

Diritto dell'Unione europea

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«Il principio della nazionalità, provocato ed ingigantito dalla stessa oppressione militare che anela a distruggerlo, dissolverà i fortuiti imperii dell'Europa orientale; e li tramuterà in federazioni di popoli liberi. Avremo pace vera, quando avremo li Stati Uniti d'Europa»

(Carlo Cattaneo, *Dell'insurrezione di Milano nel 1848 e della successiva guerra. Memorie*, Lugano, 1849, p. 306)

Il processo d'integrazione europea

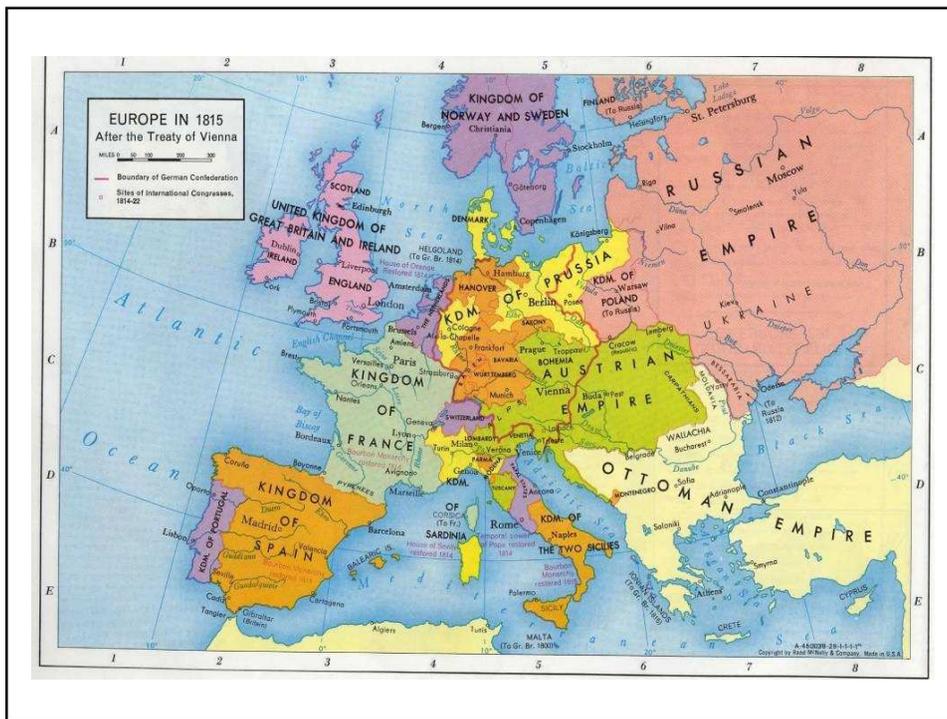
Lezione n. 1

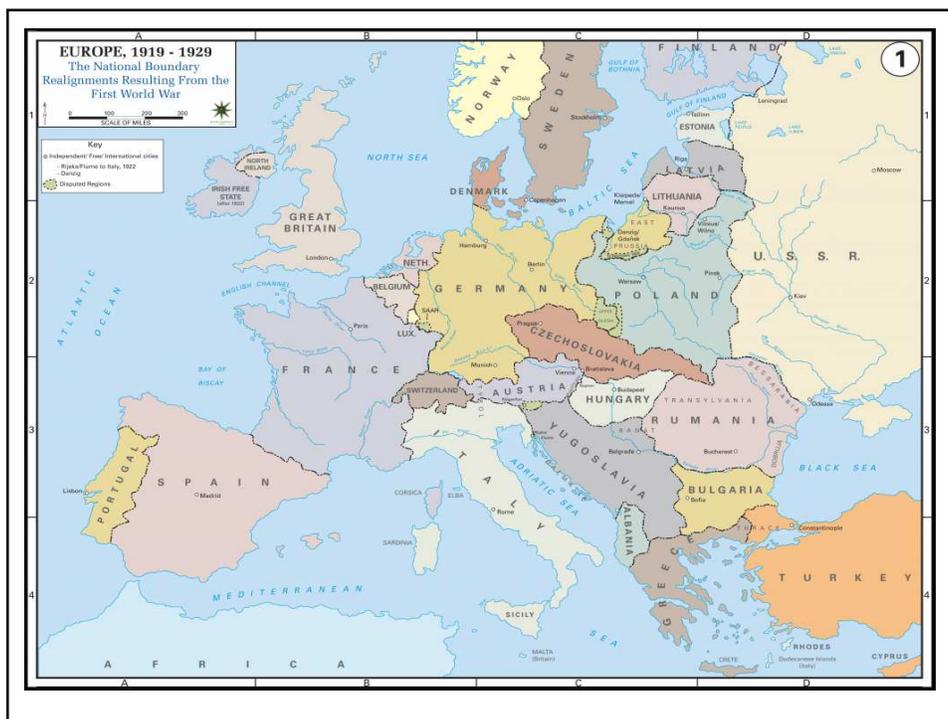
Looking back ...

