3 Towards European Union

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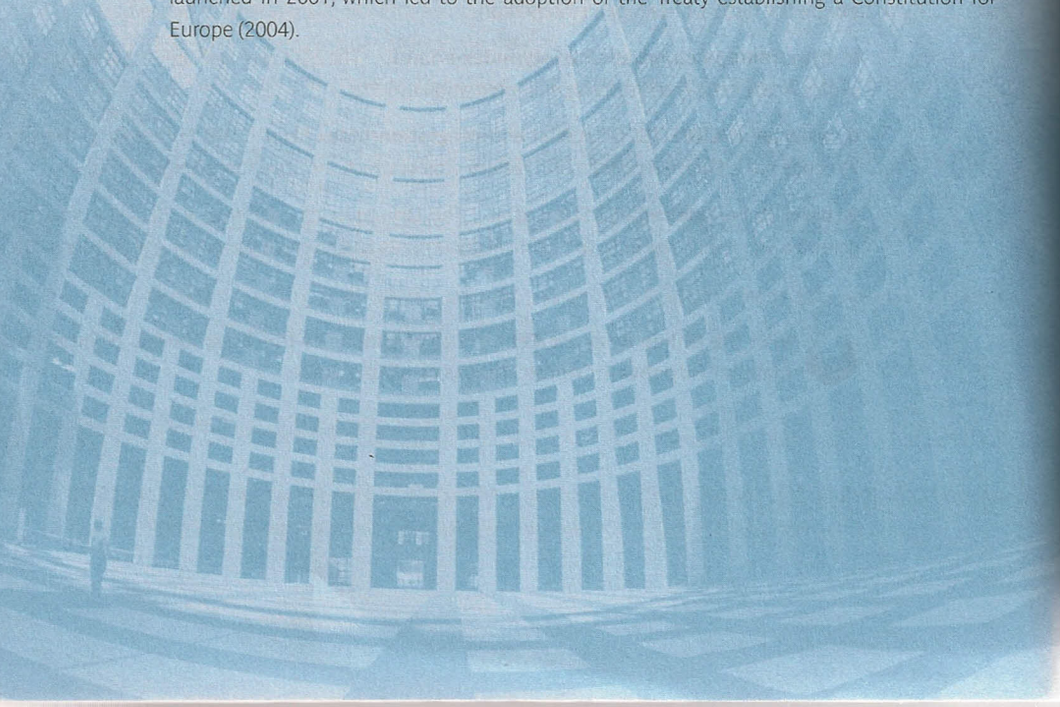
Chapter Contents

Reader's Guide

The focus of this chapter is the emergence and development of the European Union (EU). Key issues include the significance for the idea of 'union' of the Single European Act (1986), the Treaty on European Union (TEU) (1992), and the pillar structure of the EU. The chapter also examines the origins and impact on the EU of the Treaty of Amsterdam (1997) and the Treaty of Nice (2000), presenting their key reforms and assessing the extent to which they contribute to the idea of the EU as a 'union'. The chapter also introduces the 'Future of Europe' debate launched in 2001, which led to the adoption of the Treaty establishing a Constitution for Europe (2004).



Introduction

The underlying theme of this chapter is that the EU is less than its title implies. This is obviously the case when one considers the use of the term 'European'. There are many different definitions of what 'European' means, not least in the geographical sense. And no matter which definition one adopts, there can be little doubt that the EU in 2006, even now with 25 members, still does not cover all European states. This is something that has been recognized, most obviously in Article 49 TEU, which allows any 'European' state to seek membership of the EU. It is also evident in the prominence given to enlargement over the last decade.

This chapter is not, however, concerned with the question of the EU's membership and geographical coverage (see Chapter 26). Its focus is more on the extent to which the EU is a 'union'. For although it has long been the goal of the member states to create a European 'union', the extent to which it has achieved this is open to question. Indeed, whereas 'union' might conjure up ideas of coherence and uniformity, the EU today is characterized very much by variation and diversity. This is recognized not just by academics and other commentators, but also by the EU's institutions and its member states. Hence, voices are often heard calling for change. It is in part the desire to ensure that the EU behaves and acts as a 'union' that is behind the ongoing process of treaty reform – or constitutionalization – which has dominated the EU's agenda since the mid-1980s. Indeed, since the TEU was agreed in December 1991, a further three treaties have been agreed. All have sought to reform the EU (see Box 3.1).

What this chapter does, then, is discuss the structure of the EU and how this has been affected by certain key developments over the last 15 years. The chapter examines not only the origins of the EU, but also the background to and content of the Treaty of Amsterdam (1997) and the Treaty of Nice (2000). In between discussing how these have changed the EU and impacted on the idea of 'union', consideration is given to the significance of the launch of EMU, a process which simultaneously promoted closer union and **differentiated integration** within the EU, thus suggesting that member states may integrate in different ways or at different speeds in the future (see Chapter 24). The chapter concludes by introducing the issues that the EU and its member states sought to address as part of the 'Future of Europe' debate that eventually led to the drafting of the Constitutional Treaty (see Chapter 4). Before then, however, the EU as a 'union' and the TEU need to be considered.

