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Carrying the EU Forward: The Era of Lisbon

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Reader's Guide

This chapter explores how the EU ended a long period of constitutional change by agreeing the Treaty of Lisbon and then used it to face new challenges of a financial crisis, Brexit, and COVID-19. All of these contributed to thinking that further treaty change might be needed. The process started in the Convention on the Future of Europe in 2002–03, which led to the Constitutional Treaty of 2004. Despite its rejection, the EU persisted with treaty change, and produced not a constitution, but, in October 2007, an orthodox amending treaty—the Treaty of Lisbon—carrying forward much of the Constitutional Treaty into two consolidated treaties. Although ratification was held up by an initial referendum rejection in Ireland in June 2008, reflecting both doubts about some elements of the Treaty and a deeper unease about the EU, this was overcome, and the Treaty entered into force on 1 December 2009. Its implementation proceeded relatively smoothly but was complicated by the eurozone crisis, which in turn pushed the EU to pursue further treaty

reform, this time resulting, because of UK objections, in an extra EU compact as well as a treaty amendment. Thereafter, increasing **Euroscepticism**, populism, and persistent question marks over the popular **legitimacy** of the EU caused the official appetite for treaty reform to all but evaporate for much of the 2010s, even if integrationists believed further reform was needed. Then, after the UK's June 2016 vote to quit the EU, many thought that further changes were possible, with France's President Macron calling for a 're-founding' of the Union. However, Brexit was negotiated within the terms of the Treaty of European Union. Equally, despite limits to the EU's treaty responsibility for health, measures to deal with the COVID-19 pandemic were agreed. Calls for treaty revision, including from populist leaders, have continued but, despite EU member states committing in 2020 to a **Conference on the Future of Europe (CoFE)**, active steps to re-negotiate the consolidated treaties have not yet begun.

3.1 Introduction

Given the political tensions in the EU that accompanied the process of treaty reform in the 1990s (see Chapter 2), it is perhaps surprising that the EU continued to pursue its own reform so doggedly during the first decade of the 2000s, initially with a Future of Europe debate and a **European Convention**, then with a **Constitutional Treaty (CT)** in 2004, and later with the Treaty of Lisbon in 2007. Moreover, the pursuit of reform in the second half of the decade occurred against the backdrop of the CT's decisive rejection in referendums in France and the Netherlands in 2005, its rapid abandonment in a number of other member states, and increasing evidence of rising Euroscepticism and concerns about the popular legitimacy of the EU. **Eurosceptics** and opponents put this seemingly unrelenting commitment to more integration down to an unholy and ideological lust for **power** on the part of a basically anti-democratic European elite seeking to replace national and popular **sovereignty** by a centralized, and probably neo-liberal, **superstate** (see Chapter 15).

The truth is less dramatic. Many European decision-makers and commentators believed that enlarging EU—which would increase in size during 2004–07 from 15 to 27 member states—needed substantial institutional reform if it was to develop effectively. This had to take precedence over the opposition of those who queried integration and the EU project. Moreover, the opposition overlooked the fact that the reforms contained in the much-maligned CT were far less radical than many assumed and had been more democratically devised and directed than in previous treaty reforms. In other words, treaty reform was not

a Manichean war between good and evil, but a normal political conflict over the **governance** and direction of the EU.

So, although many observers assumed that with the blows inflicted by the French and Dutch electorates in 2005 the CT was dead, during the so-called 'period of reflection' that followed, other states continued to ratify it. Little serious reflection actually took place. Eventually, however, the German Council presidency during the first half of 2007 led a push for a new deal, securing agreement among the member states on a detailed mandate for a new **intergovernmental conference (IGC)** that would preserve many of the innovations of the CT but within an orthodox treaty that would have nothing of the 'constitutional' about it. A rapid and technical IGC followed, and the new Treaty was signed in Lisbon in December 2007. The thought behind this strategy was that it was the constitutional element that had alarmed people; removing this would therefore permit easy parliamentary ratification.

To begin with, this was indeed the case. However, on 12 June 2008, the Irish electorate rejected the **Treaty of Lisbon**, just as they had initially rejected the **Treaty of Nice**. The reasons for this were partly related to the text itself, but also to specific Irish issues and, especially, to an underlying popular angst. The rejection nevertheless threw the EU into a new crisis. This time, there was no reflection period, the ball being quickly and firmly left in the Irish court. By the end of the year, with all except three other member states having completed ratification, the Irish government, having secured various clarifications and concessions, committed itself to holding a second referendum. This it won, and ratification of the

new Treaty was soon completed, despite the obstructionism of Czech President Vaclav Klaus. The Treaty of Lisbon entered into force on 1 December 2009.

Although many expected—and hoped—that this would usher in a period in which the EU might cease tinkering with its **treaty base**, treaty reform was soon back on the agenda. This was essentially driven by the eurozone crisis and in particular the decision to create a **European Stability Mechanism (ESM)** to help address the sovereign debt crisis and to establish more effective mechanisms for coordinated economic governance and improved **fiscal discipline**, particularly within the eurozone. In the face of UK opposition to a treaty amendment, extra-EU means had to be found to establish a **Fiscal Compact** (see Chapter 25). As the sense of crisis surrounding the eurozone began to abate from mid-2012, calls for treaty reform to provide for banking union, **fiscal union**, and economic union dissipated.

This scuppered UK government plans to use eurozone reform as an opportunity to leverage a renegotiation of its membership status in advance of an ‘in–out’ referendum. Instead, it had to settle for a deal that postponed associated treaty amendments (e.g., to remove the applicability of ‘ever closer union’ to the UK) to an unspecified later date (see Chapter 27). While integrationists continued to murmur about the need for further treaty reform, and with the prospect of Brexit failing to induce a sense of existential crisis for the EU, it was not until the election of Emmanuel Macron in France in 2017 and his call for the ‘*refondation d’une Europe souveraine, unie et démocratique*’ that there was any sense of a real political impetus for reform emerging (see Chapter 29). This was followed by plans in 2020 for a new Conference on the Future of Europe (CoFE).

This chapter explores the background to the CT and the emergence and adoption of the Treaty of Lisbon. It explains and assesses the Treaty’s main points, before reviewing its ratification and assessing the significance for the EU of the Treaty and the experience of securing its ratification. The chapter then explores how the EU and its institutions have adapted to the reforms introduced by the Treaty and have also eschewed further major treaty reform in response to the eurozone and subsequent crises (see Chapter 26). It concludes with a discussion of the prospects for further treaty reform in the light of the UK’s withdrawal from the EU and the various new calls for reform, noting the continuing resistance to treaty change.

3.2 From the ‘Future of Europe’ debate to the Constitutional Treaty

The origins of the Treaty of Lisbon owe much to the ‘Future of Europe’ debate started by the Nice **European Council** in 2000 and the Constitutional Treaty which grew out of it. Awareness of the Treaty of Nice’s own weaknesses together with pressures from outside for clarification and **constitutionalization** were key drivers. The initial terms of reference for the ‘Future of Europe’ debate were outlined by the 2000–01 IGC that drew up the Treaty of Nice. It was to focus on: how to establish and monitor a more precise delimitation of powers between the EU and its member states; the status of the **Charter of Fundamental Rights (CFR)**, proclaimed at the Nice European Council; a simplification of the treaties, with a view to making them clearer and better understood; and the role of national parliaments in the EU’s institutional architecture. In addition, ways of bringing the EU closer to its citizens would be sought. However, by the time the debate was formally launched with the European Council’s **Laeken Declaration** in December 2001, a whole raft of new and often wide-ranging questions had been tabled for discussion.

