

EU Institutions and Policies



UNIMC
scienze
politiche

The EU's FP system: institutional framework, actors and policy-making



Institutional framework of EU FP policy-making: the basic

1) CFSP/CSDP >> the Council under the strategic leadership of the European Council is the main actor supported by the HR and the EEAS

2) EU external actions (e.g. trade, development cooperation) and the external dimension of internal policies (e.g. energy)

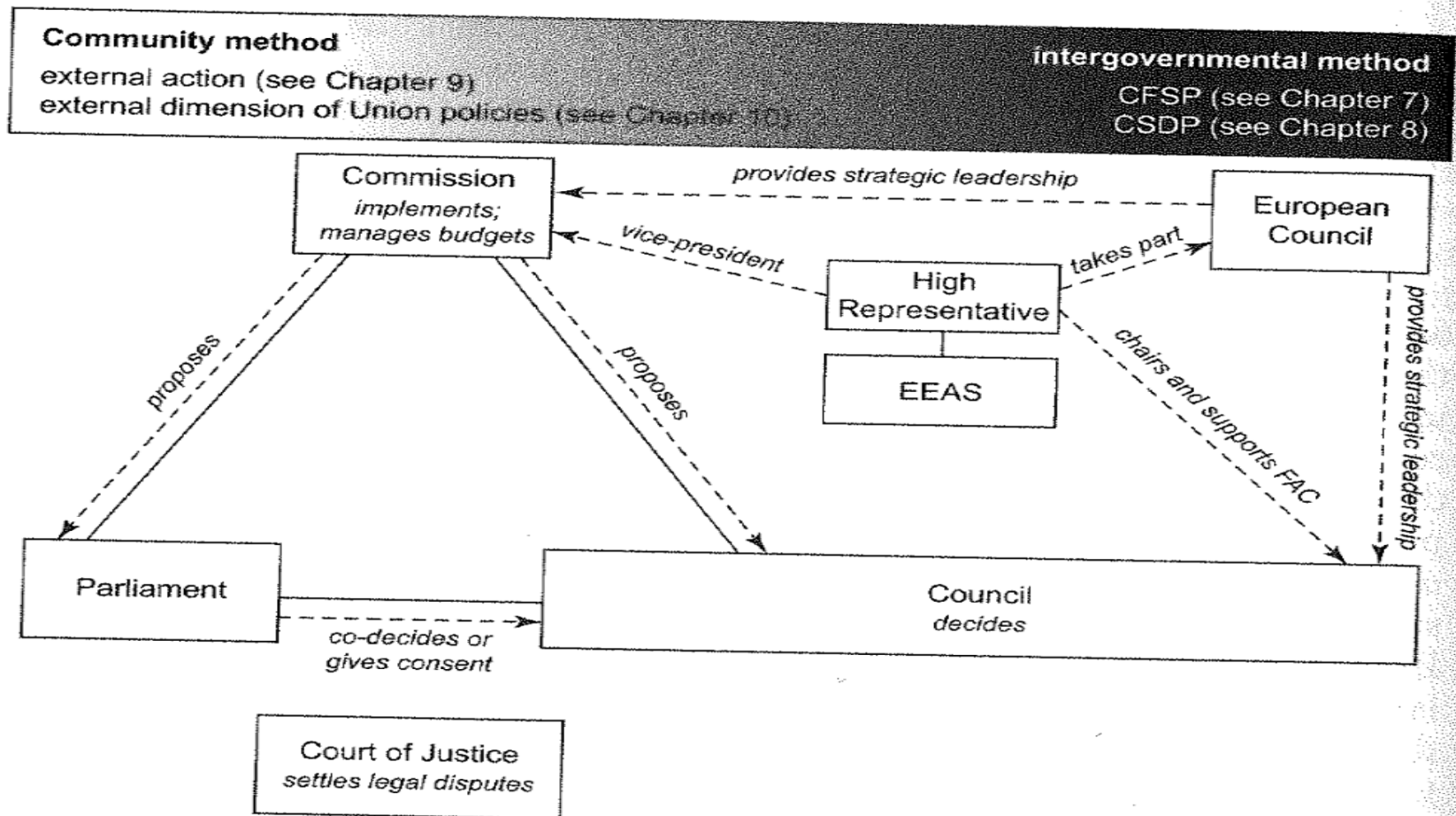


>> the Commission proposes, the Council decides (alone or in co-decision with the EP, or after consultation with the EP) and the Commission implements, controls and manages budgets

...in 2) acts are legally binding and the ECJ provides legal oversight

Institutional framework of EU FP policy-making:

Figure 3.1 Institutional framework of EU foreign policy-making (basic version)



