

EU law

**DIRECTIONS**

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Part I

# Institutional law



# The establishment and development of the European Union

## *Learning objectives*

This chapter will first of all provide an overview of why and how the European Union (EU) was established and how it developed. In doing so, it will pay special attention to the two parallel developments in the history of the Communities and the EU known as 'widening' and 'deepening'. After considering these developments, the chapter will then explore the relationship with the UK and how the UK fitted into this development. Finally, it will consider the external relations of the EU. Hence this chapter will enable you to understand:

- why the Union (at first called the Communities) was originally set up;
- how the Communities were first established;

- the perceived aims and goals, and how those aims and goals have changed;
- the expansion and development of the Communities and Union;
- the increase in policies and integration;
- the UK's role in this history;
- the external relations of the EU; and
- where we are today with the EU – developing news.

## Introduction

### Reasons for considering EU history

As with many things, particularly legal rules, they are easier to understand and rationalize if you are aware of why they were established in the first place. Any study of the law on courses of 'European Union law' and, as it was previously entitled, 'European Community law', must start with a consideration of the history and development of the Union. Without this, it will be much more difficult. Looking at the past helps us to understand why the EU has taken the form it has today, the pressures involved in this process and why certain decisions were taken, along its history. In any subject, merely learning the rules does not help you to understand the purpose for which they were enacted and the reasons that led to them. This is even more the case with the EU. Many of the laws, whilst clearly aimed at specific topics such as ensuring free movement of goods or persons, or requiring the equality of treatment of different groups, or regulating the recognition of a profession in the member states, are a compromise of different perspectives. In the EU, these perspectives come from the different member states, the different cultural understandings, different histories, and different social and economic backgrounds, hence the treaties and laws that have been produced under the Treaties are often achieved only as a compromise. On their own, the individual rules may not make a great deal of sense; with an understanding of the history and development, hopefully, they might make a great deal more sense.

**i** Section 1.4 will consider in more depth two particular aspects of this development: namely, the expansion and further integration of the Communities and Union, which are referred to as 'widening and deepening'.

### **cross reference**

*We will come back to the discussion about why the Communities evolved in this way and the difference between the pillars in section 1.5.8.*

### 1.1

## Why was the Union set up? The motives for European integration

This section will go through the various factors that combined to persuade at first two European states, and then six, to start the process of European integration.

## Explanation of the terms 'European Communities' and 'European Union'

A brief mention needs to be made here in respect of the terms 'European Union' and 'European Community' because their use can be confusing. The term 'European Union' was brought in by the Treaty on European Union (TEU, which is also known and referred to as the Maastricht Treaty – just to make matters more complicated!), and describes the extension by the member states into additional policies and areas of cooperation. Even though the Lisbon Treaty, following its amendment of the EC and EU Treaties, has now established definitively that the European Union be known exactly as that, this was not always the case, and whilst the history and development sections that follow will make this clear, it is nevertheless useful now to outline the previous terms used as you will come across them. Prior to the changes brought about by the TEU, three original Communities existed: the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). The TEU brought these together under one so-called 'pillar' and renamed the EEC Treaty simply as the European Community (EC) Treaty. It also added two further pillars, dealing with Common Foreign and Security Policy (CFSP) and Provisions on Police and Judicial Cooperation in Criminal Matters. Note that the ECSC has now expired and no longer exists. The organization in three pillars was often illustrated in the form of a classical Greek temple.



When the Lisbon Treaty came into force on 1 December 2009, the term 'Community' was replaced by the term 'Union' and it is now correct to refer only to the European Union. Most EU law courses and indeed books did not consider matters previously in the old second and third pillars in any depth, if at all. However, following the Lisbon Treaty, the three-pillar structure was broken up. The CFSP has been kept in the EU Treaty and the freedom, security and justice matters that were in the third pillar are now organized in a Title of the Treaty on the Functioning of the EU. Hence, then, for the most part, the term 'Community' has been replaced by 'Union' in this book, except where the context demands otherwise. It remains to be seen whether EU law courses will be expanded to incorporate freedom, security and justice matters.



For more details on this section scan here or visit the Online Resource Centre.

### 1.1.1 Reaction to the World Wars: the desire for peace

Even a cursory glance at European history will reveal just how long Europeans have been fighting and killing each other. The ultimate in the series of wars was, of course, the Second World War, in which some 55 million souls worldwide, but mostly in Europe, lost their lives. There have been centuries of invasions, occupations and dictatorial rule in most, if not all, of the countries of Europe at some stage. With this firmly in mind, it should come as no surprise that the very strong reaction after the Second World War to this death and destruction was a very important and motivating factor in the moves to create a more peaceful and stable European environment in which countries could develop and prosper without resorting to the obliteration or subjugation of others. It is all too easy, in this period of relative European peace and stability now, to understate this motive. Of course, there are reasons underlying the violence and featuring large is the desire to unify Europe, and, in pursuit of this goal, for one country or ethnic group to impose its culture, often including language or religion or government, on others. Unfortunately, most of these attempts have not been peaceful and, over the ages, these attempts have affected the majority of the citizens of Europe. Generally, the attempts to unite, from the Romans to the Second World War, have led to wholesale loss of life, even attempted genocide and that ghastly modern euphemism for the same, 'ethnic cleansing'. It is therefore this bleak, but simple and understandable, backdrop that led to an increased desire to do something to stop the cycle of wars that caused so much death and destruction. Whilst, over the centuries, there had been ideas and discussions to unite European nations, particularly following the First World War, it was only after the Second World War that these desires and expressions found substantive fruition.

### 1.1.2 Security against the rising Soviet threat

At the time, a further and developing factor that considerably influenced the desire on the part of the European nations to cooperate was the deteriorating relations between the former Allied powers. It was not long after the Americans, British and the Russians had met victoriously in the streets of Berlin in 1945 that the understandings between those countries broke down and they became increasingly suspicious of each other. UK Prime Minister and war premier Winston Churchill described in March 1946 in Fulton, Missouri, the situation of increasing Soviet influence and control over eastern Europe, in a borrowed phrase that was taken up generally, as a kind of 'Iron Curtain' that had descended between western and eastern Europe. The general situation came to be described as the 'Cold War' and lasted in lesser and greater states of tension until the collapse of Communism in Europe in 1989–90. With this increased fear of the possible expansion and domination of Europe by the Soviet Union, combined with the then existing Soviet strict control over the countries of eastern Europe, the tension mounted in the late 1940s and throughout the 1950s. At its worst, in the 1960s, the Cold War threatened the nuclear annihilation of the opposing parties. It thus became increasingly important that the countries of western Europe integrate amongst themselves to form a bulwark against further Soviet expansion. The Cold War was thus a clear and real catalyst for western European integration.

### 1.1.3 Political willingness

The period following the Second World War saw a number of moves towards the integration of European nation states. Political and economic cooperation and development between nations was regarded as crucial to replace the economic competition that was viewed as a major factor in the outbreak of wars between European nation states. Some of these moves were taking place within a worldwide effort for greater political cooperation between nation states, the most notable being the establishment of the United Nations in 1945 and the Council of Europe in 1949.

### 1.1.4 Economic development

There were also inherently economically motivated steps towards international cooperation that resulted in the establishment of such organizations as the International Monetary Fund (IMF), the General Agreement on Tariffs and Trade (GATT) and, most notably, the Marshall Plan, which funded the establishment of the Organization for European Economic Corporation (OEEC) and later the Organization for Economic Cooperation and Development (OECD), designed initially to finance the post-war reconstruction of Europe.

### 1.1.5 Summary of underlying motives and initial goals

When we come to the three European Communities, which were the forerunners of the European Union that we have today, the ultimate goals are not so distinctly discernible. As remains the case today, even before the foundation of the Communities, there was a conflict of opinion between those who wished to see European integration take the form of a much more involved model, such as a federal model, and those who wished merely to see a purely economic form of integration, such as a free-trade area. The first steps were, predictably, a compromise between the political, economic and social desires of various parties. The scene was set by the address by Winston Churchill at the University of Zurich in September 1946, and his call to build 'a kind of United States of Europe' and in particular the brave (for the time) call for a partnership between France and Germany. However, even within that speech, Churchill and Britain did not envisage a role as a key participant and instead saw Britain as being outside any general European integration, alongside the United States and Russia, observing and assisting the rise of a European state from the ashes of the destruction of the Second World War.

#### cross reference

A longer look at the relationship between the UK and the European Union will be taken in section 1.6.

## 1.2

# The founding of the European Communities

This section looks at the mechanics of how the Communities and Union were established.



For more details on this section scan here or visit the Online Resource Centre.

#### cross reference

Customs unions are defined in Chapter 10, section 10.2.2.

### 1.2.1 The Schuman Plan (1950)

The climate was certainly ready for a greater form of integration in Europe and the first direct impetus for the Communities came in the form of the plan proposed in May 1950 by the French Foreign Minister, Robert Schuman, in conjunction with the research and plans of Jean Monnet, a French government official. They proposed the linking of the French and German coal and steel industries, which would be taken out of the hands of the nation states and put under the control of a supranational body. This would not only help economic recovery, but would also remove the disastrous competition between the two states. It was aimed to make future war not only unthinkable, but also materially impossible, because it put control over coal and steel production, vital then for the production of armaments and thus the capability of waging war, in the hands of a supranational authority and not the individual states. The plan was deliberately left open for other European countries to join in its discussions. The UK, however, was reluctant to involve itself, even in the negotiations. The plan was readily accepted by Germany under Chancellor Adenauer, and Belgium, the Netherlands and Luxembourg, which form the Benelux nations, had already moved ahead with their customs union and also saw the benefits

to be gained from membership and this form of integration. Italy also considered it to be in its economic interest to join and, perhaps more importantly, considered it to be a defence against Communist takeover. Therefore, six nations went ahead to sign the European Coal and Steel Community Treaty in Paris in 1951, which entered into force on 1 January 1952. This first form of integration was thus both politically and economically motivated.

## 1.2.2 The ECSC

The ECSC Treaty was a mix of both intergovernmental and supranational integration, as the institutions set up included both the High Authority (which was later renamed the 'European Commission' by the 1965 Merger Treaty), a supranational body, and the Council of Ministers from the member states, an essentially intergovernmental body. Whilst the Community established did not fulfil all of the wishes of Jean Monnet, who was a federalist, he was appointed the first President of the High Authority. The degree of integration that it achieved was, without any doubt, a very important and indispensable first step from which further integration could follow. Indeed, it was assumed by some, the so-called neofunctionalists, that further integration would be inevitable as successful integration in one area was assumed to spill over into other areas of integration. The ECSC Treaty expired in 2002, but its enduring tasks and commitments were assumed by the EC Treaty.

## 1.2.3 The proposed European Defence Community and European Political Community

The Schuman Plan, which formed the basis of the ECSC, was not the only proposal for integration being discussed and negotiated at the time. Monnet put forward a proposal (the 'Pleven Plan') for a European Defence Community (EDC) in 1952. In addition, because it was argued to be politically and practically necessary, in support of that a European Political Community (EPC) was also proposed in 1953, to provide overseeing political control and foreign policy for the EDC. The proposals and the negotiations proved to be complex and were drawn out because they were surrounded by other political considerations such as the expansion of Communism in south-east Asia and fears in respect of the rearmament of West Germany. Both of these proposals, with hindsight, were premature and far too ambitious for the time. They faced opposition from outside the ECSC, the UK in particular, and from within the Community, most notably and fundamentally France, which after some prevarication failed to ratify the EDC in the National Assembly. Even today, the prospect of a common European army and political union is very radical; then, it was probably unrealistic.