Although the ‘debate’ attracted little popular input, this time the question of how to reform the EU would not be left simply to an IGC (see Box 3.1). Instead, drawing on the approach for the CFR in 1999–2000, a ‘**Convention on the Future of Europe**’ was established to debate options and to make proposals. This ‘**European Convention**’ comprised representatives of national governments, and members of the EP (MEPs) and of national parliaments, as well as representatives from the Commission and the 13 **candidate countries**, including Turkey, along with observers from other EU institutions and bodies. It met from February 2002 until July 2003 and was chaired by a **Praesidium**, led by former French President and MEP Valéry Giscard d’Estaing.

Although there were doubts about the potential of the Convention, it proved itself an active and, up to a point, open forum. It followed Giscard’s advice that it was best to produce a single text rather than a set of possibilities. Through a mixture of plenary sessions, working groups, study circles, and Praesidium meetings, it began to move towards a European constitution and not just a new treaty. In a spirit of openness and **transparency**, all its papers were posted on the

BOX 3.1 BACKGROUND: KEY DATES IN EUROPEAN INTEGRATION: FROM THE TREATY OF NICE TO THE CONSTITUTIONAL TREATY

2001	26 February	Treaty of Nice signed
	7 March	'Future of Europe' debate launched
	15 December	Laeken Declaration
2002	1 January	Introduction of the euro as single currency in 11 member states
	28 February	Inaugural plenary session of the European Convention
2003	20 June	Parts I and II of the Draft Treaty establishing a Constitution for Europe presented to the Thessaloniki European Council
	18 July	Complete Draft Treaty presented to the President of the European Council
	29 September	IGC opens
2004	1 May	Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia join the EU
	10–13 June	European Parliament election
	18 June	European Council agrees a Treaty establishing a Constitution for Europe
	29 October	Treaty establishing a Constitution for Europe signed
2005	29 May	French electorate reject the Constitutional Treaty (CT) in a referendum
	1 June	Dutch electorate reject the CT in a referendum
	16–17 June	European Council announces a 'pause' in ratification

Internet and its plenary sessions were opened to the public. Yet the Convention failed to attract media or popular attention, leaving things to an essentially self-selecting EU elite, skilfully steered by Giscard.

KEY POINTS

- The Treaty of Nice's weaknesses explain the agreement on the need for further EU reform.
- The Laeken Declaration provided the parameters for the next stage of treaty reform.
- The European Convention attempted to be both more open and more innovative than a typical intergovernmental conference.
- The Convention failed to attract popular attention and was perceived as an elite-driven process.

3.3 The 2003–04 Intergovernmental Conference and the Constitutional Treaty

The Convention was only just able to meet its deadline and present its draft to the European Council in June 2003. Although a minority of Eurosceptics sketched an alternative vision, the vast majority of *conventionnels* accepted it, which made it hard to ignore. The Thessaloniki European Council duly declared that the draft was a 'good basis' for further negotiations and the IGC began soon afterwards, in September 2003. However, no member state was willing to adopt the draft without amendment. In particular, Spain and Poland objected to a proposed new **double majority** voting system in the Council. Others had doubts about provisions on the Commission, the proposed Union

Minister for Foreign Affairs, the reformed European Council presidency, the respective powers of the EP and the Council, the extension of **qualified majority voting (QMV)**, and the new treaty revision processes. Given this, it proved impossible to get agreement until the European Council in Brussels in June 2004. The Treaty establishing a Constitution for Europe—90 per cent of which had come from the Convention draft, despite the IGC's 80 amendments—was subsequently signed on 29 October 2004 at a ceremony in Rome, in the same building where representatives of the **original six** member states had signed the 1957 **Treaty of Rome**.

The document that they signed was a lengthy one: 482 pages in length, complex and sometimes impenetrable, and doing little to promote transparency and **accountability**. It was designed to replace all the existing treaties and become the single constitutional document of the EU. It began with a Preamble, setting out the purpose of the EU. This was followed by a core Part I outlining the fundamentals of the EU. This included everything one needed to know about the EU's institutions, competences, and procedures, making it the most innovative and constitutional of the four parts. Part II contained the Charter of Fundamental Rights. The longest element was Part III, which contained detailed rules expanding on the provisions of Part I by bringing much of the existing Treaty on European Union (TEU) and Treaty establishing the European Community (TEC) into line with them. Part IV and the Final Act contained legal provisions common in international treaties, such as revision and ratification procedures. The protocols and declarations provided more detailed specifications and interpretations of what was found in the four parts.

In terms of content, not much was new. The vast bulk of the CT came from the existing treaties, albeit slightly altered. Innovations were mainly structural. Policy and powers changed rather less. The nature of the EU, its style of operation, its institutions, and the revision process were all altered. The CT abolished the three-pillared Union with a more singular EU. This inherited the legal personality of the Community, along with its symbols and the primacy of its law. However, the EU committed itself to respecting its member states, which were recognized as conferring powers on it, and, significantly, were given the right to leave.

The CT changed the way the EU made rules through the **ordinary legislative procedure (OLP)**. **Directives** and **regulations** were renamed 'laws'.

There was also a new focus on values and rights, along with democratic improvements, including new powers for both the EP and national parliaments. The CT also envisaged **citizens' initiatives** (see Chapter 9). Accompanying all of this was an extended use of QMV, although **unanimity** was still required for a range of sensitive and constitutional issues, such as measures relating to tax **harmonization**, the **accession** of new members, and treaty revisions. A change to what constitutes a qualified majority was also planned, with a double majority consisting of 55 per cent of member states representing 65 per cent of the EU's population becoming the norm.

The CT also upgraded the European Council and gave it a permanent president, limited the size of the EP and the Commission, formalized the use of team presidencies in the Council, and established a new post of Union Minister for Foreign Affairs. The holder was to be at the same time a member of the Commission and Chair of the Foreign Affairs Council, while heading a **European External Action Service (EEAS)**; see Chapters 10, 11, and 19). The constitutional nature of the CT was intensified by the addition of the Charter of Fundamental Rights. This was made binding on the member states, but only when they were applying EU law. Guarantees were given to the UK that the CFR did not increase EU powers. Part IV also introduced simplified revision procedures, to avoid the EU being forced to call an IGC for all alterations to its treaties.

As to what the EU could do, the CT clarified its policy **competences**, dividing them into **exclusive competences**—**customs union**, competition, monetary policy for the **euro area**, and common commercial policy—and those in which competence is 'shared' with the member states, including the internal market, social policy, the environment, and the area of freedom, security, and justice (AFSJ). In other areas, the EU's role was restricted to supporting and coordinating complementary actions. Few new competences were conferred. A number of areas—tourism, civil protection, administrative **cooperation**, and energy—were specifically mentioned for the first time in any detail, but each of these was an area in which the EU had already been active.

Generally speaking, the CT simplified the EU, and attempted to make it more comprehensible, democratic, and efficient. Unfortunately, people rarely recognized this, and Eurosceptics in particular were quick to seize on the CT's more constitutional

features as proof of a relentless drive towards the establishment of a European superstate. Moreover, the Convention and the IGC failed to involve the people and to increase the EU's legitimacy in the desired way.

With little popular and, in many cases, political understanding or appreciation of the CT, ratification by all 25 member states was always going to be a challenge. At first, it proceeded relatively smoothly even if not in a uniform or coordinated manner, since some member states, as was their right, chose to hold referendums. Most stuck with parliamentary ratification. Spain was the first to hold a referendum in February 2005. The outcome was, as expected, positive, although low turnout and scant knowledge of the CT meant that the vote was essentially an expression of support for EU membership. The second member state to hold a referendum was France. On 29 May, 53.3 per cent of voters—mainly rural, low-income, and public-sector based—rejected the CT, albeit often for reasons not associated with the EU. Three days later, Dutch voters also failed to offer their support for the CT: 61.1 per cent said *nee*. These popular rejections placed the future of the CT in doubt with opponents quick to declare the CT dead. A far-from-overwhelming endorsement in the Luxembourg referendum in July did little to create a sense that the CT was a text that commanded popular support even if, by then, national parliaments were voting in favour. Unsurprisingly, the UK government postponed its planned referendum, as did the Irish and Danes.