CHRONOLOGY 3.1

Key events, 1986–2004

1986	Single European Act signed (17 and 28 February)
1987	Single European Act enters into force (1 July)
1991	Maastricht European Council agrees Treaty on European Union (9–10 December)
1992	Treaty on European Union signed (7 February)
1993	European Union established (1 November)
1996	1996 IGC launched (29 March)
1997	Amsterdam European Council agrees Treaty of Amsterdam (16–17 June) Agenda 2000 published (15 July) Treaty of Amsterdam signed (2 October)
1999	Stage III of EMU launched (1 January) Treaty of Amsterdam enters into force (1 May)
2000	2000 IGC launched (14 February) Nice European Council agrees Treaty of Nice (7–11 December)
2001	Treaty of Nice signed (26 February) Laeken European Council adopts Declaration on the Future of the Union (14–15 December)
2002	Introduction of the euro (1 January) Launch of the European Convention (28 March)
2003	Treaty of Nice enters into force (1 February)

The European Union as a European union

The idea of creating a European 'union' has long been a goal of states committed to European integration. This was made clear in the 1950s when the six original members of the European Economic Community (EEC) expressed their determination in the first recital of the preamble to the Treaty of Rome 'to lay the foundations of an ever closer union among the peoples' (see Box 3.2). They reaffirmed this in 1972 when they expressed their intention to convert 'their entire relationship into a European Union before the end of the decade'. In joining them in the European Communities (EC), new members from 1973 (Denmark, Ireland, and the United Kingdom), 1981 (Greece), and 1986 (Portugal and Spain) also signed up to this goal. And reaffirmation of the commitment was central to the Solemn Declaration on European Union proclaimed at the Stuttgart European Council in June 1983 and, in part, inspired the Single European Act (SEA) of 1986. This, as its preamble noted, was adopted in response to the member states' desire to 'to transform' their relations into 'a European Union', to 'implement' this new entity and invest it 'with the necessary means of action'.

KEY CONCEPTS AND TERMS 3.2

European Union and European union

Note the use of the word 'union' in these two treaty clauses

DETERMINED to lay the foundations of an ever closer union among the peoples of Europe

Preamble, Treaty of Rome (1957)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'

Article 1, Treaty on European Union (1992)

The Single European Act (SEA)

The SEA brought about some significant reforms to the Treaty of Rome. In terms of policies, it introduced a range of formally new competences (environment, research and development, economic and social cohesion); established a deadline for the completion of the internal market and facilitated the adoption of harmonized legislation to achieve this; committed the member states to cooperate on the convergence of economic and monetary policy; and expanded social policy competences to include health and safety in the workplace and dialogue between management and labour. As regards the institutions, it expanded the decision-making role of the European Parliament (EP) through the introduction of the cooperation procedure to cover mainly internal market issues and the **assent** procedure governing association agreements and accession. It also extended the use of **qualified majority voting** (QMV) in the Council; allowed the Council to confer implementation powers on the Commission; and established a Court of First Instance (CFI) to assist the Court of Justice in its work. In addition, it gave formal recognition to the European Council and European Political Cooperation (EPC), the latter being the forerunner of the Common Foreign and Security Policy (CFSP) and now having its own dedicated secretariat. The fact that neither the European Council nor EPC were technically part of the was reflective of member states' differences on how much **supranational** integration they were willing to pursue. For some, there was a clear preference for **intergovernmental cooperation**. Evidently, the desire for a European 'union' was not universal.

The establishment of the EU was not, however, far off. Despite being a very brief document and one that failed in many respects to meet the aspirations

CASE STUDY 3.3

From Intergovernmental Conference (IGC) to Treaty

The European Union and the European Community were both established by constitutive treaties concluded between their founding member states. If the current member states wish to reform the EU or the EC they need to amend the constitutive treaties. This is done via an intergovernmental conference (IGC) where the member states negotiate amendments. Agreed amendments are then brought together in an amending treaty which all member states must sign and ratify. Ratification normally involves each member state's parliament approving the treaty by vote. In some member states, either for procedural or political reasons, treaties are also put to a referendum.

CASE STUDY 3.4

The Treaty on European Union

The impact of the Treaty on European Union (TEU) on the process of achieving 'ever closer union' was considerable. Most significantly it formally established the EU. In addition it promoted European integration in a whole variety of ways whether through the promotion of cooperation in the two new intergovernmental pillars on foreign and security policy and justice and home affairs or through the expansion of EC activities. Indeed, thanks to the TEU, the EC was given new competences in the fields of education, culture, public health, consumer protection, trans-European networks, industry, and development cooperation. Citizenship of the EU was also established. And, of course, the TEU set out the timetable for EMU by 1999. As for existing competences, some were expanded, notably in the areas of social policy, the environment, and economic and social cohesion, although in an attempt to assuage concerns of over-centralization of power, the principle of subsidiarity was introduced. Moreover, the TEU saw the establishment of new institutions and bodies including the European Central Bank, the Committee of the Regions, and the Ombudsman. As for existing institutions, the powers of the EP were increased, not least through the introduction of the new codecision procedure, greater use of qualified majority voting in the Council was agreed, the Court of Auditors was upgraded to an institution, and the Court of Justice gained the power to fine member states.

of **integrationists**, the SEA and the launch of the initiative to complete the internal market by the end of 1992 ushered in a period of renewed dynamism for the EC during the second half of the 1980s. At the time, calls for further steps towards European union were being made by senior European leaders such as the French President, François Mitterrand, and the German Chancellor, Helmut Kohl, as well as by the Commission President, Jacques Delors. All this plus the collapse of communist regimes in Central and Eastern Europe in 1989, the end of the Cold War, and the prospect of German unification led in 1990 to the launch of two intergovernmental conferences (IGCs) (see Box 3.3), one on EMU and a second on political union. Out of these emerged the Treaty on European Union (TEU).