The history of the European continent

- from the end of the French Revolution
- to the beginning of the European integration process (the middle of last century)
- to the current European Union (today)

200 years, more or less



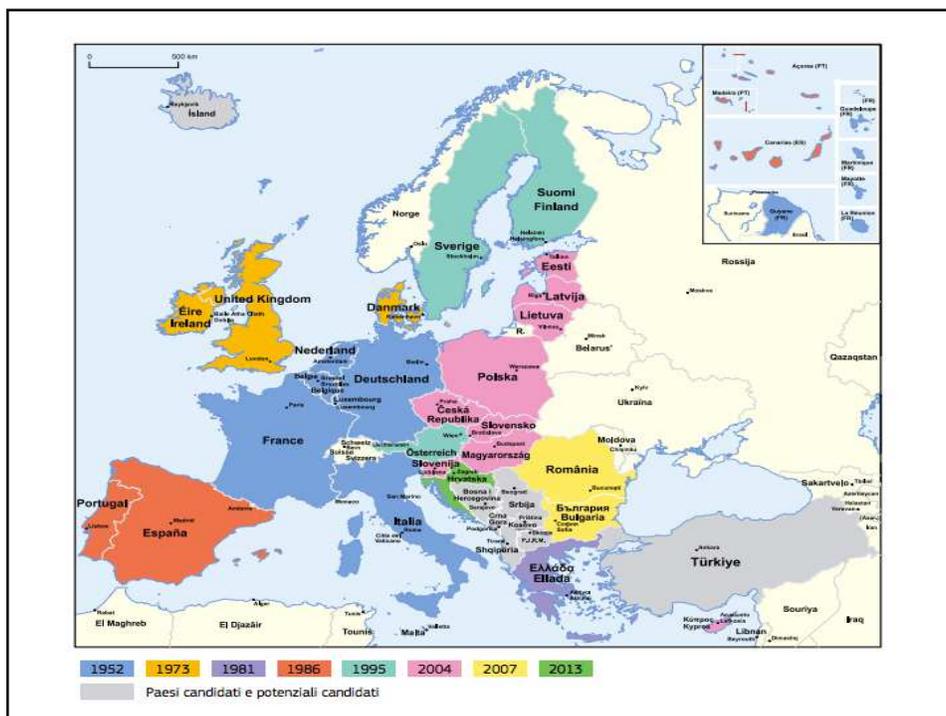


Europe in 1945: Aftermath of the World War II



The 'Iron Curtain'





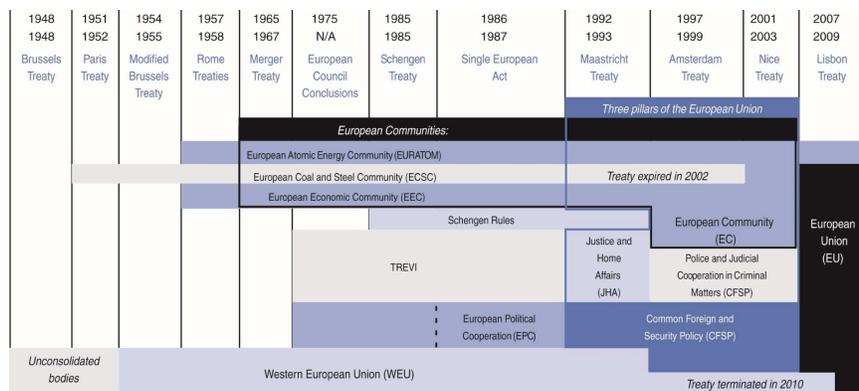
L'integrazione europea come "processo": due direttrici di marcia

