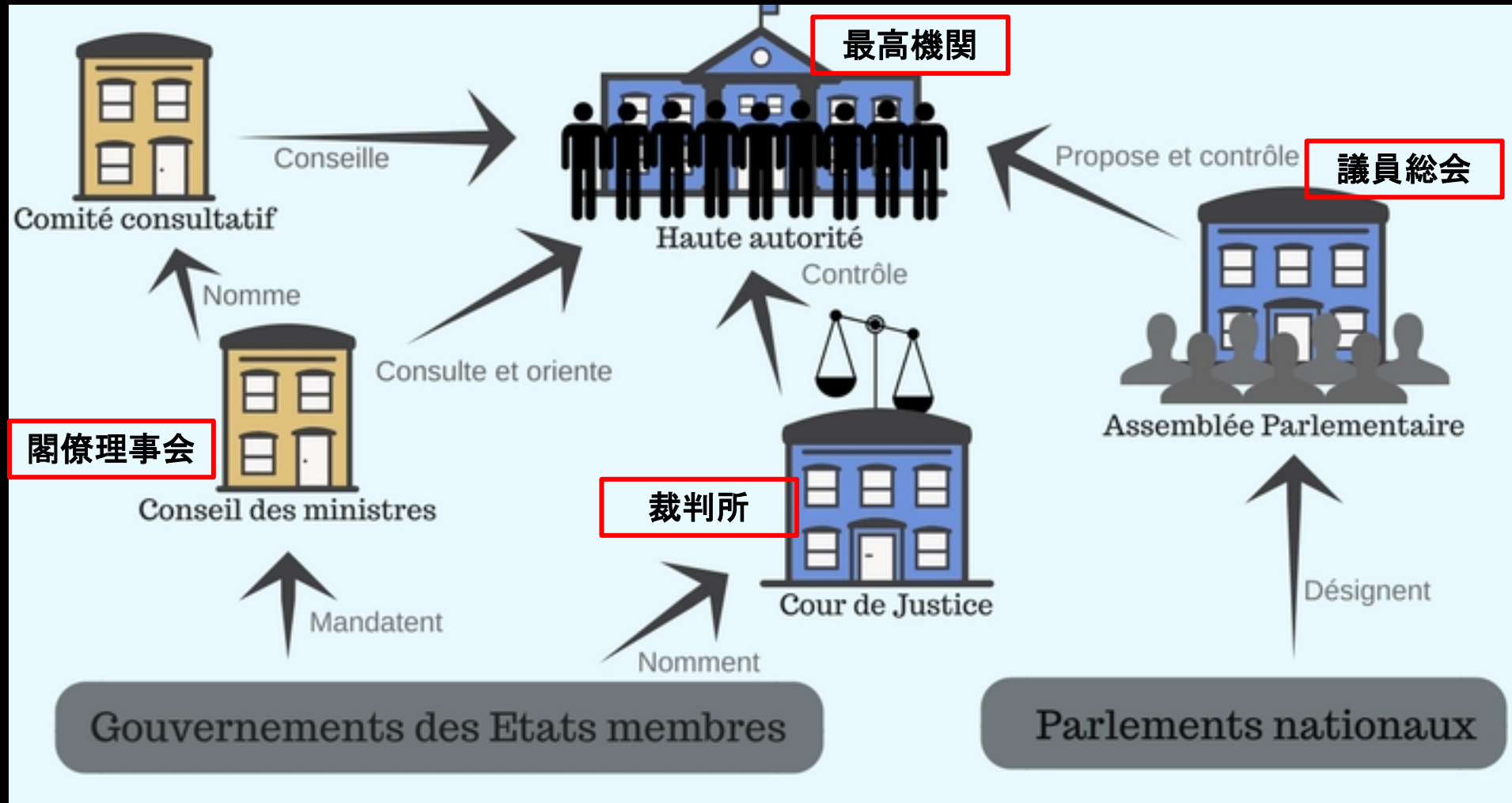


Pays membres



- 仏 西独の石炭を利用し、鉄鋼業の近代化を図る
- 西独 仏と対等な立場で国際社会へ復帰
- 伊 産業界は抵抗も「外圧」による合理化への期待
- Benelux 仏独支配に抵抗あるも、経済的に選択の余地なく、安全保障面からも仏独協力は望ましい
- 英 超国家的統合には反対

石炭鉄鋼共同体の機構的構造



<<https://www.touteurope.eu/histoire/qu-est-ce-que-la-ceca/>>

ARTICLE 9

La Haute Autorité est composée de neuf membres nommés pour six ans et choisis en raison de leur compétence générale.

ECSC設立条約9条1段

最高機関は、その全般的能力に基づき選ばれ、6年の任期を有する9名の委員により構成される。

ARTICLE 10

Les Gouvernements des États membres nomment d'un commun accord huit membres. Ceux-ci procèdent à la nomination du neuvième membre, qui est élu s'il recueille au moins cinq voix.