The Treaty on European Union

Agreed at Maastricht in December 1991 and entering into force on 1 November 1993, the TEU – often referred to as the 'Maastricht Treaty' – was designed to expand the scope of European integration, reform the EC's institutions and decision-making procedures, and bring about EMU (see Box 3.4). Moreover, the goal of ever closer union was to be furthered by bringing together the EEC – now renamed the European Community, the European Coal and Steel Community (ECSC), and the European Atomic Energy Community (Euratom or EAEC) as part of an entirely new entity, to be called the 'European Union'. This was to be more than simply the existing supranational Communities. Established in 1993, it comprised not just their **supranational** activities, but also **intergovernmental cooperation** in foreign and security policy matters and justice and home affairs.

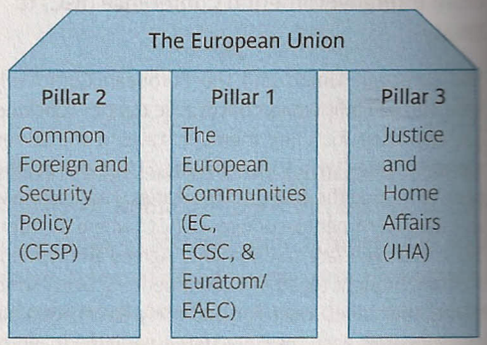
This mix of supranational integration and intergovernmental cooperation meant that the new EU fell short of what might normally be considered a

'union': a political and legal entity with a coherent and uniform structure. Indeed, in an early assessment of the EU, Curtin (1993) referred to its constitutional structure as a 'Europe of bits and pieces'. Depending, for example, on the policy area, the roles of the relevant institutions involved in decision-making differ. In the early years of the EC, there was essentially one approach, the so-called **Community method**. This would no longer be the case.

That the EU lacks uniformity in terms of its structures and policy-making procedures is evident from the terminology widely used to describe it. For many, whether they are practitioners, academics or others, the EU structurally is akin to a Greek temple consisting of three 'pillars'. The first comprises the original Communities (the EC, Euratom/EAEC, and, prior to mid-2002, the ECSC – see Box 3.5), while the second and third consist of essentially intergovernmental cooperation in the areas of the Common Foreign and Security Policy (CFSP) and, originally, justice and home affairs (JHA) (see Figure 3.1; and Chapter 1). Changes in the relationship between the pillars since 1993 have meant that the boundaries between them have become blurred.

To supporters of supranational integration, the establishment of the EU in 1993 on the basis of three 'pillars' represented a clear setback. This was because the intergovernmental pillars threatened to undermine the supremacy of the Community method, the use of supranational institutions and decision-making procedures to develop, adopt, and police policy. On the other hand, adopting a mix of supranational and intergovernmental pillars merely formalized existing practice. Even prior to the TEU, the member states were pursuing intergovernmental cooperation outside the framework of the EC. The most obvious examples were EPC and **Schengen** activities relating to the removal of border controls (see Chapter 19). These had been taking place since the early 1970s and mid-1980s respectively. All the same, the mix of supranationalism and intergovernmentalism, particularly given that the Community institutions, with the exception of the Council, were at best marginal players in Pillars 2 and 3, meant that the EU, when established, was less of a union than many had either hoped or feared.

Figure 3.1 The pillar structure after Maastricht



The idea of the new EU as a union was also undermined by certain other features of the TEU. First, plans for EMU – the most important new area of EC activity – were set to create a three-tier EU with the member states divided between those which would become full participants, those that would fail to get in (that is, meet the **convergence criteria**), and those – the United Kingdom and Denmark – that either had availed or could avail themselves of opt-outs. Semi-permanent **differentiation** between member states in a major policy area would characterize the new EU. Secondly, it was agreed that closer integration in the

BOX 3.5

The European Communities: from three to two

Originally there were three European Communities: the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (EAEC), the EEC being formally renamed the European Community in 1993 thanks to the TEU (though it was often used informally as a shorthand for the EEC before that date). Since then, the ECSC has been disbanded, its founding treaty having expired after 50 years, as envisaged, in July 2002.

area of social policy would be pursued only by 11 of the then 12 member states. Resolute opposition to increased EU competences meant that new legislation resulting from the so-called 'Social Chapter' would not apply to the United Kingdom. Thirdly, Denmark was later granted a de facto opt-out from involvement in the elaboration and implementation of foreign policy decisions and actions having defence implications. All this created the image of a partially fragmented EU.

That the TEU's provisions did not all apply to the same extent to all member states was significant as such differentiation had never been enshrined in the EU's treaty base before. This is not to say that differentiation between member states had never existed (see Chapter 24). But it had been temporary, with new member states given strict time limits for fulfilling the requirements and obligations of membership. Hence, there were fears that the Maastricht opt-outs would set a precedent leading, at worst, to an ***à la carte*** EU with member states picking and choosing the areas in which they were willing to pursue closer integration. Such fears were initially assuaged when, at the time of the 1995 enlargement, the EU refused to consider any permanent exemptions or opt-outs from the existing ***acquis*** for the new member states. Austria, Finland, and Sweden had to and indeed did accept all the obligations of membership, including those concerning social policy, EMU, and the CFSP, the latter being significant because each of the three countries was still notionally neutral.

KEY POINTS

- Despite 'ever closer union' being a long-established goal of the EC member states, the EU was not created until 1993.
- The EU lacks a uniform structure consisting as it does of one supranational and two intergovernmental pillars.
- The TEU introduced opt-outs from certain policy areas for some member states.