It was clear that the CT itself was only one of the reasons for the 'no' votes in France and the Netherlands and for the lack of overt enthusiasm for it elsewhere. Certainly, the text was problematic and, as a complicated compromise document, it was hard for its supporters to sell. The issues that it addressed were also poorly appreciated. Not that it had really mattered in France where detailed studies of the referendum make little reference to the CT's substantive content. Voters' worries were essentially national and social, seeing the EU as becoming too liberal. Paradoxically, the portions of the CT that seem to have motivated this were those that actually came straight from the existing treaties, suggesting that people were only now coming to realize what had been agreed in the original treaties, which had been rarely, if ever, read. Popular rejection of the CT was also part of a broader malaise that had at its

roots a general dissatisfaction and frustration with national governments as they struggled with unemployment, threats from **globalization**, and social welfare difficulties. However, some 'European' issues such as the **Bolkestein Directive** on services, Turkey's potential membership, and the increasing regularity and pace of treaty reform and the unsettling implications of **enlargement** in 2004 did feature (see Chapter 15).

KEY POINTS

- The 2003–04 IGC produced a slightly amended text.
- The CT was designed to replace all the existing treaties and become the single constitutional document of the EU.
- The CT attempted to establish a streamlined and more democratic EU.
- The constitutional dimension of the CT proved to be highly controversial.
- 'No' votes in the French and Dutch referendums reflected a range of concerns and was regarded as evidence of popular discontent with the EU.

3.4 From Constitutional Crisis to 'Negotiating' the Treaty of Lisbon

Although ratification continued well after the two 'no' votes, the CT was effectively dead, leaving the EU with a constitutional crisis. For much of 2005 and 2006, EU leaders were at a loss as to what to do. The UK Council presidency deliberately sought to avoid discussion; neither the French nor the Dutch could decide what they wanted in place of the rejected CT. The Austrian Council presidency in 2006 talked bravely of the CT's resuscitation, but was unable to overcome national disagreements. Many in Germany, including Chancellor Angela Merkel, made it clear that they supported the revival of the CT at the right time, but others preferred to see the text abandoned to history. Eurosceptic voices dominated debate. Not surprisingly, in June 2006, the reflection period announced the previous June was extended for a further year. The best that the Commission could come up with was the idea of a declaration for the fiftieth anniversary of the Treaty of Rome on 25 March 2007.

Some new ideas were, however, being proposed, notably the option of a '*mini-traité*' from France's

soon-to-be President, Nicolas Sarkozy. Enquiries were also carried out into the cost of not having a constitution, and the Spanish and Luxembourgers began to rally ratifiers in an umbrella movement known as the **'Friends of the Constitution'**. More significantly, Germany was making preparations for its Council presidency during the first half of 2007. Chancellor Merkel felt the CT's reforms—which included an increase in Germany's voting power—were absolutely necessary for the EU. In October 2006, she declared that it would be the German Council presidency's

intention to produce a 'road map' for action by June 2007. Her underlying assumption seems to have been that the real problems lay with a select number of member states and, if identified, their issues could be settled confidentially. Discussions could take place between a very small group of nationally appointed 'focal points' and followed by a short 'technical' IGC (see Box 3.2).

Not everybody shared Merkel's enthusiasm. The UK was very cautious; Poland and the Czech Republic wished that the CT would simply go away. However,

BOX 3.2 BACKGROUND: KEY DATES IN EUROPEAN INTEGRATION: FROM REJECTION OF THE CONSTITUTIONAL TREATY TO THE TREATY OF LISBON

2005	29 May	French electorate reject the Constitutional Treaty (CT) in a referendum
	1 June	Dutch electorate reject the CT in a referendum
	16–17 June	European Council announces a 'pause' in ratification
2006	15–16 June	European Council agrees extension to the 'period of reflection'
2007	1 January	Germany assumes presidency of the Council
	1 January	Bulgaria and Romania join the EU
	25 March	Berlin Declaration adopted on fiftieth anniversary of the signing of the Treaties of Rome
	21–22 June	European Council adopts IGC mandate for new 'reform treaty'
	23 July	IGC opens
	18–19 October	Informal European Council adopts Treaty of Lisbon
	13 December	Treaty of Lisbon signed
2008	12 June	Irish electorate reject Treaty of Lisbon in a referendum
	11–12 December	European Council agrees concessions to Irish government in exchange for commitment to complete ratification before 1 November 2009
2009	1 January	Original scheduled date for the entry into force of the Treaty of Lisbon
	18–19 June	European Council finalizes Irish 'guarantees'
	30 June	German Constitutional Court ruling on the Treaty of Lisbon
	2 October	Irish accept Treaty of Lisbon in a second referendum
	29 October	European Council agrees 'Czech Protocol'
	1 December	Treaty of Lisbon enters into force

a Berlin Declaration commemorating the fiftieth anniversary of the signing of the Treaty of Rome, which was designed to reassure people about the EU's ambitions and achievements, was adopted in March 2007 and provided an opportunity for the Germans to intensify discussions on how to proceed. A questionnaire on how certain issues might be addressed was soon being circulated and in May there were contacts with various EU leaders. The election of Sarkozy to the French presidency added political weight to Merkel's plans to push for more than simply a 'road map'. On 14 June a list of outstanding issues was circulated. Less than a week later, an unprecedentedly detailed IGC mandate envisioning the adoption of the bulk of the CT's reforms in a new amending treaty was produced. This was then approved, along with a decision to launch an IGC, by the European Council on 21 June 2007 after last-minute concessions, notably to the UK and Poland.

The incoming Portuguese Council presidency made completing the negotiations on a new amending treaty its overriding objective. The IGC quickly commenced work. Foreign ministers, assisted by MEPs, considered progress at Viana do Castelo on 7–8 September and a final draft was produced in early October. Various loose ends were sorted, notably offering concessions to Bulgaria, the Czech Republic, Poland, and Italy, which threatened to veto a deal over the allocation of EP seats. An informal European Council in Lisbon on 18–19 October brought the negotiations to a close. Following legal refinements to the text, a replacement to the CT was signed in Lisbon on 13 December. In less than a year the EU had moved from a forlorn period of unproductive reflection on what to do with the CT to a new 271-page text restating its essential content.

KEY POINTS

- The reflection period failed to produce any clear answer to the ongoing constitutional crisis.
- The German Council presidency followed a tightly controlled strategy to secure member state agreement on an IGC mandate to transfer much of the CT into a conventional amending treaty.
- Discussions about the new amending treaty occurred against the background of the fiftieth anniversary of the signing of the Treaty of Rome.
- Under the Portuguese presidency, a technical IGC rapidly produced the Treaty of Lisbon.