10条1段

構成国政府は、合意により8名の委員を選任する。その8名の委員は9人目の委員を選任する。そのためには少なくとも5名の委員が賛成することを必要とする。

ARTICLE 14

Pour l'exécution des missions qui lui sont confiées et dans les conditions prévues au présent Traité, la Haute Autorité prend des décisions, formule des recommandations ou émet des avis.

Les décisions sont obligatoires en tous leurs éléments.

Les recommandations comportent obligation dans les buts qu'elles assignent, mais laissent à ceux qui en sont l'objet le choix des moyens propres à atteindre ces buts.

Les avis ne lient pas.

14条

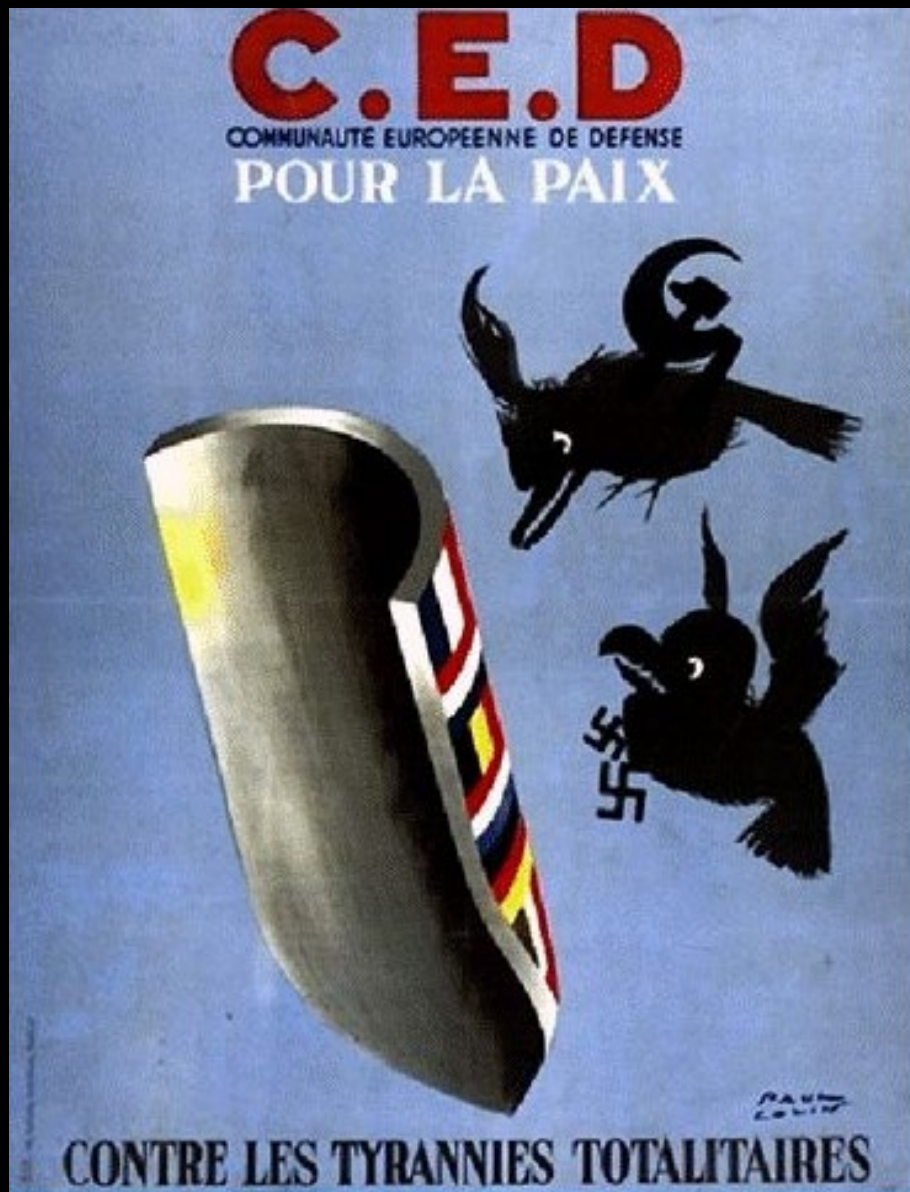
最高機関は、本条約により与えられた任務を本条約に定められた条件の下で遂行するため、決定をなし、勧告を行い、意見を表明する。

決定は、そのすべての要素において義務的である。

勧告は、それが達成しようとする目的に関して義務的であるものの、その対象となっている者に対し、当該目的を達成するための手段の選択を委ねる。

意見は、非拘束的である。

署名／発効	基本法(一次法)をなす「条約」の名称
1951/1952	ヨーロッパ石炭鉄鋼共同体設立条約(2002年終了)
1952/----	ヨーロッパ防衛共同体設立条約
1957/1958	ローマ条約(ヨーロッパ経済共同体設立条約＋ヨーロッパ原子力共同体設立条約)
1965/1967	「合併条約」
1971/1972	イギリス・デンマーク・アイルランド(・ノルウェー)加盟協定
1976/1976	欧州議会直接選挙議定書
1979/1981	ギリシャ加盟協定
1985/1986	スペイン・ポルトガル加盟協定
1986/1987	欧州単一議定書
1991/1992	マーストリヒト条約(欧州連合に関する条約)
1994/1995	フィンランド・オーストリア・スウェーデン加盟協定
1997/1999	アムステルダム条約
2001/2003	ニース条約
2003/2004	キプロス・ハンガリー・ポーランド・チェコ・スロヴァキア・スロヴェニア・エストニア・ラトヴィア・リトアニア・マルタ加盟協定
2004/----	憲法条約
2005/2007	ブルガリア・ルーマニア加盟協定
2007/2009	リスボン条約
2012/2013	クロアチア加盟協定
2020/2020	イギリス脱退協定