Reviewing the Union: the 1996 IGC and the Treaty of Amsterdam

That the EU, when it was created, was less than its title implied was recognized not only by those studying the EU but also by those working in its institutions and representing its member states. Even those who drafted the TEU acknowledged that what they were creating was not the final product, but part of an ongoing process. In the very first article of the TEU, the member states proclaimed that the establishment of the EU 'marks *a new stage* in the process of creating an ever closer union among the peoples of Europe' (emphasis added). They then proceeded to facilitate the process by scheduling an IGC for 1996 at which the TEU would be revised in line with its objectives. Among these was (and indeed remains) the idea of 'ever closer union'.

The 1996 IGC

Views on the purpose of the 1996 IGC differed. For the less integrationist member states, notably the United Kingdom, it would provide an opportunity to review the functioning of the EU and fine-tune its structures. It was too soon to consider anything radical. For others, a more substantial overhaul was not ruled out. The IGC would provide an opportunity to push ahead with the goal of creating 'ever closer union', something that the EP was particularly keen to see, as its draft constitution of February 1994 had demonstrated. Ever closer union, it was argued, was necessary if the EU wished to rectify the shortcomings of the structures created at

Maastricht and prepare itself to admit an increasingly large number of applicant countries, mainly from Central and Eastern Europe (see Chapter 26). Moreover, several member states were growing increasingly impatient with the reluctance of the less integrationist member states to countenance closer integration. And there was also the need to bring the EU closer to its citizens. Popular reaction to the TEU had shown that more needed to be done to convince people of the value of 'union'. Not only had the Danish people initially rejected the TEU in June 1992, but also the French people had only narrowly approved three months later.

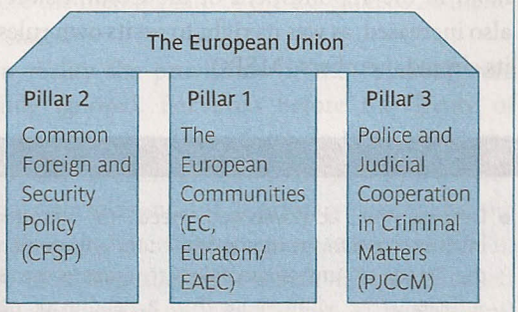
The shortcomings of the EU's structures were highlighted in reports produced by the Council, Commission, and EP in 1995. They all agreed that the pillar structure was not functioning well and that the intergovernmental nature of decision-making in the third pillar was a significant constraint on the development of JHA policy. As for Pillar 2, its inherent weaknesses had been highlighted by the EU's ineffective foreign policy response to the disintegration of Yugoslavia. Such shortcomings needed to be addressed, all the more so since enlargement was now firmly on the agenda. The European Council at Copenhagen in June 1993 had committed the EU to admitting countries once they met the accession criteria (see Chapter 26), so enlargement was set to be a permanent item on the agenda of the EU. Preparations would have to be made, notably where the size and composition of the institutions were concerned. In addition, there was the matter of QMV. Its extension to replace **unanimity** would be necessary if the EU were going to survive enlargement and avoid decision-making paralysis. Also needed within an enlarged EU, at least in the eyes of supporters of closer integration, were mechanisms that would allow those member states keen on closer integration to proceed without the need for unanimous agreement of the others. There was consequently much discussion of ideas concerning a **core Europe**, **variable geometry**, and a **multi-speed EU** (see Chapter 24). It was against this background that preparations for reforming the EU took place. These began in earnest in 1995 with the formation of a 'Reflection Group'. Its report suggested three key aims for the 1996 IGC: bringing the EU closer to its citizens; improving its functioning in preparation for enlargement; and providing it with greater external capacity. In doing so, it also promoted the idea of 'flexibility' mechanisms that would facilitate 'closer cooperation' among groups of willing member states.

The IGC was launched in March 1996 with the early stages of the negotiations confirming expectations that any agreement on reform would not be easily reached. Progress under the Irish Presidency did, however, lead to a draft treaty being produced for the Dublin European Council in December 1996. This though left many issues unresolved. And with a general election due in the United Kingdom in May 1997, it was clear that finalizing agreement on many of these would have to wait until after that had taken place. Certainly the Labour victory did make the job of drawing the IGC to a close easier for the Dutch Presidency. However, differences between other member states now came into the open. Added to this, attention was being distracted away from the unresolved issues on the IGC's agenda by a new French government intent on seeing the EU commit itself to greater action on economic growth and employment.

The Treaty of Amsterdam

What eventually emerged was the Treaty of Amsterdam which was signed on 2 October 1997. It attracted far less popular attention than the TEU in 1992–3. This does not mean that it was an insignificant treaty. It certainly caught the attention of lawyers and practitioners, renumbering as it did all but four articles in the Treaty of Rome and TEU. Moreover, in terms of substantive changes to the EU, it added the establishment of 'an area of freedom, security and justice' to the EU's objectives and – in what is often referred to as communitarization – shifted much of JHA activity from Pillar 3 into the EC pillar (Pillar 1). This meant that, the thrust of cooperation in Pillar 3 was refocused on police and judicial cooperation in criminal matters and the

Figure 3.2 The pillar structure since Amsterdam



pillar renamed accordingly (see Figure 3.2). At the same time, provision was made for **Schengen** cooperation to be incorporated into the EU. These developments meant greater coherence in EU activity. Yet the changes were also accompanied by increased differentiation. The United Kingdom, Ireland, and Denmark gained various opt-outs from both the new 'area of freedom, security and justice' and Schengen cooperation.