3.5 The main elements of the Treaty of Lisbon

The Treaty of Lisbon was an **amending treaty**. With its entry into force on 1 December 2009, it altered the existing TEU and TEC—renaming the latter the **Treaty on the Functioning of the European Union (TFEU)**—and then, in effect, disappeared from view, although commentators still mistakenly assume that it replaced existing treaties, hence erroneous references in the Brexit context to 'Article 50 of the Treaty of Lisbon'. In one sense, the Treaty was a simple document with only seven articles. However, the first two were extremely long, because they contained a whole series of amendments to the existing treaties. Article 1 contained 61 instructions on amending the TEU, while Article 2, amending the renamed TEC—now TFEU—contained eight horizontal changes and 286 individual amendments. The remaining articles made it clear that the Treaty of Lisbon had unlimited temporal effect, that accompanying Protocols were also valid, and that the TEU and TFEU would be renumbered. In addition, there were 13 legally binding Protocols, an Annex, a Final Act, and 65 numbered Declarations. Five of the Protocols—covering the role of national parliaments, **subsidiarity** and **proportionality**, the **Eurogroup**, **permanent structured cooperation**, and the EU's planned accession to the **European Convention on Human Rights (ECHR)**—were originally part of the CT. The remaining eight were new, including some dealing with the continuing significance of competition, the application of the Charter of Fundamental Rights in the UK and Poland, or interpreting **shared competences**, values, and public services. There were also various transitional institutional arrangements. These amendments and changes meant that the TEU and TFEU, in force from 1 December 2009, were significantly revised versions of their immediate predecessors.

The resulting TEU provides a fairly succinct outline of the purpose and structure of the EU, notably in terms of aims, objectives, principles, and institutions (see Box 3.3). It also now includes a good deal of detail on **enhanced cooperation** and, especially, on external action. It also has a more constitutional feel, since it deals with major facets of the EU, and has the same legal status as the TFEU and cannot be used to override it. The TFEU is even longer, with seven Parts and 358 Articles, and many Declarations (see Box 3.4). It starts with a set of common provisions and rules on **European citizenship**, which are followed by the

BOX 3.3 CASE STUDY: STRUCTURE OF THE CONSOLIDATED TREATY ON EUROPEAN UNION (TEU)

Preamble	
Title I	Common Provisions
Title II	Provisions on Democratic Principles
Title III	Provisions on the Institutions
Title IV	Provisions on Enhanced Cooperation
Title V	General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy
Title VI	Final Provisions

BOX 3.4 CASE-STUDY: STRUCTURE OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

Preamble	
Part One	Principles
Title I	Categories and Areas of Union Competence
Title II	Provisions having General Application
Part Two	Non-Discrimination and Citizenship of the Union
Part Three	Union Policies and Internal Actions
Title I	The Internal Market
Title II	Free Movement of Goods
Title III	Agriculture and Fisheries
Title IV	Free Movement of Persons, Services and Capital
Title V	Area of Freedom, Security and Justice
Title VI	Transport
Title VII	Common Rules on Competition, Taxation and Approximation of Laws
Title VIII	Economic and Monetary Policy
Title IX	Employment
Title X	Social Policy
Title XI	The European Social Fund
Title XII	Education, Vocational Training, Youth and Sport

(continued)

BOX 3.4 CASE-STUDY: STRUCTURE OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU) (continued)

Title XIII	Culture
Title XIV	Public Health
Title XV	Consumer Protection
Title XVI	Trans-European Networks
Title XVII	Industry
Title XVIII	Economic, Social and Territorial Cohesion
Title XIX	Research and Technological Development and Space
Title XX	Environment
Title XXI	Energy
Title XXII	Tourism
Title XXIII	Civil Protection
Title XXIV	Administrative Cooperation
Part Four	Association of the Overseas Countries and Territories
Part Five	External Action by the Union
Title I	General Provisions on the Union's External Action
Title II	Common Commercial Policy
Title III	Cooperation with Third Countries and Humanitarian Aid
Title IV	Restrictive Measures
Title V	International Agreements
Title VI	The Union's Relations with International Organizations and Third Countries and Union Delegations
Title VII	Solidarity Clause
Part Six	Institutional and Financial Provisions
Title I	Provisions Governing the Institutions
Title II	Financial Provisions
Title III	Enhanced Cooperation
Part Seven	General and Financial Provisions

longest section, Part III, which deals with policies. External relations, institutional, and budgetary provisions make up the bulk of the rest.

Together, the amended TEU and TFEU provide for a simplified and somewhat more efficient EU. First, in structural terms, the Treaty of Lisbon brought

matters into line with common practice. Hence the Community disappeared, and the EU became the sole structure of integration, inheriting the Community's powers, legal personality, institutions, and policy mix. Apart from the Common Foreign and Security Policy (CFSP), everything now functions according to the

basic **Community method**. Equally, there are still many opt-outs, while the facilities for enhanced cooperation were increased.

Second, despite the talk of a 'superstate', the Treaty of Lisbon made it abundantly clear that the EU is a body based on powers conferred by the member states, enshrined in the treaties, and subject to subsidiarity and proportionality. Member states have rights of action, **consultation**, recognition, support, and, significantly, **withdrawal**. The EU can also give up competences, and legal harmonization is subject to clear limits. Equally, the institutions can operate only within defined boundaries. The EU's powers are categorized as exclusive, shared, or supportive, which makes it clear that they are not all-embracing or self-generated (see Chapter 16).

Third, EU policies were not greatly expanded by the Treaty of Lisbon. Energy, tourism, and civil protection were written more clearly into the TFEU, while space, humanitarian aid, sport, and administrative operation were added for the first time. In energy, there is now specific reference to combating climate change and providing for energy solidarity. The main change concerned rules on justice and home affairs (JHA). These are no longer subject to special, largely intergovernmental arrangement, but governed by normal EU procedures. This is a significant development. And since 1 December 2014, all JHA activities have fallen under the jurisdiction of the Court (see Chapter 21).

Fourth, in terms of decision-making, the Treaty of Lisbon renamed **co-decision** as the **ordinary legislative procedure (OLP)** and established it as the default legislative process. The procedure was also extended to some 50 new areas. Inside the Council, QMV was extended to some 60 new instances with a new and simpler double-majority system replacing it from 1 November 2014. Under the new system, a majority of the member states (55 per cent) and the populations that they represent (65 per cent) is required. This has increased the proportional weight of larger member states. Member states have also retained unanimity or **emergency brakes** in areas such as tax harmonization, the CFSP, criminal matters, and social security—and, to satisfy the Poles, old-style QMV was available until 2017. Since then a form of the **Ioannina Compromise** applies.

Fifth, the Treaty of Lisbon introduced significant changes to institutional arrangements. The EP received extra powers, notably over the budget and treaty change. It also now has a virtual veto on the appointment of the Commission President. The European Council emerged strengthened and formalized as

an 'institution', meeting every three months, and with a new role in external relations and overall strategy, which points to the continuing influence of member states. Special arrangements for the Eurogroup were also provided. The Commission gained an expanded role in the area of freedom, security, and justice (AFSJ) and in foreign affairs. Thus, the **High Representative** of the Union for Foreign Affairs and Security Policy is now a 'double-hatted' Vice-President of the Commission as well as chair of the Foreign Affairs Council. The High Representative is assisted by an External Action Service. The General Affairs Council (GAC) as well as other Council formations continues to be chaired by the rotating Council presidency. The Courts' jurisdiction was extended, albeit not to the CFSP. Other institutions were largely unchanged.

A sixth facet was a new emphasis on values and rights. The former were expanded and given more prominence, while the latter were given a dual boost. Hence, the CFR was given legal status, subject to safeguards for national jurisdictions insisted on by the UK. Additionally, the EU can now sign up to the wider, independent, ECHR, although it has failed to do so. Lastly, the Treaty of Lisbon tried to make the EU more democratic. Thus, democracy was accorded a separate title in the TEU. This includes provision for a citizens' initiative. National parliaments also gained new rights to query proposed EU legislation on subsidiarity grounds, although these are not as extensive as some wished.