## 1.2.4 Progress to the EEC and EURATOM Treaties

It might have been thought that the unfortunate failure to agree the EDC would have put paid to any further attempts at European integration and it was without a doubt a blow to the European federalists. However, rather than jeopardize any such attempts, it appeared to strengthen the resolve of some of the original six member states to take matters further. Once again, Jean Monnet was centrally involved. He had resigned as President of the ECSC High Authority in order to promote European integration. Working in particular with the Benelux nations, it was proposed that rather than leave the integration to two industries, the nations should integrate the many more aspects of their economies. Thus, following the Messina Intergovernmental Conference in 1955, the Spaak Report (named after the Belgian

### cross reference

*Intergovernmentalism, supranationalism and federalism are defined at section 1.3.1.1.*

### cross reference

*These cases will be fully explored in Chapter 5, section 5.1.1.*

Prime Minister) was prepared to consider the establishment of an Economic Community and, an Atomic Energy Community for energy and the peaceful use of nuclear power. There were also additional external catalysts for further integration, including the Algerian war of independence, the Soviet suppression of the 1956 Hungarian Uprising, and the Suez Canal invasion by France and the UK. This last event served to highlight the real politics at play in the world in the 1950s and the precarious position of individual nation states in Europe, which no longer wielded the influence that they had done prior to the Second World War. All of this assisted in bringing the European Treaty negotiations to a much quicker and more successful conclusion. Thus, in 1957, the Treaties of Rome were agreed by the same six nations establishing the European Economic Community Treaty and the European Atomic Energy Community Treaty. The latter was established to promote the peaceful use of nuclear power and is still in operation.

At first, all three Communities each had their own institutions, but shared a Court of Justice and the parliamentary assembly. The separate institutions were later merged under the Treaty establishing a single Council and a single Commission of the European Communities (the Merger Treaty) in 1965, which entered into force in 1967 and the provisions of which have been incorporated into the present Treaties. Due to the range of subject matters and policies covered, the EEC Treaty was the most important.



The ECSC Treaty, established for fifty years only, expired in 2002 and the EC Treaty (now TFEU) then took over the obligations and responsibilities arising under the ECSC Treaty.

## 1.3

# The basic objectives and nature of the Communities

## 1.3.1 Was there an ultimate federal goal for the Union?

With the initial three Treaties established, what the Communities were intended to do and how they were supposed to function should be considered. The formal aims of the Communities can readily be seen by looking at the preambles to the original Treaties. The stated general aims included the creation of the Common Market, which was to be achieved by abolishing obstacles to the freedom of movement of all of the factors of production: namely, goods, workers, providers of services, and capital. The EEC Treaty also provided for the abolition of customs duties between the member states and the application of a common customs tariff to imports from third countries. There were to be common policies in the spheres of agriculture and transport, and a system ensuring that competition in the Common Market not be distorted by the activities of cartels or market monopolists. A limited start was also made with a social policy and a regional policy. Apart from these formally set-out objectives, there has been a debate older than the Communities themselves as to whether there was a grand plan for the integration of Europe. Even if it was not originally clear that the 'pooling of resources', as then termed, by a transfer of sovereign powers meant that the Communities took over in certain agreed areas, this was made clear not long afterwards by the European Court of Justice in its landmark decisions in *Van Gend en Loos* and *Costa v ENEL*.

At this stage, some terms of integration need to be considered.

### 1.3.1.1 Intergovernmentalism, supranationalism and federalism

The terms **intergovernmentalism**, **supranationalism** and **federalism** are employed to describe the forms of integration.

#### intergovernmentalism

This is the normal way in which international organizations work, the decisions of which require unanimity and are rarely enforceable, and if so only between the signatory states and not the citizens of those states. The clearest examples are the United Nations or the World Trade Organization (WTO).

#### supranationalism

This describes the fact that the decision-making takes place at a new and higher level than that of the member states themselves and that such decisions replace or override national rules.

#### federalism

This is a rather flexible term in that it can refer to a fairly wide band of integration models, but essentially, for the purposes of this discussion, it is used to mean that there will also be a form of political integration whereby the constituent states transfer sovereign powers to the federation, which will control the activities of the members from the centre. There are plenty of examples of states set up on a federal basis in the world, including the United States, Germany, Canada, Australia, Switzerland and Belgium. Certain local issues are still regulated by the constituent states, such as education, culture and land management, but most economic and political power is transferred to the centre, including, most notably, defence and trade.

### 1.3.1.2 Integration in the Communities and EU

A debate continues as to whether the Communities were supposed to integrate only in the specific areas as originally set out in the ECSC and EEC Treaties and arguably confined largely to free trade, or whether something more dynamic was intended. It was originally considered that because there was success in certain policies, this would automatically lead to a spillover from one area to another, thus bringing about increasing integration. This is termed 'functional integration' or 'neofunctionalism'. Others have described this as 'creeping federalism'. In fact, it was considered that, in order for the original policies to work properly, there had to be continuing integration, otherwise the whole project would probably first stagnate and then roll backwards to collapse. Thus sector-by-sector integration and the process of European union was regarded as an inevitable process.

For example, the setting of common trade tariffs and the establishment of the Common Market for the free circulation of goods would require and lead to exchange rates being stabilized to ensure that production factors and costs in the member states were broadly equal. This in turn requires monetary union to be established to ensure that exchange rates do not drift apart, and this requires full economic union to be achieved so that the value of different components of the common currency is not changed by different economic and fiscal policies in different countries. Clearly, then, the fiscal policies must be integrated, and this economic integration would require that political integration would have to follow in order to provide stable and consistent policy control over the economic conditions applying in the Community. The difficulties experienced by Greece and the eurozone from 2010 onwards and the attempts to impose stricter financial and economic rules in 2011–12 highlight this aspect.

According to this view, federalism, in some form, would thus seem to be the probable outcome of this process. Such an outcome, though, is a highly contested one. Only a few persons have argued openly for this degree of integration, although some of the founding fathers of the Community – Monnet, Schuman and Spaak – had expected that sector-by-sector functional

#### cross reference

*This topic will be considered further in the end-of-chapter Summary after the developments to date have been outlined.*

integration would lead slowly to ever greater degrees of federalism. It is also arguable that an agenda of federalism has been buried under the euphemisms 'a closer' or 'ever closer' Union, which are terms that have been used in the EEC Treaty (which became the EC Treaty in 1993) and in the TEU, in order to make the progress to the ultimate destination of the Communities and Union more acceptable, although it is unclear, and arguably deliberately so, whether they refer to federalism or something short of that. The TEU, as amended by the Lisbon Treaty, carries on in this vein by using the words 'continue the process of creating an ever closer Union'. The original plans put forward by Monnet for the ECSC may have been much more federal in nature and openly so, particularly as the Community was to be governed by a supranational High Authority only, but it was at the insistence of the member states that the original ECSC Treaty established a Council of Ministers, clearly intergovernmental, and a parliamentary assembly of member state representatives. This mixed model was followed in both the EURATOM and EEC Treaties. Therefore, while the Communities and some of its institutions do operate on the supranational level, it does not signify an inevitable move to federalism.

Despite the failure of the EDC and EPC, the ECSC remained successful and was complemented in 1957 by the other two Communities. The EEC proved immediately to be a success under the leadership of the first EEC Commission President, the German Walter Hallstein, and it was far more political in outlook, despite the contrary view of de Gaulle, as to how the Communities should be organized and governed. The success of the EEC seemed to give support to the neofunctionalist view that success in one sector would lead inevitably to success in other sectors and assist the process of European integration. Indeed, the success in the area of the common customs tariff appeared to work as envisaged by the neofunctionalists/federalists, and led to spillover into other areas and in particular to create further pressure for the reform of the Common Agricultural Policy (CAP). This form of functionalism was adopted deliberately by the High Authority and later the EEC Commission as the way in which to achieve further progress with European integration; these bodies put forward a linked package deal of reforms for the Communities. Since then, the Communities and Union have moved on with numerous Treaty revisions, which will be highlighted in the next section.

#### i

However, the agreed decision by the member states in June 2007 at the Brussels European Council Summit to abandon the Constitutional Treaty and to replace it by a Reform Treaty far less supranational in nature may be seen as providing a clear and deliberate halt to progress to a federal Europe, although that too can change in time. The Brussels Summit and the Lisbon Treaty are considered in section 1.5.13.

Furthermore, it appears that, as more states join, there may be more resistance to deeper integration.

#### 1.4



For more details on this section scan here or visit the Online Resource Centre.

## Developments following the original Treaties

The member states made considerable progress under the original Treaties and the Communities were very successful in achieving the aims set out and promoting economic growth in the member states in contrast with countries such as the UK. The dismantling of customs duties was achieved by the original six member states and the Common Market for the free movement of goods was largely achieved ahead of the target year of 1969, set down in the EEC Treaty. Additionally, Competition Policy and the CAP – successful in terms of guaranteeing production, but the object of criticism ever since because its price-support mechanisms have generated overproduction – are both regarded as successes. However, the Communities did

**cross reference**  
The Luxembourg Accords will be considered under section 1.5.2.

not expand until 1973, nor did it integrate any further until 1986, much of which was to do with the rejection by de Gaulle of the UK applications and the national veto established under the Luxembourg Accords. However, in 1969, a fresh start for the Communities appeared to take place. Whilst in itself it did not lead to massive or immediate change, it did allow for a new agenda for change.

The member states held a summit in The Hague in 1969, to try to get the Communities moving again, which set as its goals the completion, widening and deepening of the Communities. Although the completion of the Common Market, which should have been fully achieved by 1969, took considerably longer and actually had to wait until 1992, the widening and deepening of the Communities were processes always intended to be ongoing. The terms **widening** and **deepening** are those used then and still survive in Community and EU jargon to describe developments in two ways.

#### widening

This term refers primarily to the process of the expansion to include new member states, but can also apply to the extension into new policy areas and in developing new sectors for integration.

#### deepening

This term refers to the degree of integration that takes place in terms of *how* integration takes place. By this is meant the extent to which integration is intergovernmental or supranational, but deepening can also apply to integration in new policy areas because it would consider the extent to which the Communities have encroached into previously exclusively held areas of the member states' competences.

To some extent, the terms are overlapping and the same development, it can be argued, fits into both categories. At a fairly simple level, however, they refer in turn to the quantitative and qualitative changes over the years.

### 1.4.1 The widening of the Communities

The original founding member states – Belgium, France, West Germany, Italy, Luxembourg and the Netherlands – remained the only six member states from 1952 to 1973.

- 1973 – first expansion of members: Denmark, Ireland and the UK
- 1981 and 1986 – second expansion: Greece, Portugal and Spain
- 1990 – due to the reunification of Germany, East Germany is assimilated
- 1995 – expansion: Austria, Finland and Sweden
- 2004 – expansion: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia
- 2007 – expansion: Bulgaria and Romania

#### 1.4.1.1 First expansion

The Paris Intergovernmental Conference of 1972 finally paved the way for the first expansion of the member state, which took place in 1973, when the UK, Ireland and Denmark joined. Norway was also to have joined at this time, but a referendum of the Norwegian electorate on

the eve of membership resulted in a majority against and Norway failed to become a member – not for the last time!