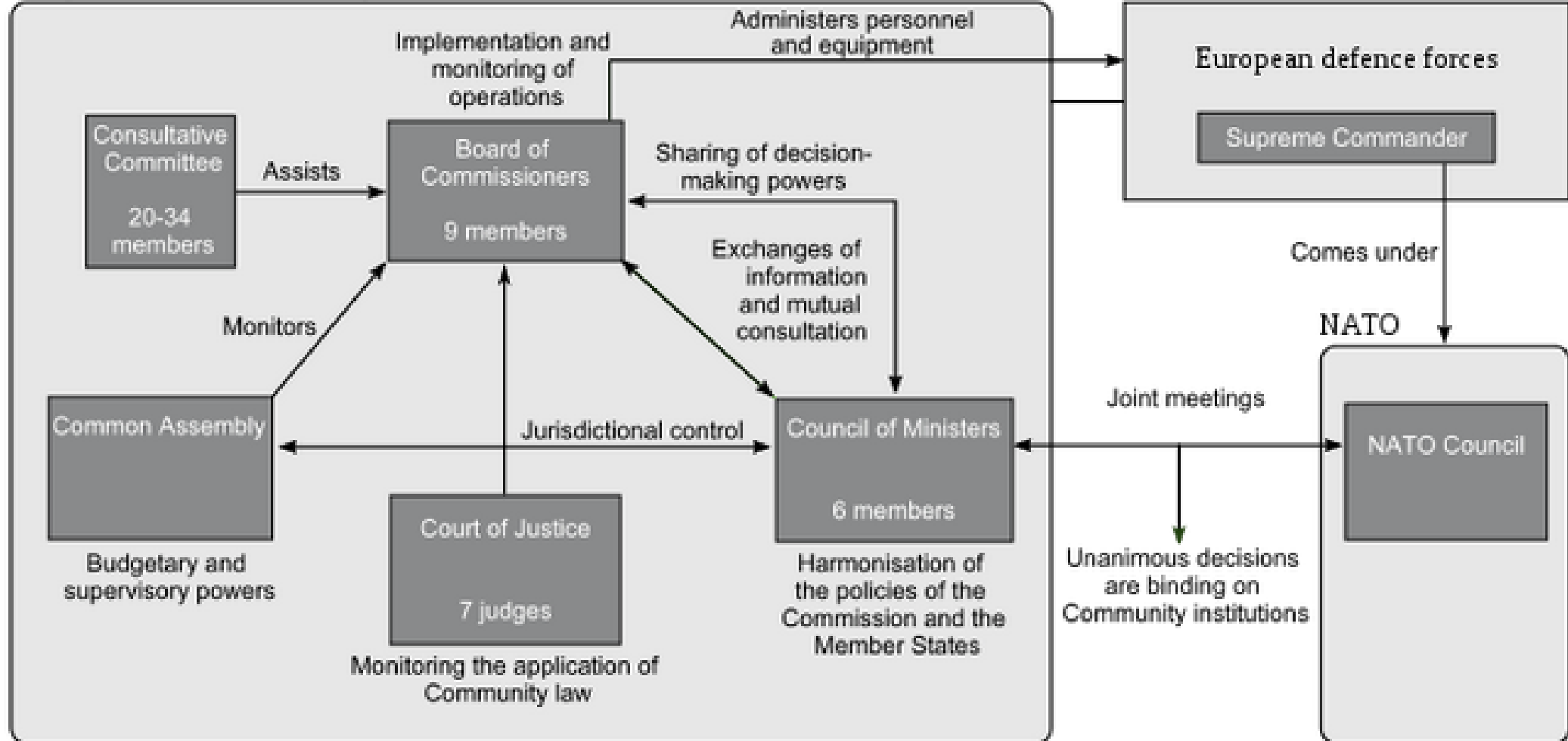


<http://www.cndp.fr/>



<http://les-yeux-du-monde.fr/>

European Defence Community



https://stringfixer.com/fr/Treaty_establishing_the_European_Defence_Community



<http://martial.berthot.free.fr/>

- Benelux 拡大しつつある6か国間通商を制度化したい
- 仏 核エネルギー共同開発への期待、スエズ危機を経て米への「従属」からの脱却の必要性
- 独 制度化への経済的利益、ザール問題解決を経て仏との関係改善
- 伊 経済的利益への期待、「外圧」による国内改革