"deepening"
(approfondimento):
un'integrazione che si fa
progressivamente più
profonda, più stretta →
ogni realizzazione (il
mercato unico, l'UEM)
non è un traguardo in sé,
ma solo una tappa verso
un obiettivo ulteriore

"widening"
(allargamento):
un'integrazione che parte
da un gruppo ristretto di
Stati ma che, sin
dall'inizio, vuole essere
inclusiva, coinvolgere tutti
i Paesi europei

Il “deepening”: un’integrazione sempre più stretta?

Lezione n. 2



ROBERT SCHÜTZE_Fig. 1.1

The beginning of the European integration process:
the birth of the European Communities

Chronology

- 7-8 May 1945 – WW2 ends in Europe with the total and unconditional surrender of Germany
- 9 May 1950 – the ‘Schuman Plan’ (after an American suggestion)
- 18 April 1951 – Treaty of Paris: ECSC
- 27 May 1952 – Treaty of Paris: EDC (failed)
- 25 March 1957 – Treaty of Rome: ECC, Euratom
- 1985 – Treaty of Schengen
- 1986 – Single European Act

From Paris to Rome

**THE EUROPEAN COAL AND STEEL
COMMUNITY (ECSC)**

Introductory remarks

- A fundamental transformation in the substance and structure of international law: a transition from an int'l law of **coexistence** to an int'l law of **cooperation** → the rise of international organisations
- At European level (notably, in the west) various efforts at (institutional) cooperation (outside EC/EU integration)
 - 1948: Organisation for European Economic Cooperation (OEEC, then OECD) – administration of the European Recovery Program (the 'Marshall Plan')
 - 1948: Western European Union (WEU), a security alliance
 - 1949: Council of Europe → ECHR
- European Communities – a new model of cooperation, aimed at **integration**: Supranationalism

European Coal and Steel Community

- The initiative came from France and was primarily addressed to Germany, which had been excluded from other forms of cooperation (Council of Europe, NATO, WEU) until then
- Sectorial market integration (coal and steel only) but...→
 - a major sector both economically and politically
 - conceived as a first step in the **federation of Europe**
- A new model of int'l cooperation: supranationalism vs intergovernmentalism

The institutional structure of the ECSC

- High Authority (Commission)
 - a very supranational (and bureaucratic) body
 - duty to ensure that the ECSC objectives would be attained
 - Decision-making power to adopt decisions, directly applicable in the MSs and binding in their entirety
- Assembly (Parliament)
 - purely advisory functions
- Council
 - charged to harmonise the action of the Commission and that of the national Governments
- Court

European Defence Community (EDC)

- The idea came from France ('Pléven Plan'):
 - the security of the MSs was to be ensured by a European army (the "European Defence Forces") under the command of a supranational institution
 - a European minister of defence, nominated by the national governments and responsible to them and to a European parliament
 - MSs were prevented from recruiting or maintaining national armed forces
- 1952 Paris Treaty failed because French parliament voted against ratification

EDC → *political* integration: a too long jump?

- EDC postponed the problem of defining the exact nature of the supranational political institution commanding the European army
- Draft Treaty establishing the **European Political Community**
 - a Community of a supranational character, founded upon a union of peoples and States
 - Its central institution: a bicameral 'Parliament', consisting of two Houses – the House of the Peoples and the Senate → the principal law-maker; a democratic and responsible political authority behind the European army

From Rome to Maastricht

EUROPEAN (ECONOMIC) COMMUNITY (EEC)
EUROPEAN ATOMIC ENERGY COMMUNITY

Return to the idea of *economic* integration

- The failure of the EDC discredited the idea of political integration for decades
- 1957 EEC and Euratom – why two treaties? → a compromise solution between
 - a) French proposal for further sectoral integration: nuclear energy (economic sector adjacent to coal)
 - b) Member States favouring the creation of a common market for all economic sectors

Which model for European economic integration?