#### 1.4.1.2 Second expansion

The second expansion actually consists of two smaller expansions spread over five years, when Greece joined in 1981 and, after protracted periods of negotiation, Spain and Portugal entered in 1986. None of these three countries was economically in a strong position in relation to the existing member states, and in view of this all were regarded by some as unfit for membership. Politically, however, their acceptance into the Communities was regarded as crucial to support the recently emerged democracies in all of these countries after varying periods of authoritarian or dictatorial right-wing rule, and further, to act as a counter force to any possible violent reaction to the left and possible establishment of governments sympathetic to Moscow. The Cold War still featured prominently in this period of history; hence entry was facilitated sooner than economic conditions might have permitted.

Note that, in 1982, Greenland withdrew from the EC after a consultative referendum. As part of the Danish realm, Greenland had become a member of the EC when Denmark joined. After being granted home rule, Greenland opted to leave the EC.

#### 1.4.1.3 East Germany is assimilated

A smaller automatic expansion took place in 1990, with the reunification of West and East Germany as the first tangible change to result from the fall of the Communist regimes in the Soviet Union and eastern European countries.

This automatic assimilation of a previously independent country results from the separation of the single-state Germany after the Second World War and the view that East Germany was not a new member state, but that the areas in the former German Democratic Republic simply became part of a larger Federal Republic of Germany and thus automatically a part of the Communities.

#### 1.4.1.4 Setting terms for future expansions

The German mini-expansion awakened the Communities to the possibility of a number of the former eastern European states seeking membership and prompted a longer-term evaluation of the conditions required of aspirant member states. This led to criteria being agreed at the Copenhagen Summit in June 1993, which outlined the requirements for new members. These included the need for stable government and institutions guaranteeing democracy, the rule of law, human rights and the protection of minorities. Economically, applicant states would have to have a functioning market economy and the ability to cope with life in the single market. The applicants would have to accept the **acquis communautaire** in its entirety including the overall political, economic, social and monetary aims of the Union, such as eventual adoption of the euro; no easy task, even for the present member states.

The next and fourth enlargement took place sooner than expected as a result of the changes in eastern Europe and the economic success facilitated by the Single European Act (SEA).

#### acquis communautaire

The term given to describe the accumulated body of Community and Union law, including treaties, secondary legislation and judicial developments.



### 1.4.1.5 The European Economic Area (EEA)

After observing in the late 1980s the economic benefits of the SEA enjoyed by the member states of the Communities, other European states, most of which had cooperation or association agreements with the Communities and were members of the European Free Trade Association (EFTA), started to make overtures to the Communities for greater cooperation and some for possible membership. Initially, further expansion was not favoured by the Commission, because it was thought that it would stifle plans for deeper integration of the then existing member states, in particular progress on the single market and possible further progress to monetary union. Additionally, prior to the collapse of Communism in Europe in the late 1980s, some of the EFTA member states were uncertain for various reasons, including their neutrality and post-Second World War constitutional position, about full membership. Therefore a lesser form of integration was proposed by the European Commission in which the participants could benefit from the advantages of the single market and the competition policy, but not be involved in the other economic or political aspects of the Communities, including decision-making. This offer was open to all of the then existing members of the EFTA. However, the negotiations for this new form of cooperation were very drawn out and subject to considerable delays. They were also taking place against the backdrop of the collapse of Communism in eastern Europe.



One of the consequences of this was that the previous objections or difficulties that might be raised by Eastern Bloc countries and the Soviet Union in particular – that full Community membership of militarily neutral countries, such as Austria, Finland and Sweden, would not be compatible with their status as neutral countries – were effectively resolved.

In October 1991, the EFTA member states Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland, signed an agreement with the EEC on the creation of the EEA. The agreement reached was that the EFTA members were not represented in the Community institutions and would take no part in the decision-making processes of the Community. They would be subject to all Community law relating to the single market, as defined by the Court of Justice. However, an additional problem was encountered whilst negotiations were being finalized and shortly before the Treaty was to come into force on 1 January 1993. The Swiss electorate rejected membership of the EEA in a referendum in December 1992, which caused considerable political and legal difficulties because Liechtenstein, with which Switzerland has a monetary union, had agreed to join. Less Switzerland, the remaining six EFTA states went on to sign and ratify the agreement, which came into force on 1 July 1993. It was soon clear, however, that, as far as business confidence was concerned, full membership of the EU was the status that attracted investment and not membership of the EEA. Indeed, both the concept and the consequences of the EEA might not, in any case, have been fully understood by outside interests. Hence, almost before the ink had dried on the signatures to the EEA Treaty, Austria, Finland, Norway and Sweden applied for full membership of the EC.

### 1.4.1.6 The 1995 expansion

In view of the fact that most of the bargaining had already been done for the EEA, entry terms were easily and rapidly decided and the four applications were quickly accepted. On 1 January 1995, therefore, the Union was joined by Austria, Finland and Sweden, bringing the number of member states to fifteen. The Norwegian electorate, however, once again chose to reject membership in a referendum in December 1994 and Norway again failed to join the Communities. The entry of the three former EFTA members meant that the remaining EFTA states, Iceland, Norway and Liechtenstein, were now the only remaining EFTA members of the EEA. Following the economic crisis of 2008–09 and the economic near-collapse of Iceland, it

made a membership application and commenced entrance negotiations in July 2010. The other two EEA states do not have membership applications pending. Switzerland remains outside both the EC and the EEA. Its application for full membership, lodged in 1992 was put on hold following the EEA rejection. A special series of bilateral agreements have been negotiated with Switzerland instead, covering many, if not most, of the aspects of the EEA.

### 1.4.1.7 The 2004 expansion

The expansion that took place on 1 May 2004 was the largest in the history of the EU and ten new states joined in one go, comprising Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. The overall time taken to resolve terms of entry was surprisingly quick considering the number of states involved and their differing economic and social circumstances. The haste was fuelled by the political events unfolding in the world, in particular by the break-up of the Soviet Union and the bloody fragmentation of former Communist state of Yugoslavia. The ten new countries were thus brought into the fold much more quickly than economic conditions alone would have allowed owing to the political desire to lock these countries into a western liberal democratic club of nations. Hence the eastern expansion took over the agenda and Commission time. The accession agreements with all of the member states were concluded and the entry terms settled for the Treaty of Accession, which was signed in Athens on 16 April 2003. The ten new member states duly joined on 1 May 2004.

### 1.4.1.8 The 2007 expansion

In September 2006, the EU Commission expressed its view that Bulgaria and Romania were ready for accession, as originally planned in the Accession Treaty concluded in April 2005. Entry into the Union of these two countries took place on 1 January 2007.

### 1.4.1.9 Future expansion

At present, there is one acceding country and five countries that are official candidate states: Croatia is the acceding country and Turkey, Iceland, the former Yugoslav Republic of Macedonia, Montenegro and Serbia are the candidate countries.

With regard to Turkey, a candidate country since 1999, the Commission recommended on 6 October 2004 that the EU should open entry negotiations; in December 2004 the Brussels European Council Summit approved this position, and negotiations were started on 3 October 2005. Without doubt, these negotiations will be the most controversial in the history of the Union. The difficulties are the recognition and reunification of Cyprus, the predominantly Muslim population of Turkey, the human rights record of Turkey, and the fact that quite simply, geographically, most of the Turkish land mass lies in Asia and not in Europe. Its economic situation is also regarded as problematic; however, it may be argued that the entry of Turkey is exactly what the EU should come to terms with to create a multi-ethnic, multi-cultural, and multi-religious Union. Negotiations on twelve Chapters are taking place and one is completed, but with no fixed timetable for overall completion, which might take many years.

#### Chapter

The name given to each of the various policy areas covered by the Treaties with which Turkey (or another candidate state) must fully conform before it can be accepted for membership. There are about thirty-five Chapters in total to be negotiated and closed.



For more details on this section scan here or visit the Online Resource Centre.

With regard to Croatia, negotiations on the various Chapters commenced on 3 October 2005 and were completed in 2011 for a possible EU entry on 1 July 2013, provided that all twenty-seven existing member states and Croatia ratify the Accession Treaty, which was signed in Brussels on 9 December 2011.

The former Yugoslav Republic of Macedonia made an application to join in March 2004, and was considered as of 17 December 2005 to be a candidate country. Entry negotiations have been recommended by the Commission, but have not yet commenced with Macedonia, although visa liberalization has been put into effect.

Following the economic recession in 2008–09, Iceland, already a member of the EEA, made an application in July 2009 for full membership of the EU. It was envisaged that a fast-track negotiation might take place in view of the existing conformity of Iceland with the EU through EEA membership, although debt repayments to the UK and the Netherlands might interrupt this. In February 2010, the Commission recommended to the European Council that access negotiations should commence and Iceland became an official candidate state. Eleven Chapters have been opened, eight of which have been closed provisionally.

Montenegro applied for membership in 2009 and was granted candidate status in December 2010. Access negotiations have not yet commenced. Serbia was granted candidate status on 1 March 2012.

As to other possible members, there are the remaining Balkan states, presently considered to be potential candidate countries, as well as the possibility in the future for the states of the former Soviet Union that border the EU. Thus the countries of Albania, Bosnia and Herzegovina, and Kosovo have all been formally recognized by the EU as those eligible for future EU membership, but only if they prove themselves to the satisfaction of the EU and existing member states to be fit for membership. They have all now made applications, the latest of which was Serbia in December 2009.

One or two other countries have previously made applications, but have either withdrawn these or put them on hold. Norway has twice concluded entry negotiations only for entry to be rejected by the Norwegian electorate at the eleventh hour. At present, it has no application pending, but the possibility of future membership remains high on the political agenda, with opinion polls showing a majority of Norwegians in favour of full membership.

The rejection by the Swiss of membership of the EEA in 1992 also led to the suspension of its application for full membership. Even though Swiss governments have expressed the view that Switzerland will eventually apply for full membership, that aim was severely dented, at least for a few years, by the categorical rejection by the Swiss electorate of EU membership negotiations in a private initiative referendum in March 2001 when 77 per cent of those voting said 'No'. Therefore there are presently no plans to revive the dormant application by Switzerland, although significant governmental and other elements consider membership of the EU to be necessary and indeed inevitable, if not immediately, then at some stage in the future.

#### 1.4.1.10 The future of enlargement

The fact that the EU is conducting accession negotiations with Turkey invites a final consideration in respect of further widening and enlargement: what is the limit? The answer to this is as much driven by the answer to the question: what is Europe – politically and geographically? Two Mediterranean island states have already pushed the geographical border of the EU further: Cyprus lies closer to the Middle East and is nearer to Asia than Europe and Malta is not much further away from Africa than it is from other parts of Europe. Indeed, there are existing parts of some member states that are clearly beyond any usual definition of Europe. The Canaries (Spain) lie off the west coast of Africa, French Guyana is completely in another continent in South America, the Azores and Madeira (Portugal) are in the Atlantic and the French islands of

Guadeloupe, Martinique and Reunion lie in the Caribbean. Greenland was part of the EU until it was granted home rule from Denmark in 1979 and left the EU in 1982.

In fact, there are not many European states left to apply, depending on the definition of 'Europe': only Norway, Liechtenstein, the smaller states of Andorra, Monaco and perhaps parts of the former Soviet Union, such as the Ukraine, Belarus and Moldova, some of which are deliberately pursuing pro-European policies.