Institutional framework of EU FP policy-making: the ideal types

1. Community method

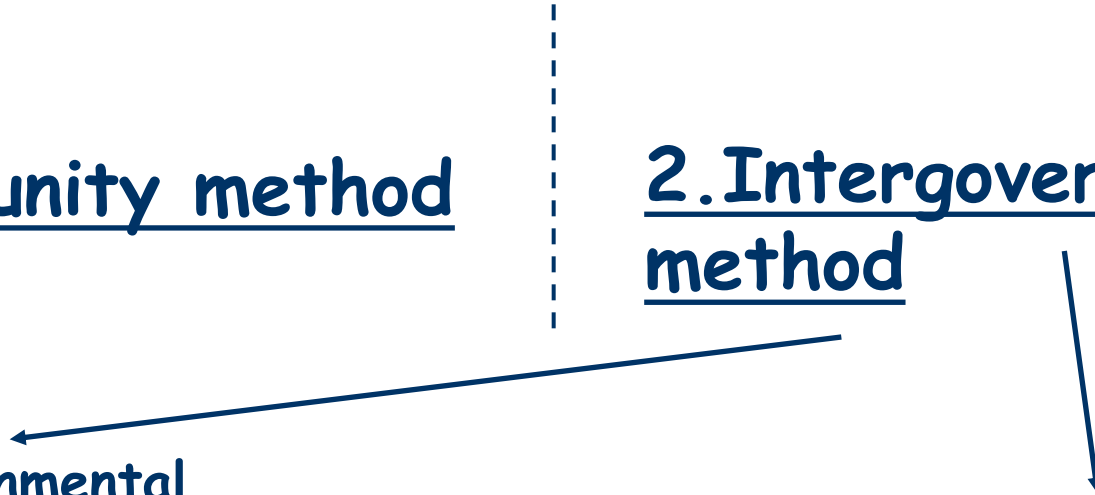
2. Intergovernmental method

3. Intergovernmental cooperation

MS do not transfer competences to the EU, but within the EU framework cooperate in the elaboration of EU FP and coordinate their national FPs

4. Intergovernmental integration

MS transfer competences to the EU, but within the EU's institutional framework they retain control on policy-making (Council + unanimity rule)



Major actors of EU FP



Major actors in the EU FP:

1. The European Council

2. The Council of the European Union

3. The European Commission

4. The HR/VP and the EEAS

5. The European Parliament

6. The Court of Justice of the EU

7. ...+ other minor actors (...)



Fragmented
(or complex)
organizations

1. The European Council:

- Role: strategic direction, 'strategic interests', 'the general guidelines' 'strategic lines' 'general political direction'
- Chaired by a President (appointed for 2.5 year) which also provides external representation on CFSP/President of the EC + HR
- NO formal role in the FP legislative process, but for any important decision its consent (at least tacit) is necessary
- Adopts 'Conclusions' where it 'confirms', 'welcomes' or 'endorses' other decisions/documents or it 'invites', 'calls', or 'asks' for new actions/decisions
- >> then implementation is required!

2. The Council of the European Union ('the Council'):

- *Role:* it is the main FP decision-making body in the EU both in political and legal terms
- Council meets in 10 configurations, FAC deals with CFSP/CSDP, external trade, development cooperation, humanitarian aid and international agreements (MS+HR, HR chairs the FAC)
- But there are many other configurations with an external, FP, dimensions: ECOFIN; JHA; Energy, environment, etc...
- *Intergovernmentalism:* The Council + the European Council ensure that the CFSP/CSDP remain under the control and supervision of MS

2. The Foreign Affairs Council (FAC):

- FAC is composed by the ministries of FP of MS, but most decisions are not actually taken by the ministries! (remember?)
- 'A-points' (Agreed Points) >> issues agreed by MS at a lower level: COREPER, Political and Security Committee (PSC) or in the Working Parties/Groups
- Debates and decision-making in the FAC are difficult (27 MS with ministries and diplomats, HR, other Commissioners, EEAS officials)
- >> many decisions are taken informally before the meetings!

2. The Council/Substructures:

- Several diplomatic, bureaucratic and military actors prepare and support the Council's works
- *COREPER II, PSC* >> PSC is composed by ambassadors, representatives of the Commission + EU Military Committee (EUMC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM)
- Plus: Working Parties (or Working Groups) dealing with specific issues/regions (e.g. Non-proliferation or Western Balkans)
- The other Working Groups with external action implications are chaired by the rotating Presidency of the Council