Not all the CT made its way into the revised TEU and TFEU. The constitutional language was dropped; so too was mention of the EU's symbols. Thus, EU acts are not called 'laws'. Equally, the term 'Minister for Foreign Affairs' was rejected. This abandonment of 'constitutional' language marked a significant change from the CT, but many critics preferred to ignore it.

KEY POINTS

- The Treaty of Lisbon was not designed to have a lasting existence of its own, since its function was to amend the two treaties—the TEU and TEC—on which the EU is based.
- The TEU and TEC were extensively altered and modernized, and, in the case of the latter, renamed as the TFEU.
- Together, the TEU and TFEU create one structure, the EU, with characteristics fairly close to those of the past.
- The Treaty of Lisbon introduced changes to institutional arrangements affecting all key institutions.

3.6 The Treaty of Lisbon: an appraisal

The first question is whether the Treaty of Lisbon succeeded in its intention of increasing the democratic legitimacy and the **efficiency** of the EU. Given it was initially rejected in a referendum in Ireland (see Section 3.7 'Ratification of the Treaty of Lisbon'), many would claim that it failed. However, this ignores the clear democratic improvements giving more powers to national parliaments and the EP, introducing the citizens' initiative, and commitment to the ECHR and the EU's own Charter. And, in the UK, the insistence on referring, incorrectly, to *Article 50 of the Lisbon Treaty* shows that it had become accepted even in the most hostile quarters. The more precise delimitation of EU powers and the insistence that these are 'conferred' by the member states underlines the role of national democracy in the EU. This was reinforced by the elevation of the European Council's role, equal status among member states, and their right to secede. The expansion of the Courts' jurisdiction can also be seen as reinforcing the legal and democratic nature of the EU, even if critics saw this as an example of competence creep. Conversely, some believed that the changes in the Common Foreign and Security Policy (CFSP) downgraded the Commission to the benefit of the member states. As to efficiency, the introduction of a European Council President, the linking of the High Representative with the Commission, the use of simpler voting procedures, and the extension of co-decision involving the European Parliament and the Council have all had an impact on the operation of the EU. However, such changes have hardly transformed the EU.

Thus, Lisbon introduced a wide-ranging series of changes, the actual importance of which is always difficult to determine in practice given the significance of the economic and political context in which reformed institutions function, new structures operate, and competences are used. Much of the decade or so since the Treaty of Lisbon entered into force has been one of almost perpetual crisis, at least as far as the **eurozone** is concerned, and so, given the need for leadership, has ensured a very high profile for the European Council. Merkel and others certainly intended the Treaty to shake things up. However, the new EU remained remarkably like the old one. And, if it failed to turn the world upside down, the Treaty did give the EU a new and surprising stability, enabling it to cope with crises which were soon to beset it.

KEY POINTS

- The Treaty of Lisbon was complex and difficult to understand.
- The Treaty of Lisbon sought to make the EU more democratic and efficient, but this has not always been acknowledged.
- Despite the range of changes introduced, and the criticisms made of it, its effects have not been revolutionary.
- Article 50 TEU sets out the procedure for a member state's exit from the EU.

3.7 Ratification of the Treaty of Lisbon

The Treaty of Lisbon entered into force in December 2009. It did so almost a year later than planned thanks to a protracted and contested ratification process. An initial period where member states completed the process relatively easily via parliamentary endorsements was interrupted in June 2008 by popular rejection in Ireland. However, ratification did not grind to a halt and, by the end of the year, very few approvals remained outstanding. This was in no small part owing to the nature of the Treaty of Lisbon. As a reworked version of the Constitutional Treaty, minus its constitutional and other symbolic trappings, the Treaty was deemed to be sufficiently far removed from its predecessor for member states previously committed to ratification via referendum to obviate the need for popular endorsement.

Much to the relief of Eurosceptic groups and other opponents of the Treaty, Ireland had to hold a referendum. Its result was very much to their liking. On a turnout of 53.1 per cent, a majority of 53.4 per cent voted against ratification, many signalling a lack of knowledge and understanding of the text and its significance. If the rejection was a bitter blow to the Treaty's supporters, it did not, however, bring the process of ratification to an end. Various non-ratifiers made a point of pushing ahead, notably the UK, which completed parliamentary ratification a week later. Others followed suit. By the end of 2008, only three countries, apart from Ireland, had still to complete ratification: Germany, Poland, and the Czech Republic.

KEY POINTS

- Parliamentary difficulty
- The main knowledge together
- Ratification 'no' vote itself to h 2009.
- Irish voter guarantee the way fo

On Ireland, EU leaders decided to leave it to Dublin to come up with a solution. A general assumption was that, if all other member states were to ratify, it would increase the pressure on Ireland and oblige voters to consider the possible threat to Irish membership when they voted again. Ratification therefore continued. Lisbon was far from dead. Nor was it open to further revision. However, the European Council in December 2008 did signal that concessions could be made and some 'legal guarantees' agreed if the Irish government committed itself to completing ratification before 1 November 2009. It did, and a second Irish referendum was held on 2 October 2009. The outcome was a clear 'yes'. On a turnout of 59 per cent, more than two thirds (67.1 per cent) of the 1,816,098 voters who cast their vote voted in favour of ratification. With the German Constitutional Court having ruled that there were 'no decisive constitutional objections' to ratification, provided that improvements were made to the *Bundesrat's* rights of scrutiny, all that stood in the way of the Treaty of Lisbon's entry into force was ratification in Poland and the Czech Republic. Polish President, Lech Kaczyński, soon penned his signature to Poland's Ratification Act, leaving only the objections of his counterpart, President Vaclav Klaus, in Prague to be overcome. Once a 'Czech' protocol with an 'exemption' from the Charter of Fundamental Rights had been agreed, Klaus finally signed off on Czech ratification. The Treaty of Lisbon then duly entered into force on 1 December 2009.

KEY POINTS

- Parliamentary ratification proceeded without undue difficulty into summer 2008.
- The main causes of the 'no' vote in Ireland were a lack of knowledge and understanding of the Treaty of Lisbon, together with specific national concerns.
- Ratification of the Treaty of Lisbon continued despite the 'no' vote in Ireland, with the Irish government committing itself to holding a second referendum before 31 October 2009.
- Irish voters' concerns were addressed through 'guarantees' and a dedicated 'Irish' protocol, thus paving the way for a 'yes' vote in a second Irish referendum.

3.8 The significance of the Treaty of Lisbon

The Treaty of Lisbon was a second attempt to realize reforms that many EU leaders thought necessary to make an enlarging EU fit for the world into which it was moving in the first decades of the 2000s, but in a format more acceptable to popular opinion. Critics, and not just Eurosceptics, have suggested that the determination to press on with reforms apparently rejected in 2005 was a piece of arrogance that was either mindless, or a deliberate attempt to foist a superstate on the nations and peoples of Europe. There may be something to this argument, but the Treaty of Lisbon was mostly a more pragmatic matter of ensuring that the EU changed in line with its expanding membership and policy challenges. That the idea was endorsed by those who actually have to work the system deserves to be remembered.

The Treaty of Lisbon substantively repeated that the Constitutional Treaty was its starting point and not something that needed to be concealed. Pretending that this was not so was a peculiarly British phenomenon produced by the sulphurous nature of UK anti-Europeanism. It was also an argument that placed too much stress both on understanding the difference between a 'constitution' and a 'treaty', and on the importance attributed by opponents to the CT's constitutional status. Stripping off the constitutional element was seen as the way to defuse opposition. This overlooked the fact that opposition to the CT was based on a whole range of often contradictory stances and beliefs, many of them related more to the EU in general and the way in which Western European society had been developing than to the Treaty's actual terms. Another important factor was the way the 2005 'no' votes mobilized, deepened, and organized opposition to the EU. Hence the **ratification crisis** was again seen as symbolizing an underlying popular alienation from the EU, which was decreasingly being accepted as a wholly good thing. The crisis was also revelatory of governments' failure to give real attention to dealing with opposition concerns.