An application by Morocco in 1987 to join was rejected on the geographical ground that Morocco was in Africa and could not be considered as being Europe. There is now also perhaps the more focused question of whether the present citizens of the EU want a bigger Europe. At the time of writing, there appears to be more reticence than support for further expansion.

#### 1.4.1.11 Accession preconditions

Regardless of which state is a candidate, all existing and new member states are required to accept and adopt the entire body of EU law – that is, the *acquis communautaire* – which includes the Treaties, Protocols, Declarations, conventions and agreements with third countries, secondary legislation and the judgments of the ECJ. This requirement was previously noted under Article 2 TEU, but is now to be found indirectly in Article 20 TEU (post-Lisbon). Since the TEU, the criteria for membership has been much more clearly spelled out.

##### Article 49 TEU

Any European State which respects the principles set out in Article 2 and is committed to promoting them may apply to become a member of the Union.

These principles are human dignity, freedom, democracy, equality, the rule of law and respect for human rights. In addition, potential member states will be required to satisfy a number of criteria provided at Copenhagen in 1993 that were established with the membership applications of the newly emergent democracies in eastern Europe in mind. The criteria were essentially a refinement of previous practice. The 1999 Helsinki European Council Summit added a form of 'good neighbour' requirement for entrant states: that disputes with neighbouring countries be resolved before entry. It might have been a good idea, but the most visible case requiring the application of that policy was Cyprus; however, the Greek and Turkish parts of the island were not able to resolve fully their differences prior to the entry of Cyprus to the EU on 1 May 2004. Thus, although the whole island of Cyprus is in the EU, EU law is applied only in the southern Greek half of the island despite the fact that a referendum vote in Cyprus to reunite the island was approved by the Turkish side, but rejected by the Greek Cypriot electorate. Note, though, that Turkish Cypriots are citizens of a member state, the Republic of Cyprus, even though they live in the northern part of Cyprus; therefore their personal rights as EU citizens are not affected.

Potential border disputes existing between Estonia and Latvia and the Russian Federation were also not resolved prior to accession. The Helsinki Summit additionally marked a realization that the Copenhagen criteria could not be strictly applied and that some flexibility had to be exercised. The Laeken European Council Summit in December 2001 also emphasized that membership was dependent on candidate countries ensuring that their judicial institutions were capable of meeting the requirements of EU membership. The applicability of the criteria for deciding whether an eligible candidate can become an admissible one were confirmed at the Copenhagen Summit, which took place in December 2002. In relation to Turkish membership, it emphasized the need to meet the political criteria.



The good neighbour principle has now found Treaty expression in Article 8 TEU.

1.5

## The deepening of the Communities



For more details on this section scan here or visit the Online Resource Centre.

This section charts the increasing degree of integration entered into by the member states, from the original Treaties establishing the Communities, to the present position following the entry into force of the Lisbon Treaty in 2009.

### 1.5.1 The primary Treaties

The first and fundamental movement on the path of integration was, of course, the ECSC Treaty, now expired, which was soon followed by the agreement and ratification of the EEC and EURATOM Treaties by the original six member states. It was clear at the time of negotiation that a transfer of power was involved, particularly in the climate of the time and the clear federalist intentions of the main protagonists of the plan, Schuman and Monnet. The only amendments that were made to the primary Treaties for the first two decades were minor ones brought about, first, by the decision to merge the institutions of the three Communities and then by the Accession Treaties required for the new member states. Prior to the Merger Treaty of 1965, each of the Communities had its own Council and High Authority/Commission; however, the Court of Justice and the Parliamentary Assembly had both been shared by all three Communities from the outset. The merger of the institutions was a practical step to provide common coordination and to avoid the duplication of effort and resources. It was nothing more significant than that. The first Accession Treaties for Denmark, Ireland and the UK dealt specifically with the details of accession of the new member states or merely made the changes to the Treaties considered necessary for it to continue working in the same way as previously, but with adjustments to reflect the increase in member states and the composition of the institutions: for example, to Council voting numbers, and to Commission, European Parliament and Court of Justice memberships. The fundamental constitutional core of the Communities and how they worked remained untouched until 1986.

### 1.5.2 The 1960s and the Luxembourg Accords

Initially, the Communities were very successful in achieving the aims set out and promoting economic growth in those member states, in contrast with slower economic growth in countries such as the UK. The dismantling of customs duties was achieved by the original six member states before the target date set down in the EEC Treaty. Additionally, Competition Policy was seen to be working and the CAP was clearly successful in terms of guaranteeing production. It was, however, the subject of criticism because its price support mechanisms led over time to the massive overproduction and stockpiling of commodities such as butter, sugar and wine. These cost the Community not only a great deal of money to dispose of, but also political ill-will in the world as Third World agricultural products had no chance of entering the heavily protected EC market.

However, following this initial period of success and achievement, any chance of either further expansion or deeper integration was stifled. The brake on such progress was most effectively

#### cross reference

Qualified majority voting is also considered in Chapter 2, section 2.2.4.3.



The boycott of the EU institutions by French President de Gaulle was the way in which France objected to an increase in the Communities' own resources and powers.

All progress, indeed everything in the Communities, simply halted. The compromise agreement that broke the deadlock was the infamous Luxembourg Accords, in essence an 'agreement to disagree'. This basically provided that where the member states were not able to agree a proposal and where a vital national interest of any member state was at stake, that member state could finally veto the proposal in Council. There was no definition of a vital interest, and so member states were left to define a vital interest themselves.

#### 'Majority Voting Procedure', Extract from the Luxembourg Accords (1966) 3 EEC Bulletin 9

- (I) Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty.
- (II) With regard to the preceding paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached.
- (III) The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement.
- (IV) The six delegations nevertheless consider that this divergence does not prevent the Community's work being resumed in accordance with the normal procedure.

### 1.5.3 Stagnation and 'Eurosclerosis'

The whole unfortunate episode surrounding the Luxembourg Accords resulted in stagnation in the decision-making process for many years to come. It led to the long, slow, painful period of the Communities that has become known as the period of 'Eurosclerosis', and which lasted from 1966 until the early to mid-1980s. The basic problem was the near-inability of the member states to reach decisions on Community legislation, and widespread dissatisfaction at the slow pace at which the goals of the EEC were being achieved. Whilst much of the blame can be laid at the door of the French boycott and the Luxembourg Accords, the ability to reach decisions was made much more difficult by the doubling of member states between 1973 and 1986 to twelve.



In 1973, Denmark, Ireland and the UK joined the Communities, followed in 1981 by Greece, and in 1986 by Spain and Portugal.

Trying to obtain the unanimous agreement of first six, then nine, then ten, and then all twelve members proved at times to be simply impossible. Amongst the main concerns were the time taken by the Community institutions to make new laws and the amount of work with which the Council was faced, partly because particular provisions were presented many times as the Commission made amendments to make them acceptable to all member states. A notorious example of this is Directive 85/384, which did nothing more controversial than harmonize the training requirements for architects, but which took the institutions seventeen years to agree and finally enact. Further concerns related to the lack of representative democracy in the decision-making process of the Community and the delays experienced by litigants to the Court of Justice. It was clear to everyone that some change had to be brought about. Whilst it was true that some adjustments had been made in the form of amendments to the original treaties, these were of a limited nature. More significantly, but restricted to a specific process, was the increase in powers of the European Parliament in the budgetary process by the Budgetary Treaties of 1970 and 1975. Otherwise, little further progress had been achieved in this period. However, before looking at the relaunch of the Communities, in the background the European Court of Justice was going about its business of judging cases and, in doing so, laying down some extremely important principles of law.

### 1.5.4 The Court of Justice and integration

Whilst the Community institutions were busily going nowhere on the path to European integration, the Court of Justice appeared not to be affected by the 'Eurosclerosis' and had, from a very early date, adopted a very supranational tone in its judgments, including the far-reaching decisions on direct effects and supremacy in *Case 26/62 Van Gend en Loos* and *Case 6/64 Costa v ENEL*. These judgments contributed greatly not only to building a separate Community legal system, but also to enhancing the supranational status of the new European legal order and constitutionality of the Communities.

### 1.5.5 Revival attempts

In 1969, following the resignation of de Gaulle and the change in West Germany to a Social Democrat government, a summit of the heads of state and government was arranged in The Hague expressly to relaunch European integration. The 1969 Hague Summit established the system of EPC, but which was deliberately intergovernmental in nature and sat outside the formal Treaty set-up. As such, it can be regarded as another move away from supranationalism and the neofunctionalists' dream of progress on European integration. It was also unfortunate, but the reforms and the relaunching of the Communities envisaged at The Hague were severely disrupted by the world economic situation, which grew steadily worse in the early 1970s. The Middle East wars and ensuing oil crises led to very high inflation and stagnation in the world economies and to the unwinding of the first attempt at some sort of monetary union, the European Monetary Unit (EMU), which bound European currencies into a flexible relationship with each other.

The year 1973 also saw the entry of three new member states, two of which, the UK and Denmark, were even then the least federal-minded member states in the European Communities. There were nevertheless further attempts to revive the flagging fortunes of the Communities. A further summit in Paris in 1974 led to the formalization of the previously

informal European Council Summit meetings to provide an overriding political guide to the Communities. This, however, tended to strengthen further the intergovernmental hand of control over the Communities rather than to provoke deeper integration. The Paris Summit also, for the first time, allowed the Commission a role in the summitry, something pressed for by the new Commission President, Roy Jenkins. The Summit also made the decision that the European Parliament should be directly elected as from 1978, although this could not take place until 1979 due to difficulties in the UK in preparing the legislation. Finally, the European Monetary System (EMS) was established in 1978, despite the collapse of the previous attempt (the EMU). The EMS proved to be stable and, with the establishment of the European Currency Unit (ECU), became the precursor to monetary union and the euro (€).

These limited successes, however, did little to counter the generally prevailing malaise that hung over the Communities and institutions. This was not helped by the attitude and activities of certain member states. When de Gaulle disappeared from the international scene in 1979, the new UK Prime Minister, Mrs Thatcher, appeared immediately to take up the baton of intergovernmentalism and the bolstering of purely national interests. Whilst the UK may well have had a case in arguing for a more equitable budget contribution and neither Mrs Thatcher nor indeed anyone else has gone as far as de Gaulle in disrupting the work of the Communities (with the limited exception of David Cameron's veto during the Euro Summit discussions in December 2011), the negotiating style and public pronouncements of Thatcher left much to be desired. These budget wrangles and the sheer lack of progress generally in the Community dragged on seemingly endlessly into the mid-1980s. The stagnation and intergovernmentalism not only thwarted any moves to more integration, but also engendered a period of national protectionism, which itself was threatening to undermine some of the basic goals of the European Communities already achieved. Notably, the Common Market was simply not being completed as envisaged and, if anything, was becoming more fragmented. The situation in the 1980s was that both the stagnation of the Communities and the lack of international competitiveness of Europe in relation to American and Japanese industrial and commercial progress had been clearly recognized. It was abundantly clear and understood that reform, and indeed radical reform, of the Community and institutions was necessary.