- Customs union (as opposed to a free trade area)
- Common market of goods
- Abolition, as between MSs, of obstacles to free movement of persons, services and capital
- Common transport policy
- A system ensuring that competition in the common market is not distorted – EU competition law → model of *market economy*, at odds with the model of centrally planned economy

The most recent steps of the European integration process: from **the European Communities to the European Union**

- 1992 – Treaty of Maastricht (old EU)
- 1997 – Treaty of Amsterdam
- 2001 – Treaty of Nice
- 15-12-2001 – Laeken declaration on “The future of the European Union (European Council)
- 2004 – Rome ‘Constitutional Treaty’ (failed)
- 2007 – Treaty of Lisbon (new EU)

From Maastricht to Nice

THE (OLD) EUROPEAN UNION

Intergovernmental developments outside EEC

Since the 1970s, MSs began to cooperate in other important fields, but not within the institutional framework of the EEC:

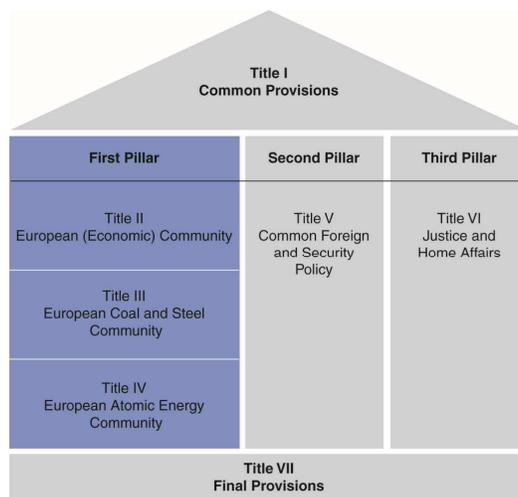
- i) Summit meetings (Heads of State or Government) → European Council
- ii) Monetary union – Werner Report
- iii) European Political Cooperation → MSs' foreign Ministers had to regularly meet
- iv) Police and judicial cooperation in criminal matters → 'TREVI' mechanism

Maastricht Treaty: a constitutional compromise

- Two parallel intergovernmental conferences:
 - a) EMU; b) deeper political union
- What constitutional arrangement?
 - A) Placing new policies into the supranational structure of the European Communities? NO, with the sole exception of EMU (price: differential integration), Union citizenship ...
 - B) Establishing a separate international organisation – the European Union: a common legal roof → the 'Temple Structure'

Art A TEU (Maastricht)

- By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union'.
- ...
- The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty
 - i) Common Foreign and Security Policy (CFSP);
 - ii) Justice and Home Affairs (JHA)



ROBERT SCHÜTZE_Fig. 1_2

Homogeneity components in the old EU

- a) The **ROOF** of the Union 'temple' – the common provisions of the TEU
- Common objectives – Art B TEU
 - Single institutional framework – Art C TEU
 - Common principles – Art F TEU
- b) The **BASE** of the Union 'temple' – the final provisions of the TEU
- Determining the relationship between the pillars – Art M TEU
 - Common rules for their amendment – Art N TEU
 - Common rules for the accession of new MSs – Art O TEU

Art B TEU (Maastricht)