All this strengthened the argument that the EU was facing—and continues to face more than a decade on—a crisis of legitimacy. By the mid-2000s it was clear that there was a major problem in the old member states of Western Europe, the populations of which were now much less inclined to identify

with the EU than they used to be. This was because of their economic unease, their lack of confidence in the future, and their feeling that their interests were not being taken into account by a distant 'Brussels'. Yet much of the opposition to Lisbon, as with the CT, came from people who described themselves as 'good Europeans'. Their objections were not to integration as such, but to the EU's style and strategy over the previous 15 years. Lisbon served as a symbolic surrogate for such doubts. However, if the Irish 'no' vote was a hammer blow for EU elites, it was not a death warrant for the Treaty of Lisbon. As in 2005, it opened a period of crisis, thanks in part to the way in which it revived anti-EU and Eurosceptic forces across Europe, which did well in the 2009 and 2014 European Parliament elections but less so in 2019. It certainly forced the EU to give more attention to institutional questions at the expense of the policy issues that both friends and foes alike believe should be its main concern. However, talk of the demise of the EU remained, and remains, much exaggerated. While there was clearly vocal and active opposition to the Treaty of Lisbon, this needed something special, such as a referendum, to make an impact. Ultimately, however, ratification was completed, and the new arrangements began to work with more effectiveness than many had expected, paradoxically sometimes to the benefit of some of those who had opposed the new Treaty.

KEY POINTS

- Abandoning the language of 'constitution' in the Treaty of Lisbon failed to pacify opponents.
- The Irish 'no' opened a new period of crisis over EU reform.
- Despite the success of Eurosceptic parties in European Parliament elections, talk of the demise of the EU remains much exaggerated.

3.9 Implementing the Treaty of Lisbon

It was never intended that the Treaty of Lisbon would transform the EU, so its actual entry into force on 1 December 2009 passed with very little fanfare. It nevertheless introduced some important institutional changes in the **European Council** President and the

High Representative of the Union for Foreign Affairs and Security Policy. In both cases, EU leaders passed up the opportunity to appoint a prominent political leader with a view to them setting agendas, raising the EU's profile and challenging the member states, and instead opted for high profile fixers to oversee policy implementation and operate very much in line with instructions. So, Belgian Prime Minister, Herman Van Rompuy, became the first European Council President and Baroness Catherine Ashton, with just over a year's EU experience as Commissioner for trade, the first to hold the upgraded High Representative post.

Neither would have an easy ride in their new posts. Van Rompuy's time was soon being dominated by the eurozone crisis. This certainly ensured him a profile, but equally it involved much reactive firefighting and so limited his opportunities to define his new position, particularly given the central role that Germany was playing under Merkel. The barely known Ashton was meanwhile faced with not only taking on preparations for and chairing the Foreign Affairs Council and implementing its decisions, but also setting up the External Action Service. The latter was a tall order indeed and would prove to be a challenging and drawn-out process; the former demanded a sense of strategy and decisiveness not always evident.

Beyond these institutional appointments, the immediate impact of the Treaty of Lisbon was rather muted. This would soon change as the European Parliament, Council, and Commission came to terms with the realities of the ordinary legislative procedure's extension to most remaining areas of EU competence. For the first time, MEPs had a legislative role with regard to the Common Agricultural Policy (see Chapter 23); their budgetary powers were also increased. And so the voice of the EP on these as well as other issues was soon becoming louder, and it was a voice to which the Commission, and especially the Council, had to listen. The voice of citizens and national parliaments was also enhanced by the Treaty. The citizen's initiative was eventually launched in 2012 and national parliaments gained new opportunities to '**orange card**' Commission proposals. Few citizens' initiatives have, however, impacted on EU legislation and national parliaments have faced considerable logistical challenges in securing coordinated responses. All this, while well-intentioned, has done little to address the EU's democratic deficit and bring the EU closer to its citizens (see Chapters 9 and 12).

In advance of the 2014 and 2019 EP elections, the political groupings sought to personalize the process more. Exploiting the EP's enhanced role in the appointment of the Commission President, each grouping identified its own *Spitzenkandidat* ('lead candidate') who, it was expected, would be accepted by the European Council as the nominee for Commission President if that group secured the largest number of MEPs. The move failed to stimulate popular engagement and turnout in 2014 once again fell, this time to 42.6 per cent. It did, however, result in the candidate of the largest grouping, Jean-Claude Juncker from the European People's Party, being elected by MEPs as Commission President. As Luxembourg's Prime Minister from 1995 to 2013, Juncker was a veteran of European Councils and so very much part of the EU establishment rather than the youthful and fresh face that many critics of the EU thought it required.

The same could not be said for Ashton's replacement as High Representative. Here, the European Council opted for the much younger and relatively inexperienced Italian Foreign Minister, Federica Mogherini. The challenges she faced were no less daunting than those that Ashton had taken on, at least in policy terms. Once again, rather than appoint a 'big-hitter' the European Council had opted for a less high-profile appointment. Assuming an established role, however, Mogherini was able to engage in diplomatic initiatives more than her predecessor. Thanks to Juncker's reorganization of the Commission into Project Teams each led by a Vice-President, with the High Representative leading on 'A Stronger Global Actor', Mogherini was supported by a cluster of fellow Commissioners thus improving EEAS-Commission cooperation as responsibilities become clearer.

As for the European Council President, in replacing Van Rompuy with the former Polish Prime Minister, Donald Tusk, EU leaders made their first appointment to a senior position of a colleague from one of the 'new' member states in Central and Eastern Europe. Symbolically, at least, this was an important move. Unlike Van Rompuy, Tusk was spared the firefighting associated with the eurozone crisis, yet he too had only limited space to shape the still relatively new role owing to tensions and divisions over the migration crisis and the need to manage the protracted Brexit process. Both Mogherini and Tusk completed their terms of office without major incident. Their successors were appointed without controversy or fanfare in 2019, suggesting the posts were settled: Josep Borrell,

former EP President and Spanish Foreign Minister, became High Representative; former Belgian Prime Minister, Charles Michel, became European Council President. The same could not be said for the *Spitzenkandidat* process, which was effectively ignored after the 2019 EP elections when EU leaders nominated and MEPs elected Ursula von der Leyen as European Commission President (see Chapter 10).

KEY POINTS

- The implementation of the Treaty of Lisbon occurred against the background of the economic crisis.
- The new post of European Council President and the revised post of High Representative have been established and appear settled.
- MPs have seen their role in EU decision-making increase through the extension of the OLP.
- Whereas MPs in 2014 successfully used the *Spitzenkandidat* process to determine the next European Commission President, the process was effectively abandoned in 2019.
- Despite the measures introduced by the Treaty of Lisbon, the EU is still perceived as suffering from a democratic deficit.

3.10 Beyond the Treaty of Lisbon: crises, Brexit, and the future of the EU

When the Treaty of Lisbon was agreed, and later when it eventually entered into force, EU leaders appeared eager to call time on more than 20 years of seemingly interminable discussions about institutional reform and treaty change. Hence, on the day after the signing ceremony in Lisbon in December 2007, they declared that the new Treaty provided the EU with 'a stable and lasting institutional framework'. Furthermore, they expected 'no change in the foreseeable future' (Council of the European Union, 2008: point 6). Such sentiments were widely shared. The mood was that the days of treaty reform were now over. Ideally, there would be no major treaty for the next 25 years.