議会 Assembly→Parliament

間接選挙 → 直接選挙

当初は立法過程に意見を述べるのみ

委員会 Commission

数名(当初は9名)の委員＝閣僚級

立法提案

法の実施

理事会 Council

国家代表

政策決定

法案採択

裁判所 Court

数名(当初は7名)の裁判官

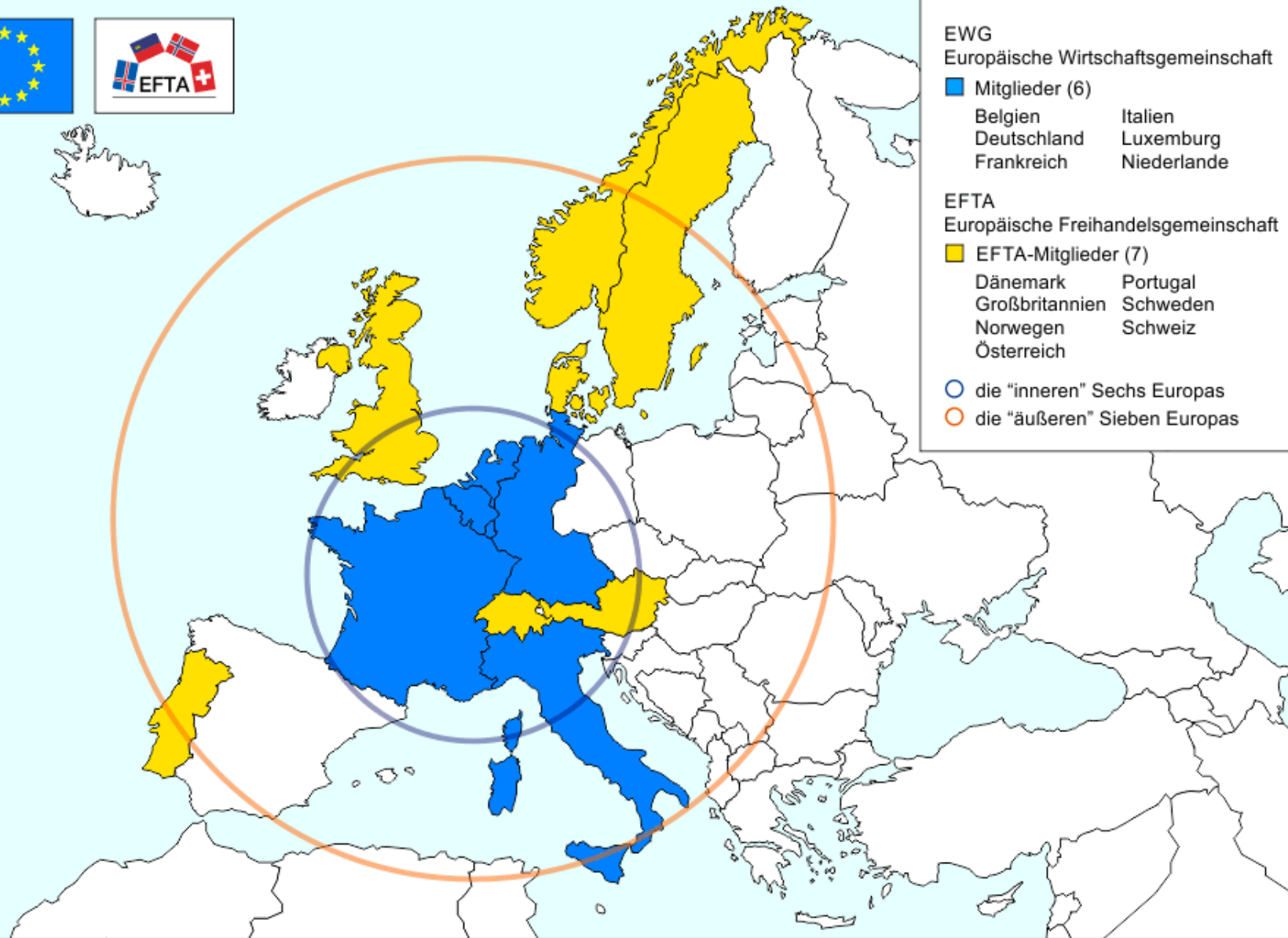
数名(当初は2名)のavocat général

法の適用

「違憲立法審査」



CRP-Infotec



EWG
Europäische Wirtschaftsgemeinschaft

■ Mitglieder (6)

Belgien	Italien
Deutschland	Luxemburg
Frankreich	Niederlande

EFTA
Europäische Freihandelsgemeinschaft

■ EFTA-Mitglieder (7)