Numerous reports and studies were conducted by the different Community institutions and additionally many external reports had been commissioned over the years that had all recommended changes. A number of areas in which improvements were required had already been identified by those reports in the lifetime of the Communities. The fact that there were so many of these speaks volumes for their (in)effectiveness in tackling the deep-rooted problems of European stagnation. However, whilst individually, they did not provide a solution, collectively, all of them, especially the latter ones, helped finally to establish and develop the climate for the eventual changes brought about by Treaty change and in particular by the SEA, which led in turn to the TEU (the Maastricht Treaty), the Treaties of Amsterdam and Nice, and lastly the 2009 Lisbon Treaty. In particular, these concerns were taken up by the new Commission President Jacques Delors, who brought a package of reforms to the member states with the measures considered necessary for the completion of the single market. Whilst there remained opposition to any significant institutional changes recommended, especially by the UK, the single market completion was the carrot that brought the Eurosceptic governments on board, particularly the UK and Germany, as the proposals were hailed as a shining example of trade liberalization. Whilst the other member states were undoubtedly also interested in the trade and economic aspects of the reforms proposed, the smaller states in particular had a greater desire to see the institutional reforms recommended. In 1985, a sufficient head of steam had built up for the member states to accept, albeit some reluctantly, that the necessary changes were ones that could effectively be undertaken only by substantively amending the founding Treaties.

#### **cross reference**

See section 1.6 for more on the relationship between the UK and the EU.

**cross reference**  
This development and these cases will be fully considered in Chapters 5 and 8.

### Intergovernmental Conference

A conference of the member states outside the Treaty and Communities set-up, which is established to discuss and agree Treaty change.

## 1.5.6 The first Intergovernmental Conference (IGC) and the Single European Act

An **Intergovernmental Conference** took place in 1985 to discuss the decision-making of the Council of Ministers, the legislative powers of the EP, the executive power of the Commission, the policy areas of the Community and the delays before the Court of Justice.

The SEA was the product of the IGC and came into force in May 1987. The Preamble to the SEA states that it is 'a step towards European Union'. It amended the EEC Treaty in several important respects, perhaps most importantly changing the legislative process affecting some Treaty Articles and generally extending the Community's competence and concern in new policy areas.

The SEA is the first significant amendment of the primary Treaties. It is an important watershed in the historical development of the Communities and is not to be underestimated in its importance, although it was underestimated at the time, not only by external observers and commentators, but also by the heads of state and government who signed up to it. It is sometimes difficult to grasp its importance because it is the first of a series of package-deal changes to the Treaties that not only added new areas of competence, but also simultaneously made various institutional changes and policy amendments.

The SEA proposals that put the primary focus on market liberalization were enthusiastically welcomed by the member states, but were linked to the institutional changes, and it is probably fair to say that the far-reaching political consequences of these were seriously downplayed by the EC Commission. Even its title underplays the significance of the matter: an 'Act' suggests somewhat less than a new Treaty; it suggests secondary legislation rather than primary treaty material. So, in 1985, the draft SEA was put to and debated at the IGC. It was agreed by the ten member states in December 1985 and came into force in July 1987, after signature and ratification by all twelve states.



Portugal and Spain had joined the Communities in January 1986, during this ratification process.

### 1.5.6.1 Achievements and evaluation of the SEA

Whilst the SEA had its critics and was condemned by some parties, its success lay not in what it actually changed, although there was considerable progress with the internal market; its true success lay in its longer-term influence in reinvigorating integration.

The SEA amended the EEC Treaty in several important respects, and whilst they were not massive changes in themselves, they proved to be a catalyst to further European integration. Apart from the proposals to complete the internal market, perhaps most important was the change of the legislative process affecting ten Treaty Articles and generally the extension of the Community's competence and concern in new policy areas. The SEA also introduced provisions that made it possible to make changes to the judicial structure in the future by supplementing the Court of Justice with a Court of First Instance (CFI), which was regarded as being vital to cope with the significant increases in the number of cases reaching the Court and the increased delay being caused as a result. The SEA also made formal the existence of the European Council of Heads of State and Government, which was originally established as EPC. The SEA reintroduced and extended qualified majority voting (QMV) in the Council, introduced the cooperation procedure in law-making, which provided the European Parliament with more than just a consultative role for the first time, and increased Commission powers.

#### cross reference

See details on the Court of Justice including the CFI (now the General Court) in Chapter 2.

#### cross reference

All of these matters are further considered in Chapters 2 and 3.

It is certainly the case that the SEA did not represent a radical shift to supranational or federal integration. In contrast to the original Treaties, the member states were the ones constructing its agenda and not the federalist visionaries of the immediate post-war period. Also, in view of the preceding fifteen to twenty years, which had seen a complete standstill on any such progress, it is not surprising that the changes introduced by the SEA can be regarded as modest and even disappointing. But to view the limited, mainly intergovernmental, changes brought by the SEA as a backward step on the integration road misses the point somewhat. The Preamble to the SEA states that it is 'a step towards European Union' and it therefore represented forward movement at a time of massive political conservatism in Europe; perhaps as important was the fact that, for the first time, the original primary Treaties had been substantively amended. Although this has happened on a number of occasions since then and thus has the appearance of being something easily done, at the time it was, without any doubt, a significant development. The original legal and constitutional base was shown not to be cast in stone and thus set for all time to come; it could be altered – and not just once, but as many times as deemed necessary. For most, if not all, of the states, especially the UK, signing up to and joining the Communities in the first place was a massive and historic commitment. Changing that original deal was not something to be taken lightly and could even be regarded as being as important as the Constitutional Treaty, which failed to gain universal member state approval and was ultimately abandoned. The very substance of the original Treaties was being altered and, in order to amend a treaty, another treaty is needed, so despite its name the SEA is a true amending treaty agreed by the member states. Also, after a twenty-year delay, it did introduce real majority voting in the Council of Ministers, albeit within limited fields for clear and obvious benefits, but it allowed the member states to become comfortable with QMV and thus it prepared the ground for the future use of majority voting in other areas.

#### cross reference

These aspects were considered earlier in sections 1.4.1.5 and 1.4.1.6.

The success of the SEA and benefit to the Communities was also observed externally at that time as other European states on the outside of the Communities were able to witness the increase in investment from outside Europe into the EC and indeed away from their own countries. They also wished to join in this success and, initially, plans were made to accommodate them in association agreements with the European Communities and, in an extended form of these, with the EEA. It led much more quickly than originally envisaged to the further widening of the Communities.

## 1.5.7 Beyond the SEA

It was realized very soon after the signing of the SEA that it was only part of the answer and it was advocated, largely by the Commission, that further institutional changes were required. As a result, even before the deadline of 1992 had passed, plans were being put forward by the Commission President Delors for further Treaty reform, especially on economic and monetary union and social policy. A further IGC was planned and was set up to debate the adoption of common monetary and fiscal policies, which, according to the plan, were deemed necessary to cement in the gains achieved by the largely successful completion of the single market. This further proposal for integration and, again, for the IGC to debate it were both opposed by the UK. However, external political events were moving rapidly in the world. Margaret Thatcher was deposed by her own party as Conservative leader and thus UK Prime Minister. The 'Iron Curtain' was also being dismantled, changing the political situation in Europe radically and leading very quickly to German reunification. The planned IGC for 1991 to discuss and provide for greater economic integration was supplemented by a parallel second IGC to consider political reform and to produce proposals for a new constitutional basis for the Communities. It was also considered necessary that political decision-making should also be integrated further in order to lock in any decisions reached on monetary union; otherwise, it was feared that any



For more details on this section scan here or visit the Online Resource Centre.

**cross reference**

Refer to section 1.3.1.1 for explanation and further details.

gains or decisions reached for monetary and economic union would be lost if the political decisions supporting them could still be taken independently by each member state. This in turn would lead to a drifting apart of the economic conditions in the member states and is a clear example of functionalist integration in action, in that integration in one area demands or inevitably leads to integration in another area in order to maintain the initial integration.

The parallel IGCs commenced work in December 1990, but, like the EEA negotiations, they were subject to delays as a result of the economic problems in Europe, inflation in Germany due to the cost of unification, and the considerable political social and economic change taking place across Europe.



In 1990, Germany was reunified and the area comprising East Germany joined the Communities.

### 1.5.8 The Maastricht Treaty on European Union (TEU)

The two IGCs of the early 1990s can be regarded effectively as one, particularly because they resulted in proposals for a single amending Treaty. However, the Treaty that was drafted and eventually accepted by the member states considerably complicated the constitutional base of the Communities and Union, not only because it amended the existing Treaties and most notably the EEC Treaty, but also because it added another Treaty to complement and supplement the existing treaties and to remain in force alongside the existing Treaties. It also proved to be a huge compromise, with its opt-outs in some matters for some of the member states, such as the social policy opt-out for the UK.

Chief amongst the main changes introduced by the Treaty were the timetable and convergence criteria to move to a single economy and monetary union, complete with a single currency. It provided more political cooperation, especially in the areas of foreign policy, security, home affairs and justice. The EEC Treaty name was changed to 'European Community (EC)' to represent the changes that had taken place and the huge expansion in the range of topics and policies covered by the Treaty. A new overall term, the 'European Union (EU)', was introduced to describe the extension by the member states into additional policies and areas of cooperation. The Union consists of three pillars comprising the existing Communities (the three original Treaties), a CFSP and Cooperation in the fields of Justice and Home Affairs (CJHA).

**cross reference**

See the generous interpretation of this by the ECJ in Chapter 13, section 13.3.3, on citizenship.

A large part of the problem facing European governments trying to sell this Treaty at home was that the European public had not been taken on board during the period of negotiation. Whilst European citizenship was introduced to the EC Treaty (Articles 17 and 18 EC, now 20–21 TFEU), it was really given only teeth later by the Court of Justice and the European public had largely been left out of the reform process. There were further improvements for the European Parliament in the law-making process, but the TEU also represented a backward step as far as progress towards deeper integration was concerned. The other two pillars, as first established, were intergovernmental in nature, with decisions having to be taken unanimously by the member states. Very little had been done to increase the democratic credentials of the Communities; the powers of the Council were left largely untouched and indeed were strengthened in respect of the two new pillars.



The TEU also led to new jargon, which was the result of the new complex shape of the Union, the difficulties in getting the Treaty ratified in all member states and reflected the frustrations of some member states not being happy about the more reluctant states.

Hence the terms 'European Architecture' to describe the new three-pillar structure, and 'variable geometry' to describe the way in which combinations of member states might integrate deeper and that certain states could opt out of certain policies. This is also described in the term 'multi-speed Europe'. For example, the UK was able to opt out of the social policy Chapter and economic and monetary union.

**cross reference**

It is discussed in further detail under the division of 'competences' in Chapter 3, section 3.4.2.

The Treaty did contain an expression of commitment to the rule of law and democracy, but failed to provide for any significant democratic accountability of the EU and the rule of law itself. The European Parliament had no effective voice in the intergovernmental pillars. There was also an attempt to define the relationship between the Union and the member states by the introduction of the term 'subsidiarity', which was written in the new Treaty (Article B) and which was further defined in Article 5 EC (now 5 TEU). However, its true import was vague. It was supposed to delineate the respective powers of the Union and the member states, but instead has merely confused them, and as such is regarded as somewhat reflective of the ambivalence of the member states at the time.

**cross reference**

These and democratic deficit are considered in detail in Chapter 2, section 2.4.3.1 and Chapter 3, section 3.5.

The TEU was also supposed to redress the serious concerns about the democratic deficit: that the European Parliament is the only directly elected institution, but has less law-making power than the Council. The TEU increased the power of the EU by the introduction of the co-decision procedure to a limited number of Treaty Articles. Whilst this was an important symbolic step, in reality this amounted to no more than a parliamentary veto and did little to establish real democratic decision-making in the Communities. Furthermore, this had the effect of increasing, once again, the range and complexity of law-making procedures in the Community.