3. The European Commission's internal organization:

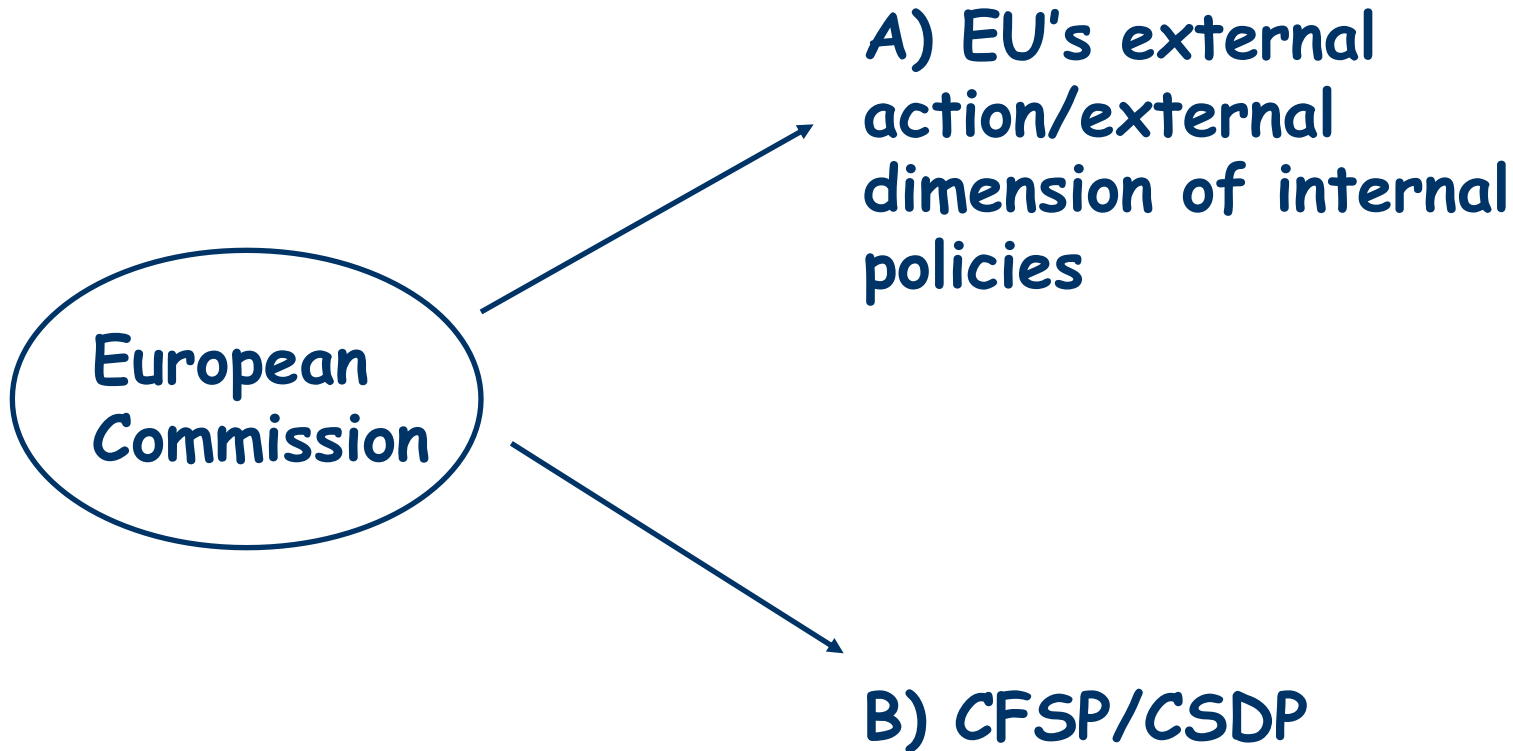
- The position of the Commission in the EU's FP system is very peculiar
- Crucial role in the EU's external action and in the external dimension of internal policies ...but limited in the CFSP/CSDP
- *'boundary problems'* >> blurred lines between external economic relations and external political relations, between domestic policy issues and external policy issues
- In practice: Commission often crucial for EU's FP implementation, due to its administrative and financial resources

3. The European Commission's internal organization:

The major DGs and Services dealing with EU FP are:

- DG Trade (TRADE) >> central role in international trade negotiations (exclusive competences on many issues).
- DG Development and Cooperation-Europe Aid (DEVCO) >> is responsible for development policy (competences are shared with MS). It managed two important instruments (ENI and the DCI)/ *now DG INTPA*
- DG Humanitarian Aid& Civil Protection (ECHO) >> responsible for managing EU humanitarian aid and coordinating EU's disaster response (inside and outside Europe)
- The Foreign Policy Instruments Service (FPIS) >> responsible for the 'Instrument for Stability': for election observation missions; the management of civilian CSDP operations; and the financial dimension of the CFSP

3. The European Commission and the EU FP:



3. A) The Commission and EU's external action/external dimension of internal policies:

- The Council and the EP can only adopt legislative acts and conclude international agreements on the basis of a formal proposal from the Commission
- Competences: to conduct negotiations with third states and IO on behalf of the EU (e.g. trade agreements, AA, ACP)
- Moreover: the Commission has an important role in implementing the agreements and an important budgetary function

3.B) The European Commission and the CFSP/CSDP:

- In CFSP/CSDP the Commission has not exclusive right of initiative, no representation task, etc...> marginal role
- But: important role in the implementation of decisions that require the use of instruments in the field of external action (sanctions/provision of aid)
- ...or when financial support is required through the CFSP budget, which is part of the general EU budget and thus managed by the Commission
- Moreover >> the Council often relies on the expertise of the Commission on specific thematic issues >> this can empower the Commission

4. The HR-VP/EEAS:

Rationale: HR/VP designed to bridge the Council and the Commission at the political level, and the EEAS and the EU Delegations should play the same function at the diplomatic and operational levels

Main functions of the HR-VP:

- HR for conducting the CFSP/CSDP and for contributing to the development of these policies as mandated by the Council
- Presiding over the FAC
- Serving as VP of the Commission with responsibility for the Commission's external relations and for coordinating other aspects of the EU's external action

4. The HR-VP: more about its tasks

- Decision-making >> chairs the FAC + it can submit initiatives and proposals to the Council + regularly consults and informs the EP + it takes part to the work of the European Council
- Implementation >> it has to assure the implementation of the decisions taken by the Council and the European Council
- External representation >> represents the EU in matters related to CFSP, conducts political dialogues with other states, and expresses the position of the EU in IO and international conferences
- Consistency >> assists the Council and Commission to ensure consistency between different areas of external actions and together with the Council unity, effectiveness as well as MS compliance with CFSP's principles

4. The EEAS and EU Delegations:

The role of the EEAS according to the Treaties (Art. 27(3) TEU):