However, the Treaty of Lisbon was never conceived as a definitive text establishing the *finalité politique* of the EU. In fact, rather than limiting the options for treaty change and primarily in order to facilitate

further treaty revision, it introduced two generally applicable '**simplified revision procedures**', and increased the number of provision-specific simplified revision procedures and so-called *passerelle* clauses in the TEU and TFEU. It therefore allowed simple, uncontroversial changes to be made as needed without opening up to bigger and more contentious changes. It would not be long before these, as well as existing provisions, were being put to use. An initial change followed from the Spanish-led demand for the re-allocation of seats originally planned for the 2009 European Parliament elections to be brought into effect post-haste. On 23 June 2010, a brief '15-minute' IGC was held to adopt the so-called 'MEP Protocol', allowing for a temporary raising of the cap on the size of the EP to 754 MEPs to accommodate 12 additional members. The Protocol entered into force on 1 December 2011 (see Box 3.5).

By then, two European Council Decisions amending the TFEU had also been introduced. The first—altering the status of Saint-Barthélemy, a French overseas collectivity—was a minor affair and barely attracted any attention. The second, coming in the midst of the deepening eurozone crisis, provoked far more debate. This was the amendment to Article 136 TFEU to enable the creation of a **European Stability Mechanism (ESM)** to provide financial assistance to eurozone countries in funding sovereign debts. Adopted on 25 March 2011, this entered into force on 1 May 2013. By then, an initial **Treaty Establishing the European Stability Mechanism (TESM)** had been signed by the 17 members of the eurozone on 11 July 2011. With eurozone leaders adopting additional decisions to strengthen the ESM in July and December 2011, this Treaty soon required modifications which were contained in a revised TESM signed on 2 February 2012. With Germany completing ratification in September, the ESM began operations on 8 October 2012 (see Chapter 25).

The TESM was not the only new treaty undergoing ratification. At Germany's insistence, a **Treaty on Stability, Coordination and Governance in the Economic and Monetary Union** had been drawn up following a fractious European Council in December 2011. Signed on 1 March 2012, its core purpose was to create between EU member states a 'Fiscal Compact' fostering budgetary discipline, greater coordination of economic policies, and improved governance of the euro area. However, in what was widely regarded as a portentous move, the Treaty

created, thanks to the UK's obstinate refusal to countenance an agreement signed by all 27 member states, an intergovernmental, extra-EU arrangement to which neither the UK nor the Czech Republic were originally party, although the Czech Republic did subsequently sign up. This not only further marginalized the UK within the EU, but also raised questions about the position of the EU's **supranational institutions** within EMU, their influence over national economic policy, and general economic policy coordination. Such fears proved unfounded in practice (see Chapter 25), even if the substance of the Fiscal Compact has not been incorporated, as envisaged, into the TEU and TFEU.

Further treaty changes have also occurred, since March 2011, to alter the status of Mayotte, a French department (July 2012), and twice to adjust the organization of the Court of Justice (August 2012 and December 2015), the second adjustment providing for a staged increase in the number of judges at the General Court to 54 from 1 September 2019. The General Court does not require this many judges, but member states could not agree on an alternative to two judges per member state (see Chapter 13). A European Council decision has also been adopted (May 2013) reversing the reduction in the size of the Commission introduced by the Treaty of Lisbon and reinstating the principle of one Commissioner per member state (see Chapter 10). This was in line with the deal which saw Ireland hold its second 'Lisbon' referendum. Part of the package was the adoption of the 'Irish' Protocol which was agreed in a brief IGC in May 2012. Ratification took longer than anticipated owing to delays in Italy and so the Protocol failed to enter into force as planned when Croatia acceded to the EU on 1 July 2013. Entry into force eventually took place on 1 December 2014. By this time, a new Czech government had announced it was abandoning the goal of securing a 'Czech' Protocol. Croatia's accession therefore saw only a few minor adjustments to the TFEU.

The years since the Treaty of Lisbon entered into force have therefore seen only minor adjustments to the EU's treaty base. Things have proceeded quietly and efficiently, without rousing public ire, thus justifying the introduction of the new processes. In line with expectations, and in a context of popular apathy towards the EU, increasing populism, and Euroscepticism, there has been very little enthusiasm for further major treaty reform over the last decade. This is not to say that proponents of reform have remained silent.


BOX 3.5 BACKGROUND: KEY DATES IN EUROPEAN INTEGRATION: THE EU AND TREATY REFORM BEYOND THE TREATY OF LISBON

2010	23 June	'Fifteen-minute' IGC adopts 'MEP Protocol'
2011	25 March	European Council adopts treaty amendment to enable the creation of the European Stability Mechanism (ESM)
	11 July	17 eurozone member states sign Treaty Establishing the European Stability Mechanism (TESM)
	1 December	MEP Protocol enters into force
2012	2 February	17 eurozone member states sign modified TESM
	1–2 March	25 EU member states sign Treaty on Stability, Coordination and Governance in the Economic and Monetary Union—the Fiscal Compact
	16 May	IGC agrees Irish Protocol
	8 October	ESM becomes operational
2013	1 January	Fiscal Compact enters into force
	1 July	Croatia joins the EU
2014	March	Czech Government abandons Czech Protocol
	1 December	Jurisdiction of the Court of Justice of the European Union extended to outstanding areas of judicial and police cooperation
2016		Irish Protocol enters into force
	23 June	EU referendum in UK
2017	1 March	White Paper on the Future of Europe
	25 March	European Council adopts Rome Declaration
	29 March	UK government triggers Article 50 TEU
2017	19 June	Start of Withdrawal negotiations
2019	December	European Council agrees to Conference on the Future of Europe (CoFE) during 2020–2022
2020	31 January	UK withdraws from the EU
	24 June	Council agrees position for Conference on the Future of Europe
2021	9 June	The Conference on the Future of Europe is launched

Indeed, rarely was there a moment during the most intense phases of the eurozone crisis when EU leaders and officials were not being made desperately aware of the EU's limited capacity to respond effectively. Appropriate mechanisms and formal competences were often either inadequate or demonstratively absent.

Consequently, there was no shortage of calls for treaty reform to provide the EU with the necessary competences and improve the institutional framework for economic governance. For many observers and commentators, banking union, fiscal union, and effective economic governance have appeared vital to

safeguard the future of at least the eurozone if not the EU; and each of them would require treaty reform.

Nothing came of the calls for treaty reform beyond the establishment of the ESM and Fiscal Compact. The preference was to exploit existing EU competences to the full. Equally, nothing came of the hopes of more federalist-minded MEPs for a new Convention following the 2014 EP elections. Instead, the prevailing sense of economic crisis during the first half of the 2010s—soon exacerbated by the worsening migration crisis from 2015 onwards—either curbed or muffled the political ambitions for the EU of many of its supporters. Even if they had been minded to pursue further reform, the prospect of facing electorates with further treaty reform simply did not appeal to EU leaders, particularly for those (e.g., France and the Netherlands) who would have come under enormous pressure to submit any text to a referendum for ratification. Others were simply opposed to any further deepening of integration. This was particularly so for the UK, although under David Cameron there was in 2014–15 a clear readiness to exploit any eurozone treaty reform to secure a major reform of the EU. Attention then turned to a renegotiation of the terms of UK membership. The agreement reached in February 2016 was much less far-reaching than Cameron had hoped and proved insufficient to prevent a ‘leave’ victory in the UK’s EU referendum four months later.