Dänemark	Portugal
Großbritannien	Schweden
Norwegen	Schweiz
Österreich	

○ die "inneren" Sechs Europas

○ die "äußeren" Sieben Europas

Stand: 01.07.1960

EWG und EFTA im Jahr 1960

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<<https://crp-infotec.de/>>

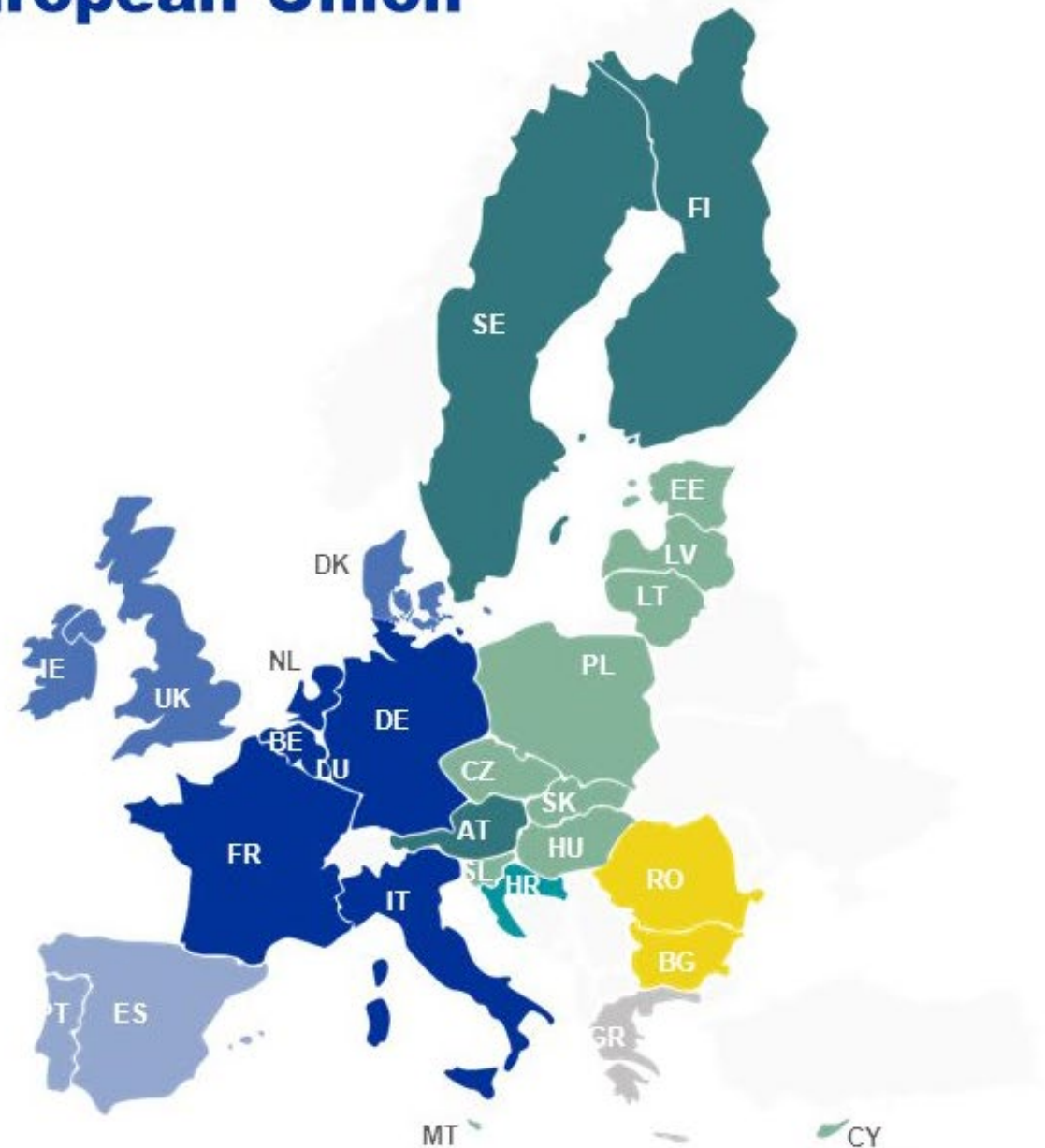
1973



<http://www.bbc.com/>

Enlargement of the European Union

1952	Belgium	2004	Czech Rep.
■	Germany	■	Estonia
	France		Cyprus
	Italy		Latvia
	Luxembourg		Lithuania
	Netherlands		Hungary
			Malta
1973	Denmark		Poland
■	Ireland		Slovenia
	United Kingdom		Slovakia
1981	Greece	2007	Bulgaria
■		■	Romania
1986	Spain	2013	Croatia
■	Portugal	■	
1995	Austria		
■	Finland		
	Sweden		



EEC設立条約



(加盟条約による修正)



欧州単一議定書による修正



マーストリヒト条約による修正
EC設立条約に改称



アムステルダム条約による修正



ニース条約による修正



リスボン条約による修正
TFEUに改称

マーストリヒト条約による**EU条約(TEU)**
創設



アムステルダム条約による修正



ニース条約による修正



リスボン条約による修正



EUR-Lex

Access to European Union law

English **EN** Guest

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- Message to EUR-Lex webservice users: from the 15/10/2021 onwards, 2 consecutive calls to EUR-Lex webservice must not be performed within 500 ms.
- On 07/10/2021, the EUR-Lex site may be temporarily unavailable from 18:00 to 22:00 (CET).