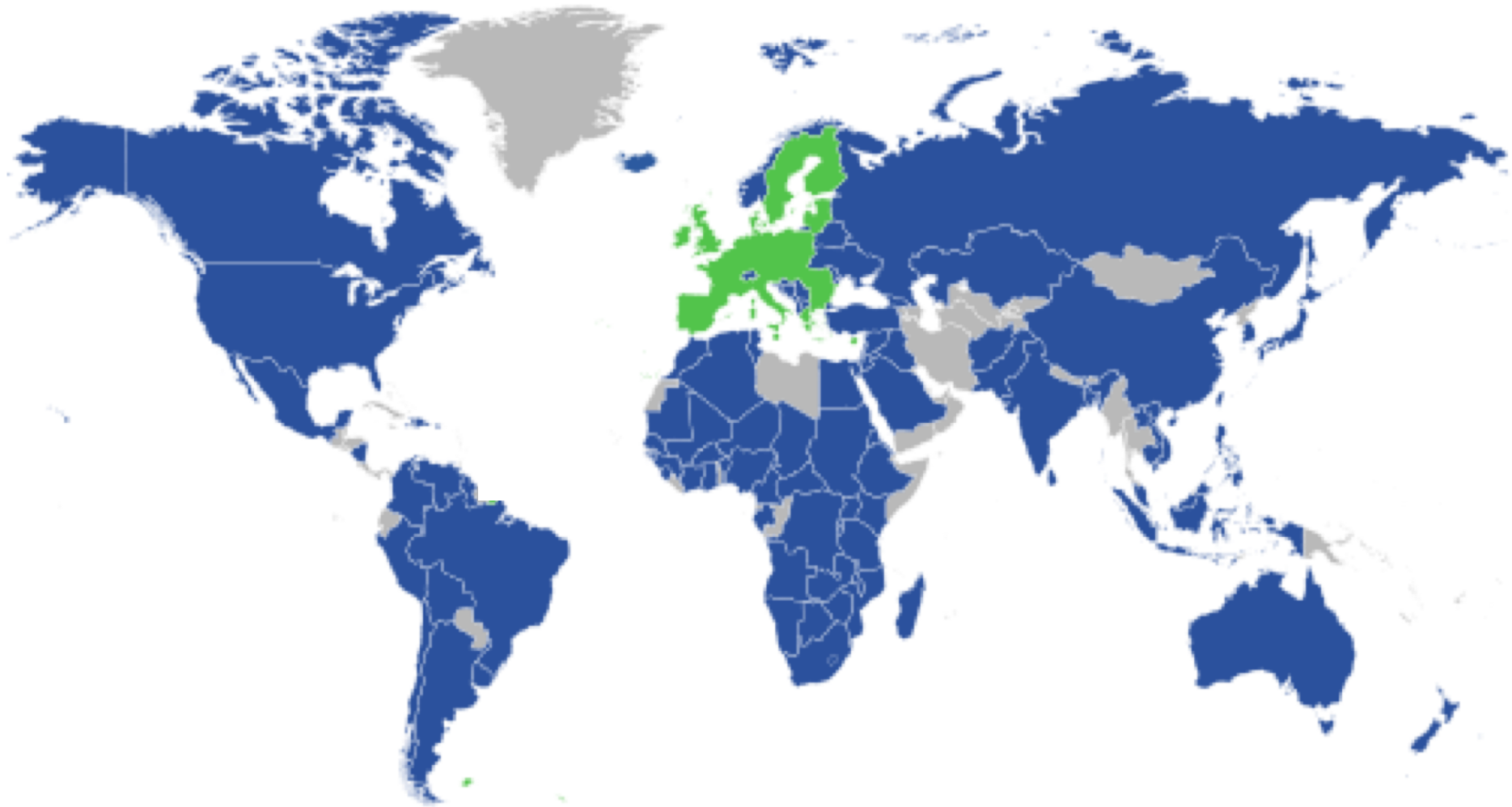
"In fulfilling its mandate, the HR shall be assisted by a European External Actions Service. This Service shall work in cooperation with diplomatic services of the MS and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the MS"

EEAS + network of EU delegations (about 140) in third countries and IO and under the HP/VP

EEAS >> hosts some permanent *crisis management structures* (civilian and military): EU Military Staff (EUMS), Civilian Planning and Conduct Capability (CPCC) and the Crisis Management Planning Directorate (CMPD)

>> The HR/VP can also appoint EU special Representatives (EUSRs: issues/regions)

EU delegation in the World (blue):



EU Special representatives (EUSR):

- EUSR in Bosnia and Herzegovina
- EUSR for Central Asia
- EUSR for the Horn of Africa
- EUSR for Human Rights
- EUSR for Kosovo
- EUSR for the Middle East Peace Process
- EUSR for the Sahel
- ...