There was also the potential for further differentiation with the introduction of mechanisms for 'closer cooperation'. Under these, member states that wished to could use the EC framework to pursue enhanced cooperation among themselves. This was provided the mechanisms were used only as a last resort, that a majority of member states would be participating, and that the cooperation would be open to all other member states. Moreover, closer cooperation could not detract from either the principles of the EU and the *acquis* or the rights of member states. Nor could it be pursued for CFSP matters. Such restrictions, as well as the de facto veto which each member state had over closer cooperation, meant that the provisions would be difficult to use. In fact, as of early 2006, none of the provisions on closer cooperation had ever been used. All the same, the possibility of using differentiation within the EU was being established.

Where the Treaty of Amsterdam lessened differentiation within the EU was in its repeal of the UK opt-out from social policy and the bolstering of the EC's social policy competences (see Chapter 17). Moreover, an employment policy chapter was introduced, in part as an attempt to assuage popular concerns that the EU did not have its citizens' interests at heart. The need to make the EU more citizen-friendly was also behind other new emphases, not least in enhanced EC competences concerning consumer and environmental protection, a new emphasis on **transparency** and **subsidiarity**, and a reassertion that EU citizenship does not undermine national citizenship.

In terms of addressing the shortcomings of Pillar 2, the IGC had resisted calls for a communitarization of the CFSP, preferring to maintain existing intergovernmental arrangements. Reforms were, however, introduced in an attempt to improve the consistency of EU action by involving the European Council more, creating the post of High Representative, establishing a policy planning and early warning unit, seeking to develop long-term strategies, clarifying the nature of the different instruments available, defining more precisely the EU's concept of security (the so-called 'Petersberg tasks' of humanitarian and rescue tasks, peacekeeping and crisis management), and allowing for 'constructive abstention' so that member states abstaining would not block CFSP initiatives (see Chapter 15). The desire to deepen integration further was asserted in the renewed commitment to a common defence policy and even a common defence.

Finally, the Treaty of Amsterdam was supposed to prepare the EU institutionally for enlargement. Here, it failed. Rather than agreeing reforms, it simply deferred the resolution of key questions, such as the size of the Commission, the redistribution of votes in the Council, and the nature of majority voting, to a later date. Unanimity was replaced by QMV in some 19 instances, but even here, thanks to German insistence, progress was far less than was either anticipated or desired by many member states. This was underlined in a declaration issued by Belgium, France, and Italy to the effect that further reform should be a precondition for the signing

of the first accession treaties with applicant countries. This is not to say that the Treaty of Amsterdam failed totally to introduce institutional reform. The size of the EP was capped at 700 members, and the **assent** and **codecision** procedures were extended to some new and to some old treaty provisions thus enhancing the legislative role of the EP. The EP's hand in the appointment of the Commission was also increased, as was its right to set its own rules for its elected members (MEPs).

KEY POINTS

- Early experiences of the EU raised concerns about the functioning of the pillar structure.
- The desire not to be held back by more recalcitrant member states led to mechanisms for closer cooperation between interested and willing member states.
- Despite the acknowledged need to introduce institutional reforms in preparation for enlargement, the Treaty of Amsterdam failed to prepare the EU sufficiently to admit more than a handful of new members.

Preparing for enlargement: the 2000 IGC, the Treaty of Nice, and the 'Future of Europe' debate

With momentum building towards enlargement to include countries from Central and Eastern Europe as well as Cyprus and potentially Malta, the need to introduce institutional reform remained on the EU's agenda. Without such reform it was feared that policy-making could grind to a halt. Moreover, there were concerns that enlargement could challenge the whole idea of 'union'. Admitting 10 countries, most of which had been undergoing processes of wholesale transformation from command to fully functioning market economies was something that the EU had never done before. How to accommodate and integrate the new members became major questions. At the same time, the EU had to ensure that its *acquis* and the notion of 'union' would be neither impaired nor undermined by enlargement, and that its institutions could continue to function as decision-making and decision-shaping bodies. Moreover, confronted with the prospect of what amounted to almost a doubling of its membership, the EU was faced with the challenge of ensuring that the commitment towards 'ever closer union' would be maintained.

Enlargement moves centre-stage

Preparing the EU institutionally for enlargement had been a key objective of the 1996 IGC. The resulting Treaty of Amsterdam failed, as noted, to deliver. Instead, it was decided to postpone reform. A Protocol therefore envisaged that at the time of the next enlargement, the Commission would consist of one national per member state provided that by then the weighting of votes within the Council had been modified either via a reweighting or through the adoption of a dual majority system of voting (see Chapter 10). The idea behind the reweighting was to compensate the larger member states for giving up 'their' second commissioner. The Protocol also provided for an IGC to carry out

a 'comprehensive review of . . . the composition and functioning of the institutions' at least one year before the membership of the EU exceeds 20 member states.

In reality the provisions of the Protocol were mainly ignored. For even before the Treaty of Amsterdam entered into force on 1 May 1999, the European Council in 1998 had identified institutional reform as an issue of primary concern for the EU. Then, in June 1999, it agreed to hold an IGC in 2000 to address the key institutional questions left unresolved at Amsterdam. The issues – the size and composition of the Commission, the weighting of votes in the Council, and the possible extension of QMV in the Council – became known as the 'Amsterdam leftovers'.