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TREATY

establishing

T H E E U R O P E A N E C O N O M I C
C O M M U N I T Y

EEC設立条約の英訳

ARTICLE 1

By this Treaty, the High Contracting Parties establish among themselves a EUROPEAN ECONOMIC COMMUNITY.

ARTICLE 2

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

Official Journal

of the European Communities

ISSN 0378-6986

C 191

Volume 35

29 July 1992

Treaty on European Union, signed at Maastricht on 7 February 1992

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TITLE I

COMMON PROVISIONS

Article A

By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union'.

Article B

The Union shall set itself the following objectives:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;

- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
- to develop close cooperation on justice and home affairs;
- to maintain in full the 'acquis communautaire' and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

TITLE II

PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY WITH A VIEW TO ESTABLISHING THE EUROPEAN COMMUNITY

Article G

The Treaty establishing the European Economic Community shall be amended in accordance with the provisions of this Article, in order to establish a European Community.

A. Throughout the Treaty:

- 1) The term 'European Economic Community' shall be replaced by the term 'European Community'.

B. In Part One 'Principles':

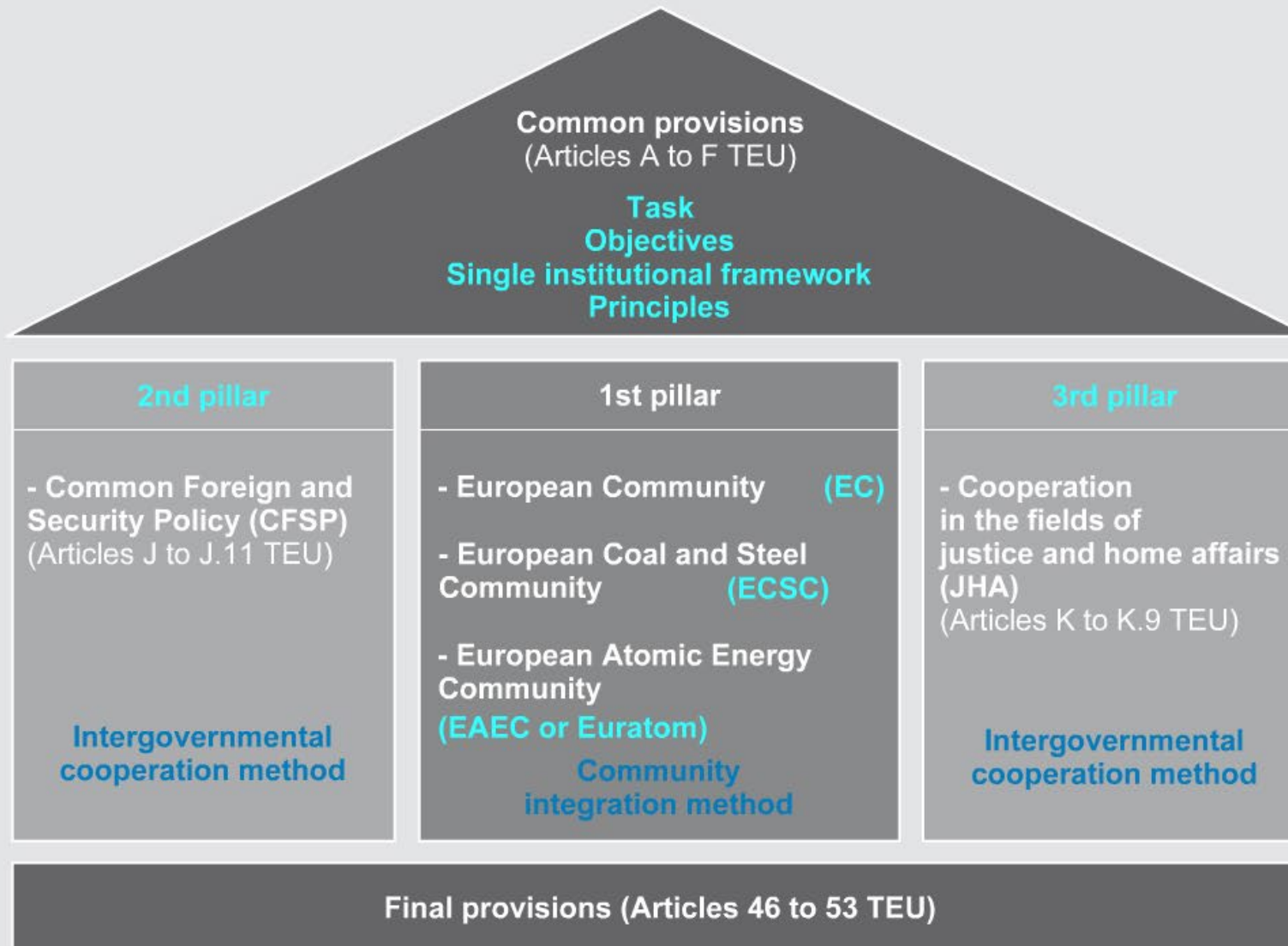
- 2) Article 2 shall be replaced by the following:

'Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.'