5. The European Parliament in the EU's FP (i):

EP role in FP is quite limited (particularly for CFSP/CSDP), some exceptions: powers over the EU budget and with regard to the adoption of international agreements

Internally, the EP has adapted its organization to better influence EU FP, main bodies:

- EP's Committee on Foreign Affairs (AEFT), + subcommittees on Human Rights and Security and Defence
- Committee on Development (DEVE)
- Committee on International Trade (INTA)

5. The European Parliament in CFSP/CSDP:

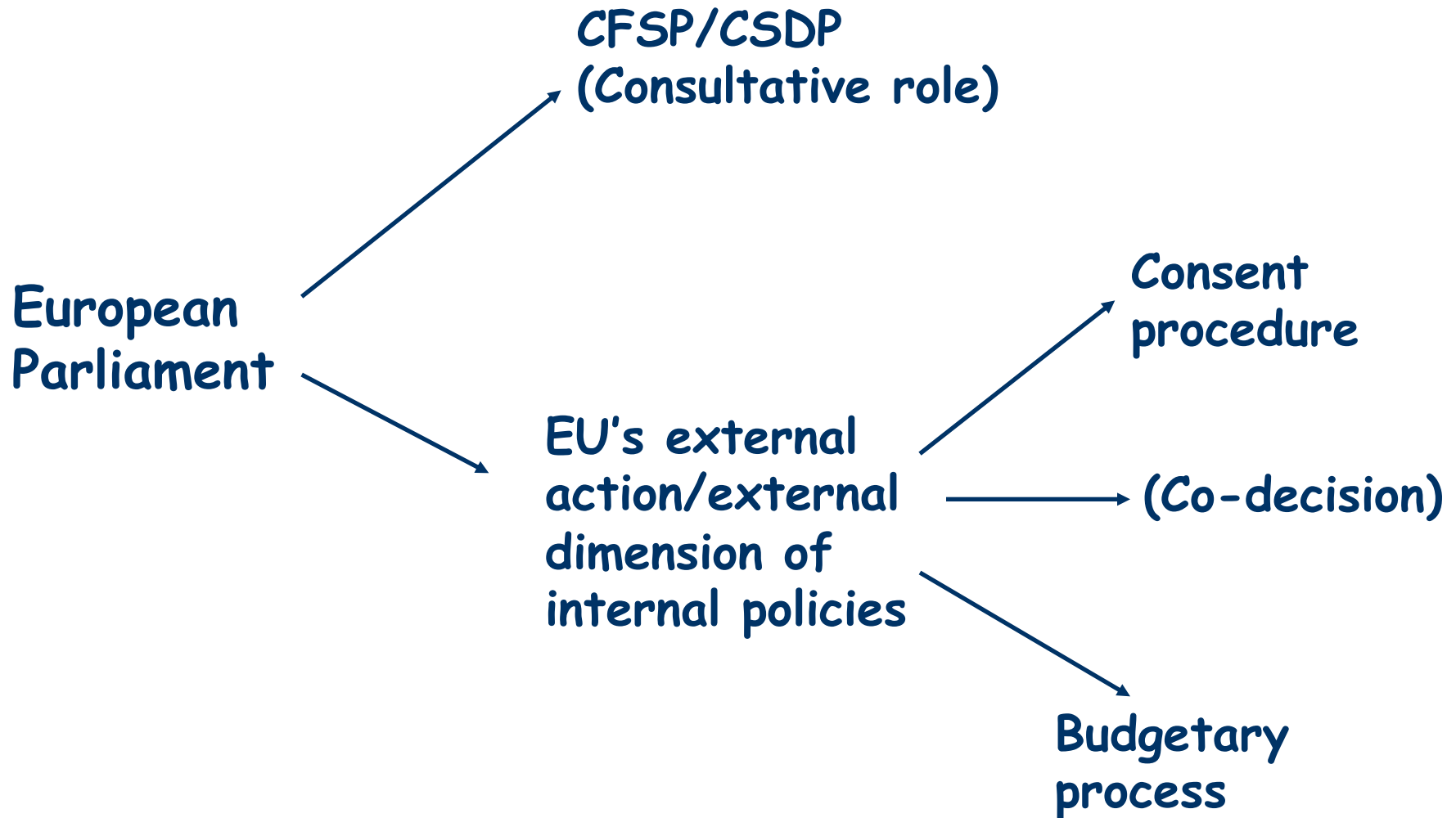
- EP has only a consultative role >> the HR shall 'regularly consult the EP on the main aspects and basic choices of the CFSP/CSDP'
- > inform the EP, and ensure that its views 'are taken into consideration'
- Moreover >> the EP can 'address questions or make recommendations' to the Council or the HR and twice a year holds a debate on the CFSP/CSDP
- + EP voices its position on FP through reports and resolutions
- EP also has informal dialogues with the HR, the EEAS and the Commission

5. The European Parliament in external actions/external dimension of internal policies:

EP has two three main tools to influence EU FP:

1. 'consent procedure' > EP veto power over ratification of international agreements >> association and cooperation agreements with third countries trade agreements...problem: is only a yes or no vote
2. 'co-decision' (e.g. development policy, below...)
3. 'budgetary process' >> the EP (along with the Council) can influence the EU budget, and create chapters in the EU budget (e.g. European Instrument for Democracy and Human rights)

5. The European Parliament in EU FP: a summary



6. The Court of Justice of the EU (ECJ) (i):

CFSP/CSDP are 'intergovernmental' and the ECJ has no jurisdiction with regard to provisions under the CFSP/CSDP

There are two exceptions to this 'rule':