What pushed the European Council into calling an IGC for 2000 were changes in the EU's handling of the enlargement process. In July 1997, a matter of weeks after the Amsterdam European Council, the Commission had published *Agenda 2000*, its blueprint for enlargement. Following its recommendations, the Luxembourg European Council in December 1997 agreed to launch an inclusive accession process with all applicant states (excluding Turkey) but open accession negotiations proper with only six of the applicants. It was felt at the time that six new members could be squeezed into the EU without necessarily holding an IGC. Within 18 months, however, attitudes towards enlargement were changing and, in the aftermath of the Kosovo conflict of 1999, the decision was taken to open accession negotiations with six more applicant countries and recognize all applicants including Turkey as 'candidate countries'. Opening up the possibility of large-scale enlargement made the need to address the Amsterdam leftovers more urgent. Hence an IGC was called.

The 2000 IGC

The 2000 IGC opened in February 2000 with only a limited agenda. This reflected the preferences of most member states for an IGC focused on the Amsterdam leftovers. Others, including the Commission and the EP, favoured a broader agenda. In a Commission-inspired 'Wise Men's Report' published in October 1999, strong support was voiced for a reorganization of the treaties and the integration of the Western European Union (WEU) into the EU as a step towards a common defence policy. A Commission report in January 2000 also reminded the member states that it was incumbent on them to ensure that the IGC reformed the EU in such a way that it would remain flexible enough 'to allow continued progress towards our goal of European integration. What the Conference decides will set the framework for the political Europe of tomorrow'. The EU, it warned, 'will be profoundly changed by enlargement, but must not be weakened by it'. As for the EP, it came out strongly in favour of a wider agenda, dismissing the 'excessively narrow agenda' adopted by the Helsinki European Council in December 1999 as one which 'might well jeopardize the process of integration'.

Such calls were initially overlooked by the IGC although 'closer cooperation' was added to its agenda by the Feira European Council in June 2000. By this time, however, certain member states were beginning to think more openly about the future of the EU. Hence, negotiations were soon taking place against a backdrop of speeches from the German Foreign Minister, Joschka Fischer, advocating in a personal capacity 'a European Federation' (see Box 3.6), and the French President, Jacques Chirac, championing proposals for a European constitution. Other proposals on the future shape of the EU from, among others, the UK Prime Minister, Tony Blair, and his Spanish counterpart, José-Maria Aznar, soon followed.

Many of the proposals were too ambitious for the IGC, where progress was already proving to be slow not least due to major differences on how best to deal with the Amsterdam leftovers. This was evident from the harsh words exchanged at the Biarritz European Council in October 2000. And the situation was not helped by the heavy-handed manner in which France, now holding the Council Presidency,

BOX 3.6

From confederacy to federation – thoughts on the finality of European integration

Excerpts from a speech by Joschka Fischer at Humboldt University in Berlin, 12 May 2000

Quo vadis Europa? is the question posed once again by the history of our continent. And for many reasons the answer Europeans will have to give, if they want to do well by themselves and their children, can only be this: onwards to the completion of European integration. A step backwards, even just standstill or contentment with what has been achieved, would demand a fatal price of all EU member states and of all those who want to become members; it would demand a fatal price above all of our people. . . .

The task ahead of us will be anything but easy and will require all our strength; in the coming decade we will have to enlarge the EU to the east and south-east, and this will in the end mean a doubling in the number of members. And at the same time, if we are to be able to meet this historic challenge and integrate the new member states without substantially denting the EU's capacity for action, we must put into place the last brick in the building of European integration, namely political integration. . . .

Permit me therefore to remove my Foreign Minister's hat altogether in order to suggest a few ideas both on the nature of this so-called finality of Europe and on how we can approach and eventually achieve this goal. . . .

Enlargement will render imperative a fundamental reform of the European institutions. Just what would a European Council with thirty heads of state and government be like? Thirty presidencies? How long will Council meetings actually last? Days, maybe even weeks? How, with the system of institutions that exists today, are thirty states supposed to balance interests, take decisions and then actually act? How can one prevent the EU from becoming utterly intransparent, compromises from becoming stranger and more incomprehensible, and the citizens' acceptance of the EU from eventually hitting rock bottom?

Question upon question, but there is a very simple answer: the transition from a union of states to full parliamentarization as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent treaty.

I am well aware of the procedural and substantive problems that will have to be resolved before this goal can be attained. For me, however, it is entirely clear that Europe will only be able to play its due role in global economic and political competition if we move forward courageously. The problems of the 21st century cannot be solved with the fears and formulae of the 19th and 20th centuries . . .

Source: www.auswaertiges-amt.de/www/en/ausgabe_archiv?archiv_id = 1027.

was managing the IGC. Accusations abounded that it was abusing its position as chair by promoting what was essentially a French agenda rather than seeking to broker compromises between the member states. At no point were the accusations louder than at the Nice European Council which, after more than four days, eventually agreed a treaty. Once tidied up, the Treaty of Nice was signed on 26 February 2001.

The Treaty of Nice

What the member states agreed at Nice attracted much criticism. Although it was rightly heralded as paving the way for enlargement, for many it produced suboptimal solutions to the institutional challenges raised by the prospect of an enlarged membership. All the same the Treaty of Nice did equip the EU better to accept new members and avoid decision-making and institutional paralysis. For example, QMV was extended to nearly 40 more treaty provisions, albeit in many instances ones concerned with the nomination of officials rather than policy-making, although some 10 policy areas did see increased use of QMV. Reaching a decision using QMV did not, however, become any easier. Despite a reweighting of votes – each member state saw its number of votes increase with the larger member states enjoying roughly a trebling and the smaller member states roughly a doubling of their votes – the proportion of votes required to obtain a qualified majority remained at almost the same level as before and was actually set to increase. Moreover, a new hurdle was introduced: any decision could, at the behest of any member state, be required to have the support of member states representing 62 per cent of the EU's total population.