**cross reference**

See, however, the comments on the Amsterdam and Nice Treaty IGC Summits and the 2007 Brussels Treaty Summit in sections 1.5.9, 1.5.10 and 1.5.13.

The TEU was agreed by the member states in February 1992 and was due to come into force on 1 January 1993. However, the process was thrown into confusion on being rejected by a slim Danish majority in a referendum. As a result, further compromises had to be found in order to appease the Danish electorate. The Edinburgh Summit in December 1992 agreed to allow Denmark various Protocols and Declarations to opt out of participation in stage III of economic and monetary union, the single currency and the defence arrangements of Maastricht, whilst not actually changing the Treaty itself. The Treaty finally came into force in November 1993. However, experience of creating this Treaty was clearly an unhappy one and the European leaders promised that it would be better handled next time.

**cross reference**

Noted earlier at section 1.4.1.11.

There was not much time to learn the lessons from Maastricht: the next time was just around the corner. Already in 1992, mindful of the political changes in Europe, further expansion had already been contemplated by the existing member states and the Copenhagen Summit laid down criteria that would have to be met by aspiring member states.

Whilst politically the TEU was supposed to be an attempt to tidy up the constitutional base of the Communities, the end result was far from this. It is criticized for its complex three-pillar construction, which involved a mix of intergovernmental and supranational elements of governance. The TEU also started a trend that was continued thereafter by the attachment to the Treaties of numerous Protocols and Declarations, which help in many cases to define further some provisions of the Treaties themselves and outline the reservations and opt-outs of some member states. Justifiably, this too has been criticized for making the Union and its legal powers too opaque and too splintered. Furthermore, the Union established was only an 'ever closer one' and not the federal union originally mooted, suggesting far greater integration than the reality agreed by the member states; hence the end product was more intergovernmental cooperation.



In 1995, a further expansion took place, with Austria, Finland and Sweden joining the Union.

### 1.5.9 The Amsterdam Intergovernmental Conference and Treaty

As a part of the agreement for the TEU and specified in the EU Treaty, a timetable was planned for the further revision of the Treaties by providing that another IGC be constituted in 1996 with a view to signing another amending Treaty in Amsterdam in 1997. It was given the objectives of proposing changes to reform the institutional structure in preparation for enlargement, to revise social policy and to review the intergovernmental pillars, in particular the CFSP, especially in respect of the rights of the free movement of persons. However, due to the delays in ratifying the Maastricht Treaty, the agenda was increasingly hijacked by new items, foremost being the preparations that would be required for the eastern expansion of the Union. The political landscape for the Union had changed greatly in a very short time. One of the few things upon which sufficient member states were agreed was the opening up of entry negotiations with the new democracies of eastern Europe. Hence the focus of attention soon shifted to further institutional reform for the next, and probably much larger, expansion of the Union. The focus thus became narrowly concentrated on the size of the Commission, the European Parliament, QMV and the rotation of the presidency of the Council of Ministers.

The negotiations were highly problematic. Each member state, it seemed, had its own agenda and was prepared to push it to the limit. The UK government was even seeking to reopen previous Treaties, to curb the powers of the Court of Justice and to reverse some of the decisions not favoured by the UK government. Hence, in this climate, the IGC dragged on into April 1997, when, in the UK, the Labour Party won the May 1997 general election and formed a new government with fewer objections. As a result, final negotiations were soon wrapped up and the Treaty was concluded in Amsterdam in June 1997. It was signed by all member states at a late-night summit in October 1997 and, following a slow, but less troublesome, ratification by all member states, it entered into force on 1 May 1999.

Whilst not as dramatic as those brought about by the TEU, a number of changes were introduced in the Treaty of Amsterdam. Unfortunately, some of these have considerably complicated the structure of the Union and the Treaties.



Following the 1997 landslide Labour victory in the UK, the Protocol and Agreement on Social Policy, previously lying outside of the Treaty structure, was accepted by all fifteen member states and therefore a revised and extended Chapter on social policy could be contained within the EC Treaty in the then Articles 136–45. A new section on employment was introduced, which provided as one of the first examples of a more open method of coordination, that the member states can develop cooperative ventures to combat unemployment. Whilst it retained broadly the division between the supranational EC pillar and the intergovernmental nature of the other two, part of the Justice and Home Affairs (JHA) pillar, concerned with the free movement of persons, was moved within the EC Pillar, with opt-outs for the UK, Ireland and Denmark. It was also agreed that the EU would incorporate the Schengen Agreement on the elimination of all border controls for twelve states, in a new Title IV in the EC Treaty, but not for the UK, Ireland and Denmark, which secured more opt-outs in this area. The Court of Justice and the European Parliament were also given a greater role in the JHA pillar, now renamed the Provision on Police and Judicial Cooperation in Criminal Matters.

The institutional reforms were far more modest. The proposals to extend QMV in Council were severely restricted notably by Germany, amongst others. However, the variety of legislative procedures, which were getting vastly out of hand, were slightly reduced and the European Parliament's powers were modestly increased by the moderately extended use of the

#### cross reference

Considered in section 1.5.13 and in Chapter 2.

#### cross reference

See sections 1.5.14 and 1.6.5.

co-decision procedure. The number of Commissioners was capped at twenty, but subsequently amended upwards in line with the number of member states as subsequent IGCs and enlargement reopened this issue along with other institutional matters.

The various changes were consolidated within both the EC and EU Treaties, and unhelpfully these were renumbered as a result, something that has done little to promote the clarity of Union law. Regrettably, the Treaty of Amsterdam added even more Protocols, thus making even more obscure an overall picture of EU and EC law.

The Treaty of Amsterdam, according to some, did very little; others regard it as a necessary consolidation of European political union, although the tangible benefits and progress are hard to discern. Additionally, the Treaty of Amsterdam seemed to throw a spanner in the works of further integration, by the replacement of further supranational integration, with the possibility of allowing some member states to cooperate further, without all member states having to do so. It introduced into the EC Treaty Article 11, and into the TEU a section (Articles 43 *et seq*, now 20 TEU) on 'closer cooperation', which allows any number of member states that so wish to integrate in other areas. This seemed to make the fragmentation of the Communities even more possible and allow for the possibility that the body of Community law known as the *acquis communautaire*, which applies in all member states in the same way, could be undermined as different combinations of member states go their own way with particular policies. Thus far, this has not been taken advantage of, although a revised form of enhanced cooperation was introduced by the Lisbon Treaty (Articles 20 TEU and 326–334 TFEU) and not all member states might participate in the Euro Stability Treaty. (Notably, the UK expects not to take part.)

The Treaty of Amsterdam, as finally agreed, proved to be far from the solution needed for preparing for enlargement, consolidating the political union and establishing a firm basis for European governance. It did little to restore public faith and confidence in the Union. As a result of the fact that Amsterdam failed to resolve the institutional reforms considered essential for the next large enlargement of the EU, there was so much left over that had to be addressed before enlargement could take place that yet another IGC was deemed necessary and was called.

### 1.5.10 The Nice Intergovernmental Conference and Treaty

The Nice IGC was convened in February 2000 with the more tightly drawn objectives of institutional change ahead of enlargement, to deal with the so-called 'Amsterdam Leftovers'. Whilst the preparatory negotiations were relatively short-lived, the summit in December 2000 proved to be exceedingly difficult. The member states wrangled mainly over the extension of QMV and voting weights in Council, and the conclusions reached were neither conclusive nor satisfactory, despite the various statements of success following the summit. The size of the Commission was also a contentious issue. The QMV discussions were, however, seized on by the member states to defend national positions as rigidly as possible. QMV was extended to twenty-seven more Treaty Articles, but not in as many areas as proposed by the Commission because of the vetoes insisted on by countries, which cumulatively significantly reduced the extension. The discussions were also drawn out because of the arguments over the combinations of country votes to get a qualified majority or a blocking minority, and even qualifications on a majority, were devised defining a minimum number of states and/or a percentage (62 per cent) of population of the EU required. In particular, the three big member states, France, Germany and the UK, were fighting to keep their level of influence against the wishes of many of the smaller states, and whilst agreement was reached at Nice on the voting formula, it was very much an imperfect one and this was soon shown to be the case. The co-decision procedure was extended again for the European Parliament, so that the cooperation procedure became even less important, applicable in only six Articles largely to do with monetary union.



See the Protocol on the Enlargement of the European Union originally attached to the Treaty of Nice. See also ex Articles 100, 103, 106, 192 and 300 EC, the latter as an alternative.

The ultimate maximum size of the Commission was also postponed again, and the temporary agreements reached were put into a Protocol on the Enlargement of the EU, which detracted further from the transparency of the rules governing the Union. The Treaty of Nice was signed by the member states in February 2001, but did not enter into force until 1 February 2003 because of its rejection by a single member state once again, this time Ireland in June 2001. When the Irish government was returned to power with an increased majority, a second referendum was organized, which resulted in a positive endorsement of the Treaty by the Irish electorate (about 63 per cent in favour).

The Nice Treaty was also a Treaty that did not bring about any further radical change to the Union.



One policy that was tightened was the 'closer cooperation' provision introduced by the Treaty of Amsterdam, which was rather open-ended and which enables certain states to proceed to further integration outside of the Treaty (ex Article 11 EC – now 20 TEU and 326–334 TFEU).

Other changes agreed at Nice included amendments to the organization and operation of the European courts whereby more cases can be heard in chambers of judges. It was agreed that a Charter of Fundamental Human Rights should be included within the Union, although the member states did not or could not agree whether it should formally be a part of a treaty or of the Union and it was not legally binding on the member states.

The Nice Treaty also introduced a provision designed to do something about the situation in which there was a clear risk of a serious breach by a member state of one of the respected principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law contained in Article 6 TEU. Article 7 TEU provided that a risk of breach can be determined and recommendations to deal with the situation can be agreed by a four-fifths' majority decision of the member states in Council, including suspension of voting rights of the member state where a persistent breach has been determined. Both of these Articles were carried forward with the same numbers into the amended TEU in 2009.

The Nice Summit also saw the agreement of the member states to move on to the next stage of integration, but it was to be done in a different way, the details of which were to be decided at a later summit of the member states.

### 1.5.11 The 2001 Laeken Summit

The Laeken Summit in December 2001 was the start of an ultimately unsuccessful attempt to put the EU on a new constitutional footing by Treaty replacement. It formally set up and prepared the agenda for a 'Convention on the Future of Europe', which was headed by a praesidium of twelve members, led by Valéry Giscard d'Estaing, a former French President. It further consisted of representatives of the heads of state and government of the fifteen member states and the thirteen candidate countries, thirty representatives of the national parliaments and twenty-six from the candidate countries, sixteen members of the European Parliament and two members from the Commission.

#### **cross reference**

*This is considered further in Chapter 3, section 3.2, on the division of competences.*

#### **cross reference**

*Council voting and in particular QMV are considered in detail in Chapter 2, section 2.2.4.*

#### **cross reference**

*Further explanation of this complication will be provided in Chapter 2, section 2.2.4.4.*



The EU had also grown to twenty-seven members with the entry of Bulgaria and Romania at the beginning of 2007.