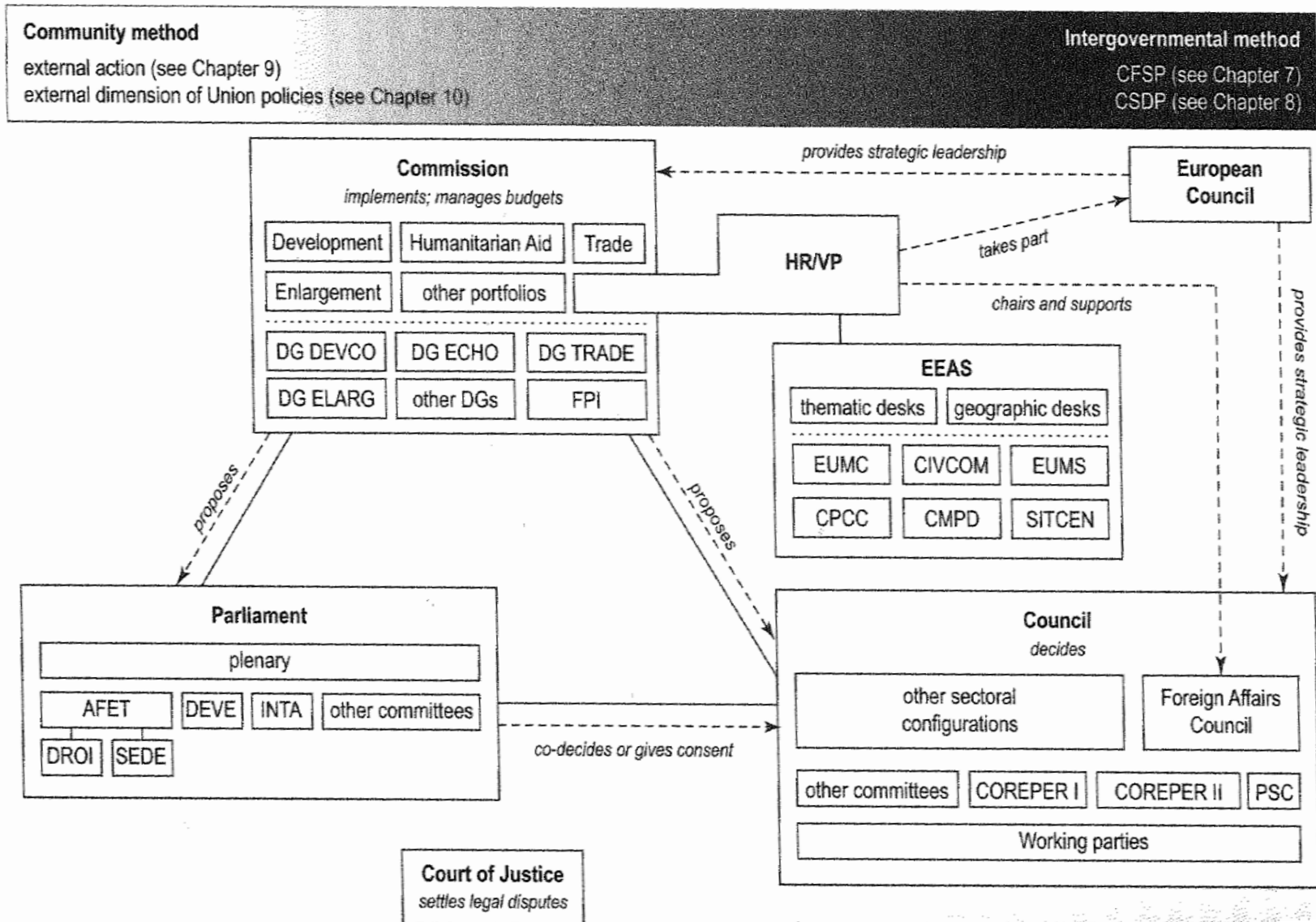
- 1) ECJ has jurisdiction to monitor compliance with the principle that CFSP implementation should not affect the exercise of the EU's competences in other policy fields and vice versa
- 2) ECJ can rule on the legality of decisions adopted by the Council that provide for economic or financial sanctions against natural or legal persons which are based on CFSP

...e.g. a person can brought its case in front of the ECJ if sanctions violate the EU fundamental rights or the rule of law

7. Other (minor) actors involved in the EU FP:

- EU agencies involved in the FP >> European Defence Agency (EDA), the European Union Institute for Security Studies (EUISS)
 - Financial actors >> European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD)
- + Multilateral IOs >> NATO, IMF, UN agencies, etc.
- + Non-state actors >> interest groups, civil society organizations, private companies, NGOs...

Institutional framework of EU FP policy-making



Decision-making and policy making: formal competences, practices and financial resources



Decision-making and policy making: main topics

1. Formal competences EU FP (the Treaties/legal basis/principles...) and decision-making: external action and on the external dimension of internal policies/CFSP-CSDP
2. Policy-making in practice: *three models*
3. Financial instruments and resources for EU FP

1. Formal competences/legal basis/principles



Competences: the principle of conferral of powers

- Principle of 'conferral of powers' >> the EU must act within the limits of the competences conferred upon it by the MS in the Treaties to achieve the objectives set out in the Treaties
- EU has NO general, legal basis to act with regard to the external environment, the competences not 'conferred' to the EU remain with the MS
- So the EU has no exclusive or all-encompassing approach to FP, given its limited competences we expect that the EU would not act in certain aspects of foreign, security and defence policy
- ...usually this is not what public opinion expect from the EU!

EU Competences and FP...(but not CFSP/CSDP!):

- Exclusive competences >> only the EU has the power to legislate and adopt legally binding acts, e.g. commercial policy, monetary policy (Eurozone)...(*'parallelism principle'* if the EU has competence 'inside' it also has competence 'outside')
- Shared competences
- Competences to support, coordinate or supplement
- ...
- But: CFSP/CSDP???