The Treaty of Nice also provided for a staged reduction in the size of the Commission. From 2005, each member state would have one commissioner. Then, once the EU reaches 27 members – scheduled for 2008 at the latest, the Commission will be reduced to no more than 26 members. There is, however, a proviso: an equitable rotation system has to be agreed. Staying with the institutions, the cap on the size of the EP was revised upward to 732 and maximum sizes for the Committee of the Regions and the Economic and Social Committee (see Chapter 18) agreed. Reforms were also introduced to the competences and organization of the Court of Justice and the Court of First Instance (see Chapter 12).

The imminence of enlargement coupled with an awareness of existing institutional difficulties also accounts for an enhanced stress on democracy and rights. Hence a 'yellow card' procedure for member states deemed to be at risk of breaching the principles on which the EU is founded was introduced. Thanks to the Treaty of Amsterdam, it had already been agreed that voting and other rights of such member states could be suspended. Moreover, the Treaty of Nice revised the mechanisms for closer cooperation – now referred to as 'enhanced cooperation'. These become easier to use mainly because the number of member states needed to start a project and the opportunities to block such were reduced. Enhanced cooperation could also now be used for non-military aspects of the CFSP. All this opened up the possibility of the EU becoming a less uniform entity.

At the same time, however, the Treaty of Nice arguably gave the EU a greater sense of coherence. In the area of CFSP, and following the development of the European Rapid Reaction Force (see Chapter 15), it made the EU rather than the WEU responsible for implementing the defence-related aspects of policy. It also increased the focus on Brussels as the de facto capital of the EU. With enlargement all European Council meetings would be held in Brussels.

Yet although the Treaty of Nice paved the way for a more 'European' EU by introducing the institutional reforms necessary for enlargement, it did little in terms of the furthering the goal of 'ever closer union'. Integration-minded MEPs were quick to express their concerns, voicing particular criticism at the perceived drift towards intergovernmentalism and the consequent weakening of the Community method (Leinen and Méndez de Vigo 2001). The new Treaty did, however, set in motion a process that drew on the speeches made by Fischer, Chirac, and others in 2000 and after to promote a debate on the future of the EU. To some, the Commission especially, this would provide an opportunity to create a stronger, more integrated EU with a less fragmented structure. Others, however, envisaged greater flexibility, a clear delimitation of competences, and a weakening of commitments to 'ever closer union'.

Beyond Nice: the 'Future of Europe' debate

The initial terms of reference for the debate were outlined in a *Declaration on the Future of the Union* in which the member states called for 'a deeper and wider debate about the future of the European Union'. This would focus, inter alia, on four issues: how to establish and monitor a more precise delimitation of powers between the EU and its member states; the status of the Charter of Fundamental Rights proclaimed at the Nice European Council; a simplification of the Treaties with a view to making them clearer and better understood; and the role of national parliaments in the European architecture. In addition, ways of improving and monitoring the democratic **legitimacy** and transparency of the EU and its institutions would be sought. The aim was to bring them closer to the citizens. A further IGC and treaty would follow.

The agenda for the 'Future of Europe' debate appeared quite limited. However, by the time the debate was formally launched by the Laeken European Council in December 2001, the reference to 'inter alia' had been seized on and a whole raft of often wide-ranging questions had been tabled for

BOX 3.7

The Laeken Declaration on the Future of the European Union

Excerpts from the Declaration, December 2001

[T]he Union stands at a crossroads, a defining moment in its existence. The unification of Europe is near. The Union is about to expand to bring in more that ten new Member States . . . At long last, Europe is on its way to becoming one big family, without bloodshed, a real transformation clearly calling for a different approach from fifty years ago, when six countries first took the lead . . .

The European Union needs to become more democratic, more transparent and more efficient. It has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union as a stabilising factor and a model in the new multipolar world . . .

Citizens often hold expectations of the European Union that are not always fulfilled . . . Thus the important thing is to clarify, simplify and adjust the division of competences between the Union and the Member States in the light of the new challenges facing the Union . . .

A first series of questions that needs to be put concerns how the division of competence can be made more transparent. Can we thus make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States? At what level is competence exercised in the most efficient way? How is the principle of subsidiarity to be applied here? And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States? And what would be the consequences of this?

The next series of questions should aim, within this new framework and while respecting the 'acquis communautaire', to determine whether there needs to be any reorganization of competence. How can citizens' expectations be taken as a guide here? What missions would this produce for the Union? And, vice versa, what tasks could better be left to the Member States? What amendments should be made to the Treaty on the various policies? How, for example, should a more coherent common foreign policy and defence policy be developed? Should the Petersberg tasks be updated? Do we want to adopt a more integrated approach to police and criminal law co-operation? How can economic-policy coordination be stepped up? How can we intensify co-operation in the field of social inclusion, the environment, health and food safety? But then, should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?

Lastly, there is the question of how to ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions. How are we to ensure at the same time that the European dynamic does not come to a halt? In the future as well the Union must continue to be able to react to fresh challenges and developments and must be able to explore new policy areas. Should Articles 95 and 308 of the Treaty be reviewed for this purpose in the light of the 'acquis jurisprudentiel'? . . .

Who does what is not the only important question; the nature of the Union's action and what instruments it should use are equally important. Successive amendments to the Treaty have on each occasion resulted in a proliferation of instruments, and directives have gradually evolved towards more and more detailed legislation. The key question is therefore whether the Union's various instruments should not be better defined and whether their number should not be reduced.