There was a contingency plan in a Declaration (No. 30) attached to the CT, which provided that in the event that one or more countries, up to 20 per cent of the countries, did not ratify the CT, then all member states could meet in the European Council to decide how to go forward and adopt a political solution. Ratification did not go far enough for this Declaration to be invoked before the CT was abandoned.

After being put on ice for two years, the CT was considered at further summit in June 2007, to see if it could be rescued or replaced. The German presidency had the task of either making the CT more palatable or coming up with something in its place that nevertheless addressed the institutional challenges of enlargement. Following another late night of summit discussions, however, it was agreed to abandon the CT entirely and to replace it,

It laid out in a declaration the goals for making the EU more democratic, transparent and efficient. In particular, attention would be paid to the governance of the Union, institutional preparations for the forthcoming expansion, the division of competences, and democratic participation in the decision-making processes of the Union.

There was to be a better definition and understanding of subsidiarity, to determine the status of the Charter of Fundamental Rights, and to simplify the Treaties and numerous Protocols and Declarations (thus finally admitting the complexity of the Treaties as they had accumulated and indeed been added to by the agreements at Nice). Other issues to be addressed included how national parliaments feed their legitimacy into the Union and finally the Convention was charged with establishing a 'Constitutional' Treaty for the EU.

The Convention worked until June 2003, when it wrote up its report and a draft Constitutional Treaty (CT) was finalized and presented to the European Council in Greece on 18 July 2003. This was subsequently considered by the IGC that commenced in October 2003 and the draft CT was presented to the Heads of State and Government Summit in Rome in December 2003.

### 1.5.12 The Constitutional Treaty for Europe

The main features of the Constitutional Treaty were a new President of the European Council and a Foreign Minister, a smaller Commission, the formal inclusion of the Charter of Human Rights, new simplified legislative tools and more involvement for national Parliaments in law-making. Whilst agreeing on almost everything, the member states failed to agree about the QMV numbers in the Council, with a side argument on the number of Commissioners, and the Rome Summit broke down without agreement on these points.

Subsequently, ten new member states joined on 1 May 2004, on the basis of the Nice Treaty and this event, combined with the low turnout in the European Parliament elections in early June 2004, refocused the attention of the member states on reaching a compromise on the voting figures. Thus, after some delay, the Constitutional Treaty was signed in October 2004 by all member states and handed over to each of the member states to ratify it by parliamentary approval or referendum or both, according to the constitutional or legal requirements of each state. However, in 2005, during the ratification process, the CT was rejected by the electorates of France and the Netherlands, which resulted in throwing the ratification process into confusion. The member states agreed that there should be a period of reflection, although some states continued the ratification process, taking the total that had ratified to two-thirds.



Even though the CT was abandoned, it is worthwhile listing the agreements reached, because most of these matters agreed found expression in the Lisbon Treaty, although slightly altered or in a more complex form. These agreements covered:

- changes to the institutional architecture of the Union and its powers, decision-making procedures and institutions;
- the transfer of power to the EU on fifteen new policy domains;
- the transfer of forty Article bases, ranging from unanimity to qualified majority;
- making the Charter on Fundamental Rights legally binding;
- providing the EU with the status of a legal person to negotiate international agreements for all member countries;
- the establishment of a longer-serving and independent President for the European Council;
- a smaller Commission comprising two-thirds of the number of member states;
- the creation of a common EU Foreign Minister to lead a joint foreign ministry with ambassadors;
- QMV for the election of all high-positioned officials;
- the commencing of a project of a common EU defence;
- an express statement that Union law shall have primacy over the national law;
- procedures for adopting and reviewing the Constitution, some without the need for another IGC; and
- an exit clause for member states.

However, the most controversial change may have been entitling the document a 'Constitution', which was probably a mistake because it was arguably just another Treaty.

### 1.5.13 The 2007 Brussels Summit and the Lisbon Treaty

The member states returned to considering the next move in Brussels in June 2007. It meant that everything was potentially up for renegotiation and some member states in particular wanted to change or amend the things that had previously been agreed at Nice and for the CT. Poland in particular wanted to change the voting arrangements in Council. The German presidency wanted to restrict discussion to more structural aspects of the Union, how to ensure that member states' powers were retained and to remove any symbolism in the Treaty that suggested statehood, such as the flag and anthem. The CT was then officially abandoned and an agreement was reached for a new amending treaty, originally called the 'Reform Treaty', to be signed in Lisbon, which would not replace the existing Treaties, but would amend them. A new IGC was convened in July 2007 to hammer out the details, but many of the features agreed for the CT were incorporated into the 2007 Reform Treaty.



The main changes can be summarized as follows.

- (1) The Union was to get its legal personality, the EC Treaty to be renamed as the 'Treaty on the Functioning of the Union' (elegant, eh?) and the term 'Community' to be replaced throughout by 'Union'.
- (2) The proposed Union Minister for Foreign Affairs was to be called the 'High Representative of the Union for Foreign Affairs and Security Policy'.



For more details on this section scan here or visit the Online Resource Centre.

- (3) The European Council was to be established as a full institution as envisaged by the CT and a European President was to be established.
- (4) The names and types of secondary law 'Regulations, Directives and Decisions' were to be kept, but given new definitions.
- (5) The Charter on Fundamental Rights was to become legally binding, but with an opt-out for its internal application in the UK and Poland.

The TEU was to be turned more into an overview Treaty with the EC Treaty being converted into a Treaty dealing with substantive issues; both, however, were to concern the institutions.



Hence, far from consolidating the Treaty, Protocols and Declaration, the European leaders have made the constitutional architecture of the Union even more complicated and fragmented. The Treaty was signed in Lisbon on 13 December 2007 by all twenty-seven member states and subjected to the required ratification process by all twenty-seven member states.

The ratification process of this Treaty was also interrupted by the rejection of the electorate of one state, because in June 2008 the Irish voters for the second time voted against an amending Treaty – this time the Lisbon Treaty. Following a period of consideration and negotiation, in exchange for the agreement by Ireland to hold a second referendum, EU leaders agreed to provide legal guarantees respecting Ireland's taxation policies, its military neutrality and ethical issues. More controversially, they also agreed that each state should maintain one Commissioner each, contrary to the Treaty itself, thus keeping one per member state. Constitutional challenges in other states such as Germany, the Czech Republic and Poland were resolved, and the deliberate delay by the Czech and Polish presidents in completing the constitutional ratification process was overcome. The Treaty was finally ratified by all twenty-seven states in November 2009 and entered into force on 1 December 2009.

The Union quickly appointed its full-time European Council President and its High Representative of the Union for Foreign Affairs and Security Policy (the Foreign Minister, but referred to as the 'High Representative') in time for the Lisbon Treaty coming into force. It amended the EC and EU Treaties significantly.

### 1.5.14 An overview of developments to date and the future

Now that the institutional changes needed for the expansion of the Union in 2004 have finally been achieved and the governance of the Union has been put on a new footing by the new Treaty set-up, albeit far less cleanly than originally planned, the Union may be allowed simply to get on with regulating the activities as agreed by its member states. The prior concerns of the Union, which were the further widening and deepening of the Union, are no longer top of the agenda, having been replaced by the continuing economic and financial crisis in the world, and in the eurozone in particular. Whilst five states are currently candidate states, only Iceland has the prospect of entry in a short time frame. Croatia will join on 1 July 2013 if all twenty-seven member states and Croatia ratify the Accession Treaty. The other four candidate states not including Iceland and the prospective candidate states are unlikely to be accepted for many years. The further widening of the Union has already been considered in detail in this chapter,

#### cross reference

*The meaning of these posts and full institutional changes will be addressed in Chapter 2 and other changes brought about by the Lisbon Treaty will be considered wherever appropriate.*

but does represent a serious challenge for the cohesion of the Union, particularly in respect to the attitudes already voiced about possible Turkish and even wider membership. Further deepening, in the form of taking integration even further forward, is also very unlikely in view of the difficulties experienced in bringing the Lisbon Treaty in force. However, as a response to the prolonged economic and financial difficulties among eurozone member states during 2008–12 (Greece in particular), further integration may put in place economic stabilization and a fiscal union. The UK Prime Minister, David Cameron, has declared that the UK will not participate, however, thus forcing the eurozone countries (the Eurogroup of seventeen) and the other nine non-eurozone countries to conclude their own international treaty to put in place the necessary laws, leaving the UK once again isolated in the EU.

## 1.6

## The relationship of the UK with the European Union



For more details on this section scan here or visit the Online Resource Centre.

This next section may or may not receive attention in all EU law courses. It concerns the rocky relationship between the UK and the European Communities and Union.

### 1.6.1 The early relationship (to the 1970s)

As noted in section 1.1.5, in the late 1940s and early 1950s, the UK was also initially keen to see a united Europe, but without its direct participation. It had at the time a historical legacy that involved quite different economic and social ties, including the Empire and Commonwealth and the Atlantic alliance, both of which featured strongly in the then recently won Second World War. These ties of security and common language are often overlooked, but played no small part in the attitude of Britain to European integration in the immediate post-war years. Britain also regarded its status as being one of remaining a world power, the sovereignty and independence of which might be compromised by membership of such an organization. As well as having the offer to participate in the ECSC negotiations, Britain was also invited to participate in the EEC and EURATOM negotiations. However, she played no significant or indeed useful part and withdrew after minimal participation. Instead, with Austria, Switzerland and other nations, the UK embarked in 1958 on what may have seemed a potentially destructive path of establishing the apparent competitor organization, the European Free Trade Association (EFTA), which involved no supranational or political aims and was intended merely to set up a free-trade area for goods. It was not long, however, before UK governments had a change of heart and policy, which could be regarded as a tacit admission of the error of not becoming involved or joining in the first place.

### 1.6.2 Two applications rejected

Within months of the entry into force of the EEC Treaty and the establishment of EFTA, the Macmillan Conservative government led the UK application for associate membership and very shortly after that, on 9 August 1961, the UK application for full membership. The reasons for previously not wishing to join had been undermined. Amongst the changes were the demise of the UK's previous world power status, the fact that direct links with most of the world had

been weakened by the economic demise of the UK, the Suez climb-down and the continuing conversion of the Empire into a Commonwealth of independent states. Trade patterns were also shifting towards Europe and the Atlantic alliance was less prominent – pointedly so after the disagreement over how to handle the Suez crisis. More than anything, Britain had observed the much faster economic progress made by the six and this provoked its desire for membership. Whether Britain was ever interested in the entire Community package is not clear. Britain had now, however, to bargain from the outside and its applications both for associate and full membership were steadfastly rejected by Charles de Gaulle, the French President. The 1967 application by the Wilson Labour government was similarly vetoed. De Gaulle's opposition to the potentially distorting influence of the UK in the Community was clearly expressed at the time.

### 1.6.3 Third application accepted

In 1970, following the resignation as president and withdrawal from politics of de Gaulle in France, the entry application by the Conservative Prime Minister Edward Heath was successful. Thus the UK joined in 1973, as did Ireland and Denmark, mainly because of their trade dependency with the UK. However, soon afterwards, the UK sought to renegotiate entry terms and held a referendum on membership.

### 1.6.4 The timing of the entry

The timing of the 1973 entry was, in fact, unfortunate. Instead of the UK being able to participate equally in the post-war boom and recovery, the world economy and that of Europe had received a severe setback and Britain, along with the rest of the western world, became the hostage of massive oil price increases. Instead of a period of economic prosperity, the 1970s witnessed high inflation and economic stagnation (sometimes termed 'stagflation'). To aggravate matters still further, the high and arguably inequitable level of the British budget contribution became the focus of attention. It did not take long before disquiet over the terms of entry arose. It seems that Britain paid too high a price to join the club, and that the budget wrangles that both then and in the future were to polarize opinion both in Europe and the UK were inevitable.