EU legal competences and the CFSP/CSDP:

- The competences for CFSP/CSDP do not fit within the general categories of EU competences
- They are defined according to other specific provisions included in Art. 24 TEU
- Note: there are many 'grey areas' that fall between CFSP/CSDP and areas like trade (EU's external action) or the external dimension of the internal policies

EU legal competences and the CFSP/CSDP:

Art. 24 TEU:

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

1. Decision-making on external action and on the external dimension of internal policies



External action/external dimension of internal policies:

- Most decision-making on 'non-CFSP issues' follows the standard procedure (co-decision)
- EP decides together with the Council (by qualified majority voting, QMV) on the basis of a proposal from the Commission
- QMV is applied for: Trade policy, Development cooperation, and economic, financial and technical cooperation with third countries
- ...plus there are different procedures for the negotiation and conclusion of international agreements - *consent procedure*...(see table)

Decision-making procedures on external action:

	Commission	Council	European Parliament	Treaty basis
Trade policy	Proposal	QMV	co-decision	Art. 207 TFEU
Development cooperation	Proposal	QMV	co-decision	Art. 209 TFEU
Cooperation with third countries	Proposal	QMV	co-decision	Art. 212 TFEU
Trade agreements	Recommendation to open negotiation; proposal for signing and concluding an agreement	QMV (with exceptions)	consent	Arts 207, 218 TFEU
International (development and cooperation) agreements		QMV (with exceptions)	consent	Arts 211, 212, 218 TFEU
Association agreements		Unanimity	consent	Arts 217, 218 TFEU

1. Decision-making on CFSP/CSDP



Decision-making procedures in CFSP/CSDP:

Intergovernmental method >> the Council is at the centre of the process and decisions are taken by unanimity

Right of initiative >> MS, HR

The Treaties include several procedures for decision-making....but all the procedures are in line with the 'intergovernmental method'...

>> intergovernmental method >> veto power for MS >> but also procedures to overcome opposition

...see below...

Decision-making procedures on CFSP/CSDP (i):

1. Decisions on the strategic interests, strategic lines, objectives and general guidelines for the CFSP (including matters with defence implications) >> defined by the European Council by unanimity
2. Decisions necessary for defining and implementing the CFSP (including decisions on actions and positions) >> taken by the Council on the basis of the European Council's general guidelines. Basic rule: Council act unanimously, with abstentions not preventing the adoption of decisions (QMV can be used for limited cases...) (see below...)
3. International agreements with one or more states or IOs >> HR submits a recommendation to the Council which authorizes the opening of negotiations and which nominates a negotiator for the EU >> the Council decides to sign and conclude the agreements by unanimity (without the involvement of the EP)

Decision-making procedures on CFSP/CSDP (ii): additional procedures to allow MS to veto decisions

- Constructive abstention >> when the Council acts unanimously, abstention by a MS does not prevent the adoption of decisions. But if a MS qualifies its abstention (with a formal declaration) it is not obliged to apply the decision

...if the MS qualifying their abstention is more than one-third of votes the decision cannot be adopted

- Limitations to QMV >> QMV does not apply to decisions with military or defence implications....moreover when QMV applies but a MS declare that 'for vital reasons of national policy' it intends to oppose the decision the Council does not vote...(HR and the European Council should find a solution...)

Decision-making procedures on CFSP/CSDP (iii): additional procedures to overcome opposition

Procedures to overcome opposition:

Enhanced cooperation >> provides for a cooperation of 9 or more MS to make use of the tools of EU FP...it can also be applied to CSDP but it must be open at any time to all MS

Permanent structured cooperation ('PESCO')>> in the area of defence policy open to those MS 'whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions'

2. Policy-making in practice



EU FP: a very complex system of policy-making

<u>Commission-steered foreign policy</u>	<u>EEAS-steered foreign policy</u>	<u>Foreign policy steered by informal division of labour</u>
Commission is involved in FP through budgetary instruments, international agreements ...the competences for the external action and the external dimension of internal policies, together with the activism, autonomy and resources explain its important role in FP	The gradual reinforcement of common 'CFSP actors' (EEAS, HR, special representatives, EU delegations...) has promoted new mechanisms for providing political steering and operational capabilities to promote common EU interests and policy	Political steering and operational action are provided by a 'self-selected group' of MS that take the lead in EU FP towards specific issues (where they have particular interest or added value) [e.g.: EU+3 on Iran, UK, F, G and the European Commission]