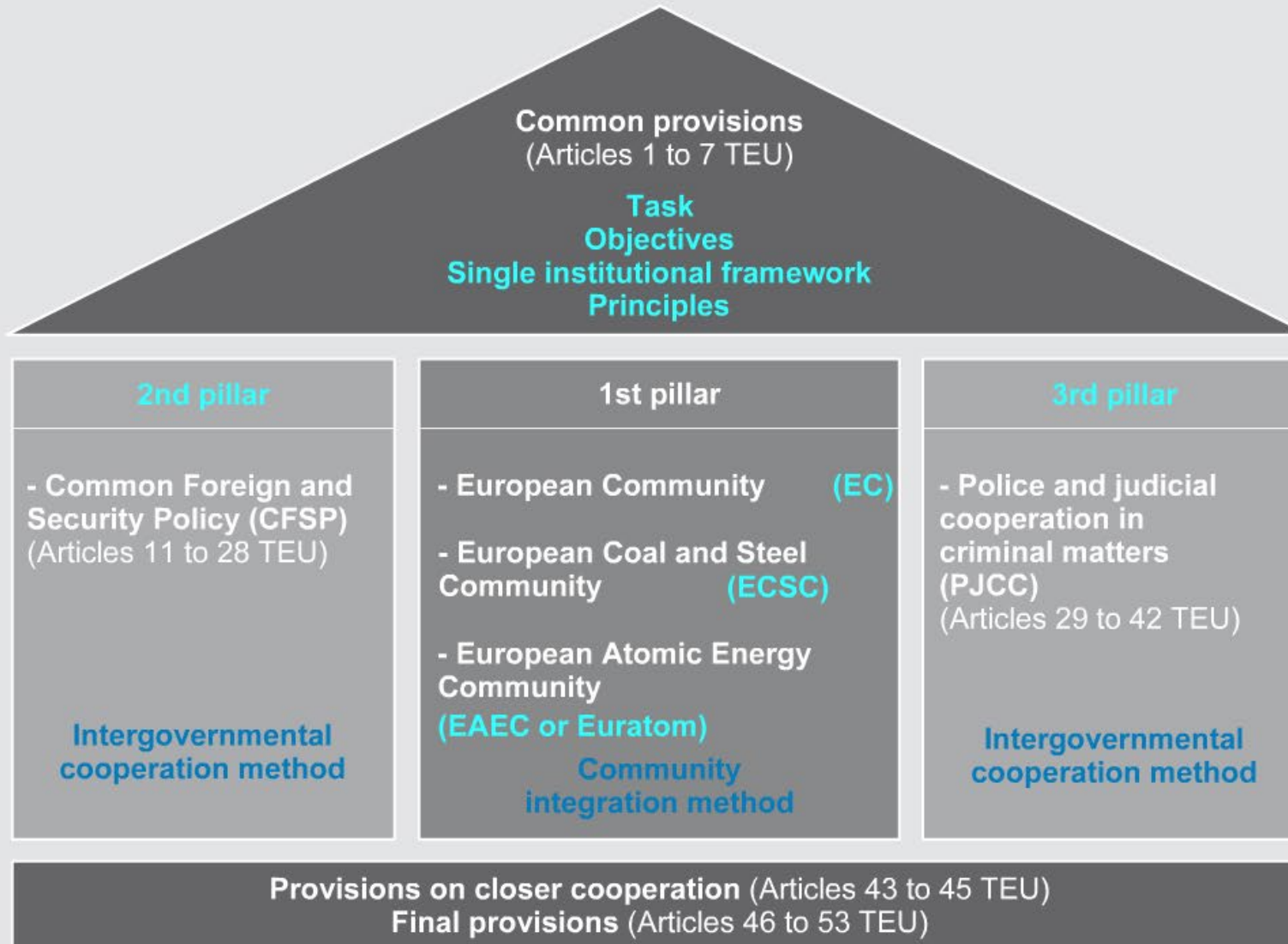
The three pillars of the European Union

Treaty on European Union (Maastricht, 7 February 1992)