The pattern of trade in the UK, which initially favoured imports from Commonwealth non-EEC countries, coupled with having to pay the higher food prices regulated under the EEC CAP, meant that British contributions were extremely high and simply added to the then severe UK domestic economic problems.

To recap for a moment, in the context of the UK entry, the Community was spawned in the aftermath of the Second World War. For membership, the original states exchanged some sovereignty and monetary contribution for security, the stability of democratic nationhood and economic progress. It was argued that Britain did not need the first two, and the third proved illusory in the 1970s and 1980s. Hence when, in 1974, a new government was elected in the UK, a renegotiation of the terms of entry was begun. This culminated in the clear-cut (over 67 per cent in favour) approval of the British public in the then unprecedented 1975 referendum, which not only *post facto* approved membership, but also the renegotiated terms and specifically the revised budget contributions. However, it was only a partial

cure for the level of contributions and this dispute was later reopened by UK Prime Minister Margaret Thatcher. Its effect was, however, to cast the UK firmly in the role of the reluctant partner and troublemaker in Europe. Viewed politically, the UK had decided to cast its lot with the EC, aware that some loss of sovereignty was involved and that a potentially high monetary contribution was required. One side of the bargain was not, as with other member states, the security of nationhood or the stamp of approval and stability of the democratic political system that membership gave. The fact that the UK had won the war and had centuries of stability meant that these were so well secured in the UK that the European Communities could never seriously be considered for these advantages, nor to keep the peace, which Britain had secured for itself by victory in the last war, albeit with considerable help. The other side of the bargain was to share in the spoils of European economic progress. Given the changing circumstances, this proved to be a dubious economic gain. No wonder that there was a feeling by some, which still remains, that membership had sold Britain short.

### 1.6.5 1980 to date

In the 1980s, the first part of the decade was occupied with further wrangles over the British budget contribution and the Communities' reluctance to reform, which hindered progress on other matters in the Community and did not engender relaxed relations with Britain's partners in the Community. It was surprising that then Conservative Prime Minister Mrs Thatcher signed the SEA, which saw the first major reform of the original Treaties. The steps contained within it for further integration and some democratization of the Communities were a significant further degree of integration. Indeed, it was regarded later as an error by Mrs Thatcher, who was most probably lured into agreeing to the SEA by the promise of the liberalized trade advantages of the single market.

The budget contributions were settled again in 1984, only to be questioned again in the 1990s and almost annually since. During the negotiations for the second major reform of the Communities, following which the TEU in Maastricht was painfully agreed, Britain demonstrated once again just how out of line it was with its other partners. Part of the agreement reached was that the UK should opt out of the social policy Chapter to which all other member states agreed. The TEU also provided a process and a timetable for moving towards economic and monetary union. The UK negotiated another opt-out in respect of the decision whether to join the final stage, in which a single currency would be established. Exacerbating the poor relationship with the other European partners was the fact that John Major's Conservative government (1992–97) was so clearly and publicly split on the issue of Europe that almost any decision needed was close to impossible to achieve. Hence the idea that any progress could be made by all of the then twelve member states of the Communities was unrealistic.

The change of government in the UK on 1 May 1997 saw an immediate change in the relationship with Europe. In 1997, whilst the delayed negotiations for the TEU were still ongoing, the new Labour government announced its intention to sign up to the social Chapter, carried through soon afterwards, and generally to take a more positive participatory role in Europe. The UK opposition to monetary union seemed to have been removed, at least in principle, although thirteen years on the uncertainty as to when the UK will actually join continues, and in the world and European economic situation now, entry in the short-to-medium-term future appears even less likely. Following the 2010 election and the establishment of a Conservative–Liberal Democrat coalition with different values and support for the EU, a part of the compromise agreement on the EU was an agreement that the UK should not join the euro for at least the term of the present Parliament.

The negotiations for the Amsterdam and Nice Treaties, the Convention and IGC for the Constitution for Europe, the expansion to twenty-five states in 2004 then to twenty-seven in 2007, and the changing political relationships between the leading EU states (notably France, Germany and the UK) have led to a far more complex Union now than previously. Inevitably, in an EU that now has a membership of twenty-seven states, each individual state will have less prominence. France, Germany and the UK remain, however, the largest and most economically powerful three states in the Union, each of them still playing a leading role in EU affairs, both positive and negative. The UK's attitude remains somewhat ambivalent, professing on the one hand to be at the heart of Europe and on the other showing a reluctance to commit as fully as other member states, notably in relation to the euro. Again, in 2007, in the negotiations for the Lisbon Reform Treaty, further opt-outs were secured by the UK Labour government, in particular from the Charter of Fundamental Rights, which, under Protocol 30 attached to the Lisbon Treaty, confirm that the Charter will not apply internally in the UK. This seems on the face of it to contradict the previous step of signing up to the social Chapter in 1997.



Poland too is subject to Protocol 30.

#### **cross reference**

*This will be considered further in Chapter 5 on supremacy.*

So there is no enthusiasm to make any progress in joining the euro and in efforts to preserve the UK veto in a number of areas, and it seems that the UK is no less a reluctant partner in 2010 than it has been for a number of decades previously, despite having the most pro-European of the major UK parties in the coalition government. In particular, two developments serve to highlight and confirm this renewed lack of enthusiasm for the EU. The first is the enactment of the European Union Act 2011, which introduces measures to ensure that any future transfer of competences or Treaty amendments must be subject to a ministerial statement in the House of Commons as to the impact and whether it requires a further transfer of competences or powers. If that is the case, then either an Act of Parliament would be required to allow the transfer, or if the Treaty proposals were substantial and not, for example, only approving the accession of a new member states, then a referendum would first be required, in which, of course, a majority would have to approve the changes for them to be ratified.

The second development was the stance taken by David Cameron, the UK coalition government Prime Minister, in Brussels December 2011 by refusing to participate in the economic and fiscal Treaty proposals, wielding in effect the UK veto. The long-term political consequences have yet to be felt, but it is clear that the UK is in a far less influential position in the EU than it has been for a long time.

## 1.7

## The EU and the world: external relations

The EU has diverse roles to play in the world order. Not surprisingly, given the more limited original political scope of the Communities, trade relations with the rest of the world feature most prominently, but not exclusively. However, because these roles and obligations in the areas of external relations have been spread over the various treaties, an overview has been difficult to obtain. Also, the competences to undertake external relations had been granted in different terms under the three original Treaties: for example, the ECSC Treaty expressly granted the legal capacity to make external agreements generally in pursuit of the objectives of the Treaty and the EURATOM (EAEC) Treaty also allowed for general agreements to be concluded, whereas

**cross reference**

These changes will be considered further in Chapter 2.

**cross reference**

The types of international agreements are also considered as a source of law in Chapter 4.

the EC Treaty (Article 281) provided that whilst the European Community had been given legal personality, it was provided with powers to conclude specific types of agreement only, such as commercial agreements under the common customs tariff (Articles 131–133 EC, now 205–207 TFEU) or the association agreements. Article 300 EC (now 218 TFEU) provided an express power to conclude international agreements in areas already clearly within the competences of the EU such as the common customs tariff, agriculture and fisheries. However, the Council of Ministers must first give the Commission the go-ahead and the European Parliament must finally assent to the agreement. As a result, there is a confusing array of trade agreements, association agreements and development aid agreements with third countries that have been negotiated by the Commission under a mandate from the Council, but finally concluded by the Council on the basis of a qualified majority. With the entry into force of the Lisbon Treaty, the Union competences in its various relations with the rest of the world have been set out more clearly. There are introduced in Articles 3 and 8 TEU, and provided in greater detail under Articles 21–46 TEU and in a new Part Five of the TFEU, 'External Action by the EU', Articles 205–222, although the policies themselves will not change. They will, however, now be coordinated by the new High Representative of the Union for Foreign Affairs and Security Policy who is appointed by the European Council, but is a Vice President of the Commission, and who will also chair the Foreign Affairs Council.



An extensive chapter on CFSP is now to be found in Articles 23–46 TEU, which also spell out in more detail the roles of the European Council and its relationship with the Council, although in view of the specialized nature of this area, it is unlikely to be covered in most EU law courses. Equally, the details of the various external relations set out in Articles 205–222 TFEU will not be considered in this text.

The three-pillar organization of the EU has now therefore been dismantled, with the Justice and Home Affairs aspects subsumed into the supranational TFEU, but the CFSP remaining intergovernmental, but within the EU Treaty. Until their various roles are fully clarified over time, there will be some overlap in external representation by the European Council President, the High Representative, the Commission, the rotating Council presidency and the still remaining Trade Commissioner.



## Summary

The process of further integration has continued with the Lisbon Treaty, which seems for the moment to have settled the argument about whether the EU was moving towards a form of Federal Union or something less than that. At present, the EU enjoys the transfer of considerable powers from the member states, its own institutions and law-making powers, an internal market, a division of powers and competences, the supremacy of EU law, its own catalogue of fundamental rights, its own parliament and also some of the more symbolic external trappings of statehood, such as a currency, a flag, an anthem and a national day, although these aspects have not now been formalized in the Treaties. The EU has a citizenship, but no *demos* – that is, no coherent European population who identify themselves with an embryonic European state. It has been shown in this chapter that the path to European unity is not straight and wide, and is far from certain. It is not planned in advance and any plans that are put in place can easily be hijacked by rapidly evolving European and world political events, such as oil price increases, world

**thinking point**

Which member states have rejected a Treaty?



## Questions

- 1 What were the main concerns of the planners of the European Communities after the Second World War? Are these issues relevant to Europe today?
- 2 What is meant by terms of integration 'intergovernmental', 'supranational', 'functional integration' and 'federalist'?
- 3 What is the meaning of, and the distinction between, the EU and TFEU?
- 4 Why do you think the UK joined the European Communities in 1973?
- 5 How far can the EU keep expanding and integrating?



For suggested approaches to answering these questions scan here or visit the Online Resource Centre.



## Further reading

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economic crises, currency collapses, the collapse of Communism in Europe, the terrorist attacks of 11 September 2001 or rejections of new Treaties by the electorate of a member state.

The European Union of twenty-seven states today, but possibly soon to be thirty-nine states if all of the candidate and potential candidate states join, will play an ever-more-important role in world affairs not just economically, but politically as well, and if for no other reason than because of its economic size. It needs to adapt to do this and, internally also, it still needs to address the issues of governance and democracy, until now not properly dealt with. However, European integration was regarded from the beginning as a process and not an end in itself. The 2007 Lisbon Treaty may nevertheless be regarded as both an example of further deeper integration because it represents a far more comprehensive ordering of the Union and member states, but also as a brake on further unwelcome integration because of its clearer delineation of competences. It makes matters clearer and sets discernible boundaries on the exercise of Union power. It might have been thought also that there would be no appetite for further integration, but the eurozone financial crises have seemingly forced upon the EU the need to integrate more closely economically and fiscally, albeit without the agreement of the UK; thus is it likely that twenty-six states will proceed, without the UK for the time being. Clearly, the integration of European states into the European Union remains an unfolding story and the end is not yet written; quite what the end is will no doubt also continue to be the subject of considerable debate.

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