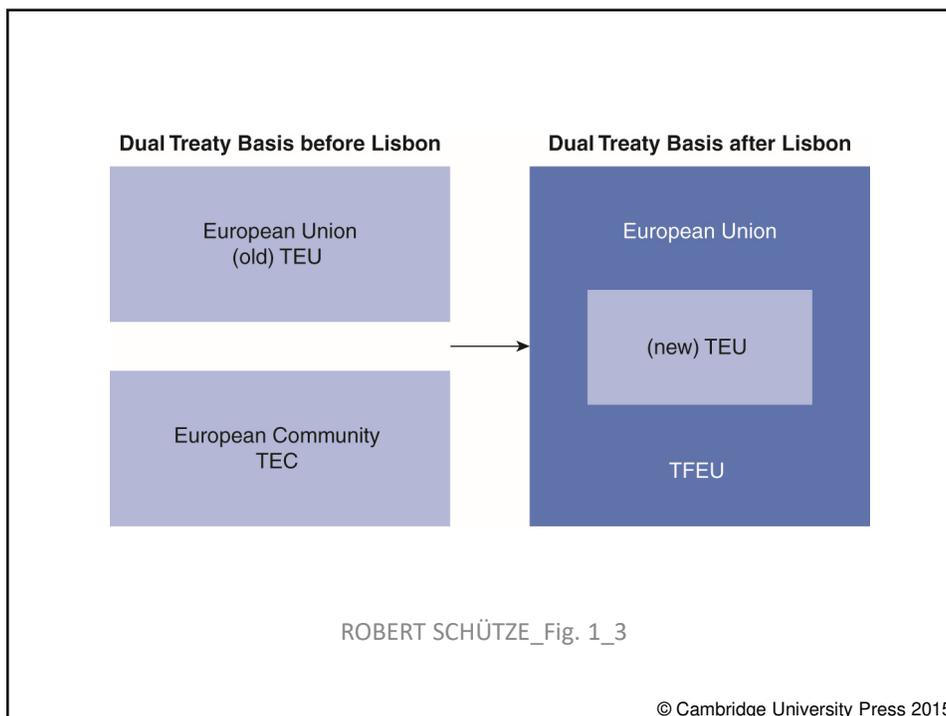
- The Union shall set itself the following objectives:
- - to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic 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.

Art C TEU (Maastricht)

- The Union shall be served by a **single institutional framework** which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the 'acquis communautaire'.
- The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers.

From Nice to Lisbon

THE (NEW) EUROPEAN UNION



Art 1 TEU (Lisbon)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common.

...

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

Art 1 TFEU (Lisbon)

1. *This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences.*
2. *This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as 'the Treaties'.*

Art 6 TEU (Lisbon)

1. *The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.*

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

...

Which model for the cooperation/integration between European States?

SUPRANATIONAL VS INTERGOVERNMENTAL IN THE HISTORY OF EUROPEAN INTEGRATION

Two ideal models

- a) Intergovernmentalism** – Traditional model of international organizations → States still play a crucial role – they enjoy both a decisional and normative veto power
- b) Supranationalism** – the “Community method” → the entity created by the member States is actually independent of their will

The second model was born with (and characterises) the EC/EU integration. But elements of both models have coexisted in the European history indeed

‘Decisional’ Supranationalism (the governmental structure of the EC/EU)

It relates to the question: who has the decision-making power in the European Communities/Union? How the decisions are taken?

It is a matter ‘internal’ to the Community/Union legal order

- ECSC → Commission is the central decision-maker – the organ endowed with supranational powers was itself ‘supranational’ = independent of the will of the MSs
- EEC → same institutional structure than ECSC but different institutional balance – Council is the central decision-maker – its independence from the MSs will depends on the voting mechanism (majority vs unanimity)
- Further steps until the current EU –
 - supranationalism –
 - ✓ Council deciding on qualified majority voting
 - ✓ Legislative powers on European Parliament, directly elected by European citizens
 - ✓ ‘judicial’ activism (*Cassis de Dijon* case)
 - intergovernmentalism –
 - ✓ The birth and the rise of European Council
 - ✓ Stall of qualified majority voting in the Council

‘Normative’ Supranationalism (the relationship between EC/EU and national legal orders)

It relates to the question: can the European Communities/Union norms be directly be applied in the MSs legal orders? Do they prevail or not over contrasting domestic rules?

It is a matter concerning the interplay between Union and national legal orders

- supranationalism –
- ✓ Direct effect of Union norms
- ✓ Supremacy of Union norms
- intergovernmentalism – traditional int’l law: whether int’l norms may be directly be enforced within the domestic legal order solely depends on this latter

Perché il widening è una direttrice di marcia
dell'integrazione europea?