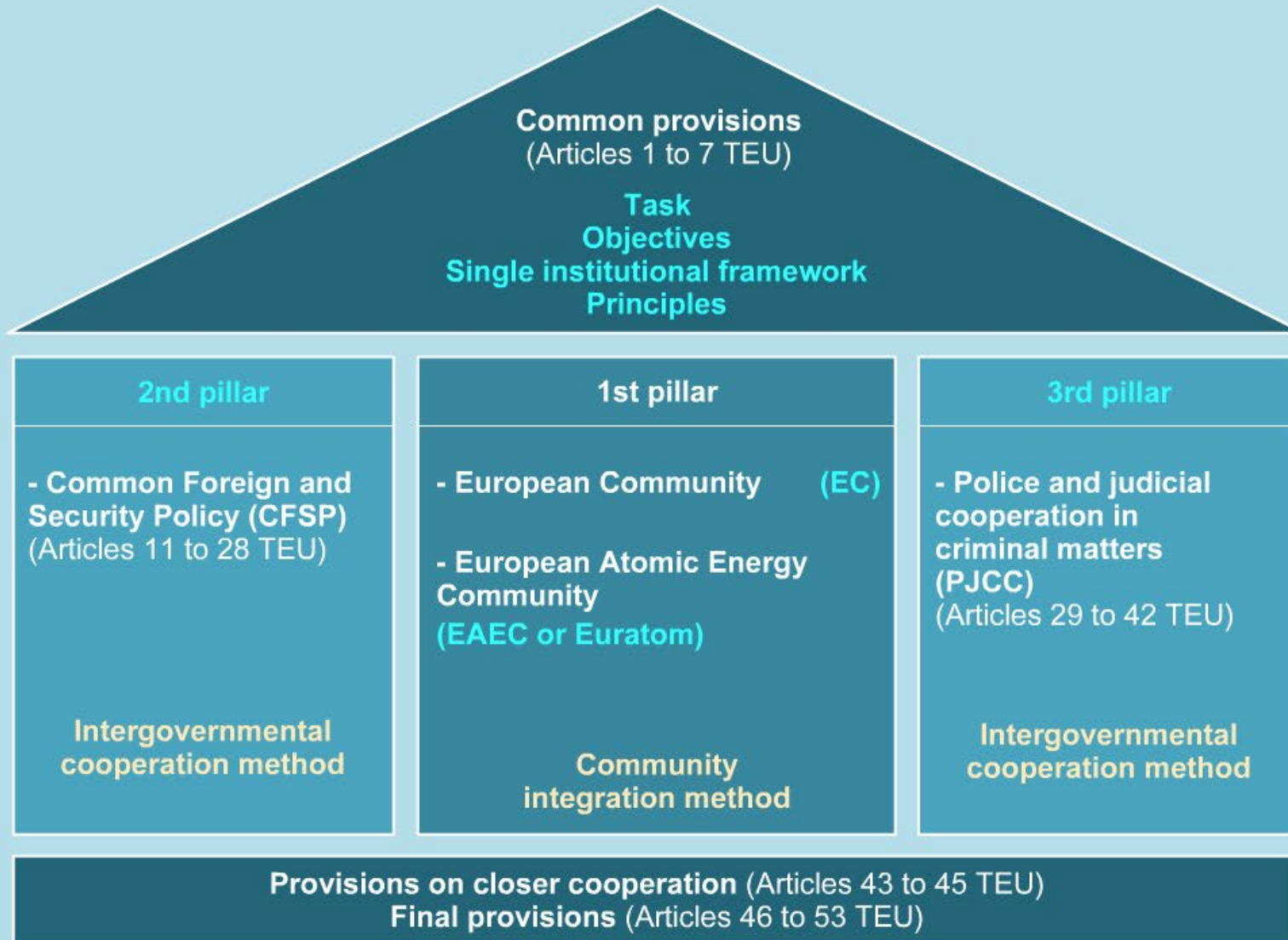
The three pillars of the European Union

Treaty on European Union (Amsterdam, 2 October 1997)



The three pillars of the European Union

Treaty on European Union (Nice, 26 February 2001)



TREATY OF LISBON

AMENDING THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Article 2

The Treaty establishing the European Community shall be amended in accordance with the provisions of this Article.

- 1) The title of the Treaty shall be replaced by ‘Treaty on the Functioning of the European Union’.

CONSOLIDATED VERSIONS

OF THE TREATY ON EUROPEAN UNION

AND

THE TREATY ON THE FUNCTIONING

OF THE EUROPEAN UNION

CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION

PREAMBLE

TITLE I COMMON PROVISIONS

TITLE II PROVISIONS ON DEMOCRATIC PRINCIPLES

TITLE III PROVISIONS ON THE INSTITUTIONS

TITLE IV PROVISIONS ON ENHANCED COOPERATION

TITLE V GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND
SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY
POLICY

Chapter 1 General provisions on the Union's external action

Chapter 2 Specific provisions on the common foreign and security policy

Section 1 Common provisions

Section 2 Provisions on the common security and defence policy

TITLE VI FINAL PROVISIONS

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

リスボン条約で追加(憲法条約に含まれていた)

- TEU 49条 加入条件
- TEU 7条 除名の可能性

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.



2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

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 (hereinafter referred to as 'the Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

PREAMBLE

PART ONE PRINCIPLES

PART TWO NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

PART THREE UNION POLICIES AND INTERNAL ACTIONS

PART FOUR ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

PART FIVE THE UNION'S EXTERNAL ACTION

PART SIX INSTITUTIONAL AND FINANCIAL PROVISIONS

PART SEVEN GENERAL AND FINAL PROVISIONS

Article 288

(ex Article 249 TEC)

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

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

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.

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

Recommendations and opinions shall have no binding force.

TFEU. これ以外の条文はTEU.