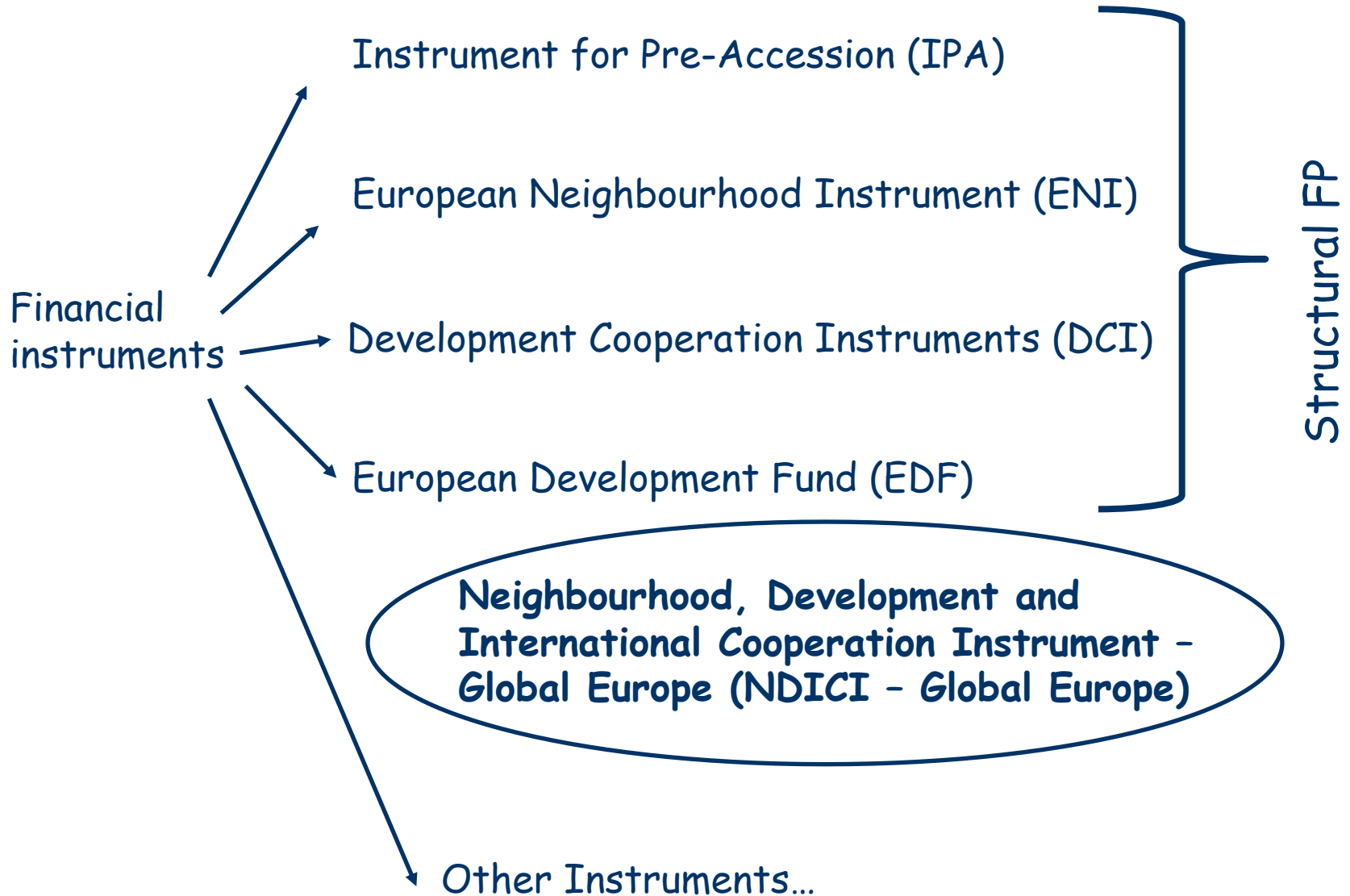
3. Financing EU FP



Financing EU FP: between interg. and comm. method

- The complex system of competences, procedures methods with regard to the substance of EU FP is...
- ...intertwined with an equal complex system of competences and procedures with regard to the funding of the EU FP
- Key issue: MS want an EU FP financially supported by the EU budget...but they want to keep control of the process and reduce the 'interference' of the Commission and the EP
- On the other hand > the Commission and the EP try to use their power over the budget to gain influence on the EU FP (even in the CFSP/CSDP domain)

Financing EU FP: structural/relational FP



The (limited) budget for CFSP/CSDP (i):

CFSP/CSDP >> are founded through different mechanisms, one for civilian operations and one for military operations

Civilian operations >> generally founded by the CFSP budget, with the exception of the salaries of personnel seconded by MS to operation (these costs are borne by MS)

Note: this budget is very limited >> MS prefer to use CFSP as an arena through which develop EU FP, but they are reluctant to provide the necessary budget for serious action

Why? >> because the CFSP budget is subject to the general budget procedures of the EU...i.e. the Commission and the EP can play an important role

The (limited) budget for CFSP/CSDP (ii):

- Military operations >> financed by MS, with the main costs supported by those MS taking actively part in the operations
- Only a limited part of the total costs can be financed through the so-called 'Athena Mechanism' >> it is separated from the overall EU budget and is under the authority of a Special Committee composed of MS (*since 2021: European Peace Facility, EPF*)
- This mechanism allowed MS to maintain a direct control over the budget for military operations....but each operation requires an ad hoc agreement among MS
- >> EU capacity to act is affected by the presence/absence of a sufficient number of MS willing to provide support for the operation

Concluding remarks: complexity and (in)consistency in EU FP



Problem: complexity and consistency

- Horizontal inconsistency >> lack of consistency between policies formulated across the EU's policy-making machine: e.g. between CFSP/CSDP, external action (trade, development, human rights, etc.) and the external dimension of internal policy (e.g., energy)
- Vertical inconsistency >> between policies agreed at the EU level and those pursued by MS at national level. The EU's FP capabilities depend on MS support...diplomatically and operationally
- Interstate inconsistency >> between MS different national foreign policies >> undermines the effectiveness of FP and damages the EU's credibility as an international actor...