L'Europa «dei piccoli passi», ma con una meta ben chiara

**THE NEO-FUNCTIONALISM:
THE “FUNCTIONAL APPROACH” TO THE
EUROPEAN INTEGRATION**

Il metodo funzionalista
(«functionalist approach»)

La costruzione dell'Europa unita come *processo*

Ogni obiettivo raggiunto non è un *traguardo* in sé
ma una *tappa* di un *percorso* verso la meta finale



L'*unione politica* (federale) europea
l'unione degli Stati e dei popoli d'Europa

La «Déclaration Schuman» del 9-5-1950

«***L'Europe ne se fera pas d'un coup***, ni dans une construction d'ensemble: ***elle se fera par des réalisations concrètes, créant d'abord une solidarité de fait.*** (...)

«La mise en commun des productions de charbon et d'acier *assurera immédiatement l'établissement de bases communes de développement économique, première étape de la Fédération européenne...*

«La solidarité de production qui sera ainsi nouée manifesterà que *toute guerre entre la France et l'Allemagne devient non seulement impensable, mais matériellement impossible* ».

«Sappiamo che la maggior parte del cammino che conduce alla Federazione europea è ancora dinanzi a noi. Conosciamo anche il nostro più temibile avversario: l'egoismo nazionale che divide i popoli (...). Ma se in futuro quest'opera vivrà nello spirito di uomini animati da spirito autenticamente europeo, gli avremo inferto un colpo mortale. Ecco cosa vogliamo: un'Europa unita nella quale tutti i popoli liberi potranno vivere e lavorare in una comunità pacifica. Mai più le guerre dovranno separarci»

Walter Hallstein, capo della delegazione tedesca nel negoziato CECA, discorso finale del 19 marzo 1951

IL METODO FUNZIONALISTA RIFLESSO NEI TRATTATI ISTITUTIVI

Trattato CECA 1951, Preambolo

«COSCIENTI che l'Europa non si potrà costruire altro che mediante concrete realizzazioni che creino innanzitutto una solidarietà di fatto, e mediante l'instaurazione di basi comuni di sviluppo economico; (...)

«RISOLUTI a sostituire alle rivalità secolari una fusione dei loro interessi essenziali, a fondare con la instaurazione di una comunità economica la prima assise di una più vasta e più profonda comunità fra popoli per lungo tempo contrapposti da sanguinose scissioni, ed a gettare le basi di istituzioni capaci di orientare il destino ormai comune»

Trattato CEE 1957, Preambolo

«DETERMINATI a porre le fondamenta di una unione sempre più stretta fra i popoli europei, (...)

«RISOLUTI a rafforzare, mediante la costituzione di questo complesso di risorse, le difese della pace e della libertà e facendo appello agli altri popoli d'Europa, animati dallo stesso ideale, perché si associno al loro sforzo»

Trattati vigenti

Trattato sull'Unione europea (TUE)

Preambolo: «Decisi a segnare una nuova tappa nel processo di integrazione europea intrapreso con l'istituzione delle Comunità europee...»

Art. 1: «...Il presente trattato segna una nuova tappa nel processo di creazione di un'Unione sempre più stretta tra i popoli dell'Europa...»

Trattato sul Funzionamento dell'Unione europea (TFUE)

Preambolo: «Determinati a porre le fondamenta di un'unione sempre più stretta fra i popoli europei...»

Carta dei diritti fondamentali dell'Unione europea

Preambolo: «I popoli d'Europa, nel creare tra loro un'unione sempre più stretta, hanno deciso di condividere un futuro di pace fondato su valori comuni»

Ever closer union and Brexit

In order to avoid Brexiteers from winning the 2016 referendum in UK, the decision of the Heads of State or Government of the Member States concerning “*A new settlement for the UK within the EU*” (18-19 February 2016) put into question the functionalist idea →

- it was recognised that UK was “*not committed to further political integration into the EU*”;
- accordingly, it was agreed that at the time of the next Treaties revision it would have been made clear “*that the references to ever closer union do not apply to UK*”