In other words, should a distinction be introduced between legislative and executive measures? Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)? Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives? For which areas of competence are open coordination and mutual recognition the most appropriate instruments? Is the principle of proportionality to remain the point of departure? . . .

[H]ow can we increase the democratic legitimacy and transparency of the present institutions . . . ?

How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?

A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

[A] third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a

Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six-monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further? . . .

[A further question] concerns simplifying the existing Treaties without changing their content. Should the distinction between the Union and the Communities be reviewed? What of the division into three pillars?

Questions then arise as to the possible reorganization of the Treaties. Should a distinction be made between a basic treaty and the other treaty provisions? Should this distinction involve separating the texts? Could this lead to a distinction between the amendment and ratification procedures for the basic treaty and for the other treaty provisions? . . .

The question ultimately arises as to whether this simplification and reorganization might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?

Source: European Council, 'Laeken Declaration on the Future of Europe', 15 December 2001 (via europa.eu. int/constitution/futurum/documents/offtext/doc151201_en.htm).

discussion. In all, the resulting 'Laeken Declaration' contained more than 50 questions. These dealt with matters ranging from the democratic legitimacy of the EU to the future of the pillar structure and cooperation in the area of social exclusion (see Box 3.7). Also, it had been agreed that the debate would not feed directly into an IGC. Instead a Convention comprising representatives of member state governments, members of parliaments, MEPs, and Commission representatives as well as governmental representatives and MPs from the 13 candidate countries would be established to explore how the questions raised in the Laeken Declaration could be answered. Only after the Convention had completed its work would the IGC meet (see Chapter 4).

For supporters of integration disappointed by the Treaty of Amsterdam and the Treaty of Nice, this 'Future of Europe' debate was welcomed as providing a further opportunity to promote the idea of 'ever closer union'. Developments they had in mind included the adoption of a European constitution, something that the EP in particular had long been championing and the French and German governments had publicly endorsed. The EP was also keen to see the communitarization of a strengthened foreign policy and remaining third pillar matters, formal recognition of the EU's legal personality, election of the Commission President, simplification of decision-making procedures, and an extension of its own powers (Leinen and Méndez de Vigo 2001). Many of these ideas were shared by the Commission, which also proposed removing existing opt-outs (European Commission 2002a). They would also be fed, along with a range of other ideas from various sources, into the work of the Convention. The challenge it faced would be to come up with acceptable answers. Whether these would result in a further step along the road to 'ever closer union' remained to be seen.

KEY POINTS

- Changes in the approach the EU was adopting towards enlargement in 1999 gave greater urgency to the need to address the 'Amsterdam leftovers' and agree institutional reform.
- The Treaty of Nice may have paved the way for enlargement, but to many it provided suboptimal solutions to the institutional challenges posed by a significantly larger EU.
- While criticized for potentially weakening the EU, the Treaty of Nice initiated a process designed to respond to calls for a European Federation and a European Constitution.

Conclusion

There has in the history of the EU and its predecessors rarely been a point when ideas for increased integration have not been aired. This has been particularly true of the period since the mid-1980s during which treaty reform and IGCs have become almost permanent items on the agenda of the EU. As a result the EU that was established in 1993 has evolved in a variety of ways. The member states have agreed to expand the range of policies in which the EU has a competence to act; they have increased the decision-making powers of the institutions; and they have embarked on some major integration projects, notably EMU which saw the replacement of 12 national currencies with the euro on 1 January 2002.

Consequently, the EU has many of the characteristics of a union. For some it resembles or is becoming a superstate. Yet for many, particularly supporters of political union, it is a much looser and fluid organization than its name suggests. Its pillar structure embodies a complex mix of intergovernmental cooperation and supranational integration that brings together in various combinations a range of supranational institutions and the member states to further a variety of policy agendas. Adding to the complexity are the various opt-outs that Denmark, Ireland, and the United Kingdom have in certain policy areas as well as the differentiated integration created by the approach adopted towards EMU. Moreover, successive rounds of treaty reform have sought to facilitate a more multi-speed EU through the introduction and refinement of mechanisms for enhanced cooperation. All this raises questions about how uniform and united the EU is.

What the various rounds of treaty reform also reveal, however, is that the EU is taking on more responsibilities and is at least aware of the challenges raised by its complex structure and procedures, particularly given its commitment to enlargement. This is not to say that its member states have warmed to the challenges, introduced appropriate reforms, or decided what the EU's ***finalité politique*** should be. Debates have continued over what form the EU should take with the latest proposal being the Constitutional Treaty signed in 2004. As the next chapter reveals, this envisages various reforms to the EU. Some would make the EU more like the union that its name implies. Equally, however, the EU would continue to be characterized by a complex mix of supranationalism, intergovernmentalism, and differentiated forms of integration. Reforms brought about by the Treaty of Amsterdam and Treaty of Nice suggest that it is set to remain as such.

? QUESTIONS

1. Is it appropriate to describe the EU in terms of 'pillars'?
2. What is meant by 'ever closer union'?
3. Do opt-outs and mechanisms for enhanced cooperation undermine the EU as a union?
4. What impact did the Treaty of Amsterdam have on the pillar structure of the EU?
5. Why did the 1996 IGC fail to adopt the institutional reforms necessary to prepare the EU for enlargement?
6. Has the Treaty of Nice prepared the EU for enlargement?
7. What impact will enlargement have on the prospects for further integration in the EU?
8. Why was the agenda for the Future of Europe debate expanded between Nice and Laeken?