Despite the eurozone and migration crises the EU continued to function. Responses to the eurozone crises, while often at least seemingly sub-optimal and tardy, nevertheless came, and primarily because of the commitment to maintaining the EU and European integration. A sense of existential crisis hung over many European Council and Council meetings during the 2010s, with no member state wishing to contemplate failure and a potential disintegration of the EU. The same was true in reaction to the UK government’s decision to trigger Article 50, which was met with a remarkable sense of unity among the remaining 27 member states and an apparent determination to ensure that Brexit did not distract the EU unnecessarily (see Chapter 27). Also testing the EU was the state of democracy and the **rule of law** in Hungary and Poland where governments talked of tearing up the treaties when faced with accusations that they were failing to uphold core EU values. A far greater test was the COVID-19 pandemic, which stretched the EU’s crisis response capabilities and posed major challenges to its

free movement fundamentals. Collective action has, nevertheless, been pursued, as evidenced by the fiscal response and the coordinated approach to the procurement of vaccines, although these have not been without their tensions and problems (see Chapter 28).

The pandemic also, understandably, pushed less pressing issues to one side. Among these was whether there should be a further substantive debate on the future of the EU. Indeed, since 2017, there had been tentative signs of renewed confidence in integration, and even some suggestions that a further round of treaty reform and more integration might be in the offing. In the March 2017 Rome Declaration marking 60 years since the signing of the Treaty of Rome, the EU27 leaders spoke of making the EU ‘stronger and more resilient, through even greater unity and solidarity’. And, parallel to this, the Commission produced a White Paper on the Future of Europe setting out possible future strategies for the Union.

No plans for any new convention or treaty reform were, however, agreed. A key purpose of the Rome Declaration was to demonstrate, at least at a rhetorical level, a sense of unity and commitment to shared values and solidarity as the UK government finally triggered Article 50 and began formally its withdrawal. However, some were keen to raise ambitions and breathe some new life into the EU. The new French President, Emmanuel Macron, eager to assert French leadership of the EU, launched an ‘Initiative for Europe’ and demanded a ‘*refondation d’une Europe souveraine, unie et démocratique*’. There were other calls too, with federalists, such as former EP President, Martin Schulz, and the MEP and former Belgian Prime Minister, Guy Verhofstadt, once again seeking progress towards a ‘United States of Europe’. Other ideas circulating included those from the ‘New Pact for Europe’ network of prominent Brussels-based and national think tanks.

EU leaders generally responded hesitantly. The European Council in December 2019 did, however, discuss the idea of holding a Conference on the Future of Europe during 2020–2022, and agreed to engage the Commission and European Parliament. In June 2020, it was agreed that the conference would involve ‘a large variety of different views and opinions—of EU institutions, Member States’ governments, national parliaments, citizens, civil society, academia, social partners and other stakeholders’ (Council of the EU, 2021). The focus would be on issues of concern to citizens and so include sustainability, societal challenges,

innovation and competitiveness, fundamental values, and the EU's international role. It would be 'a broad and open-ended process' and report to the European Council in 2022 which would decide on the next steps. The CoFE was eventually launched on 9 May 2021, Europe Day.

Whether the CoFE will lead to any major reform of the EU remains to be seen. EU leaders continue to be cautious, and generally avoid any commitment to treaty change. For the present, the focus is on seeking to manage the COVID-19 pandemic and deal with the significant social and economic disruption this is causing. This could lead to a reconsideration of the role of the EU and reform, as was seen in the 2010s with the eurozone crisis. As then, however, further substantive treaty reform may not be necessary and cannot be assumed. Some tidying up of the TEU and TFEU will be needed at some point to remove the 30 plus references and provisions relating to the UK now that it has left the EU. This could end up being the limit of treaty of changes for the foreseeable future. Even amongst people like Chancellor Merkel, who has often spoken

of her openness to treaty change, there is immense caution. The likelihood is that the adapted treaties will continue to guide the Union for some more years yet.

KEY POINTS

- The Treaty of Lisbon was never intended to provide closure on EU treaty reform.
- The eurozone crisis led to calls for treaty reform to provide the EU with the necessary competences and improve the institutional framework for economic governance but only piecemeal, ad hoc treaty amendments were introduced.
- There continue to be calls for closer European integration. The CoFE aims to facilitate citizens' deliberation on the EU's priorities.
- Now that the UK has left the EU, the TEU, TFEU, and other treaty texts will need stylistic revision, but this is low on the EU agenda.
- There remains limited appetite to pursue reform, particularly given increased Euroscepticism.

3.11 Conclusion

Despite all of the talk of the Constitutional Treaty and the Treaty of Lisbon creating a superstate, what has emerged from the successive rounds of treaty reform over the last three decades or so is an EU dependent on its member states and defined by its treaties. There is no universally shared sense of 'Europe' on which to fall back as there is a Denmark, a Netherlands, or a Slovakia. It is because of this dependence on the treaties that amendments to them have been so sensitive and controversial. Treaty reform raises questions of what the EU is, what it should be, and where it might go. Given this, it should come as no surprise that the existing treaties have already been revised and supplemented as the EU has sought to deal first with the eurozone crisis, then with Brexit, and now with the pandemic. Further revisions will follow either out of a pragmatic need for minor change or because of new problems unforeseen back in 2007, or even as a result of idealists pushing for more integration. Pressure for reform, while somewhat muted for the last 15 years has not, and will not, go away. 'The Conference on the Future of Europe' will not be the last time when such ideas are floated.

However, as much as the EU might need or its leaders and engaged citizens desire reform, the process of effecting change is fraught with difficulties and so further treaty change, at least on the scale of past treaties, cannot be taken for granted. Essentially an elite-driven project, the question of 'more EU-rope' has become increasingly politicized as substantial levels of popular Euroscepticism and contention around EU policies and action continue to show. EU leaders were only able to secure many of the reforms contained in the Constitutional Treaty by ensuring that the Treaty of Lisbon was drafted in a secretive and technocratic manner and ratified almost exclusively through parliamentary processes. It would be unwise for such an approach to be repeated. Not only must any substantial treaty reform process now involve a convention, but the formal commitment of EU leaders and the EU institutions to greater transparency and citizen engagement mean that voters simply cannot be marginalized. A key challenge, however, is ensuring that debate is informed. As experience with the Constitutional Treaty and the Treaty of Lisbon amply demonstrated, many of the arguments deployed by their

advocates and, especially, their opponents were decidedly inaccurate. Unfortunately, little by way of debate on the EU since the late 2010s appears to have narrowed the knowledge gap surrounding understanding of the EU, how it functions and what it does and does not do. This was amply reflected in the Brexit referendum. This all points, and certainly not for the first time, to the need for the EU's institutions and, more importantly, its member states to engage citizens in meaningful and informed debate on what the EU is, can, and should be.

It needs to be recognized, however, that the EU is far from static. Although the institutional and other reforms introduced by the Treaty of Lisbon have now bedded in, the EU remains a work-in-progress and therefore subject to, and often in need of, revision. This was amply demonstrated in the eurozone crisis where the EU was shown to lack any real fleetness of foot but rather a propensity simply to muddle through. Problems over vaccination strategies seem to have reinforced this. Given that it is ultimately a union of member states, each of which is committed to pursuing its own preferences, not infrequently with scant regard for the collective EU interest, reaching agreement on any increase in EU competence, institutional innovation, or change in the decision-making

process will be slow if it can be achieved at all with such a sizeable membership.

UK withdrawal from the EU may change some of the dynamics of treaty reform. The EU will, after all, have lost one of its members least supportive of closer integration. However, other member states remain equally sceptical of lofty ambitions for the EU. Euroscepticism has become part of the political mainstream and, just as there are calls for more integration, so there are as many calls for reining in the powers of the EU if not abandoning the EU, and not just from populist politicians. The EU also faces challenges to fundamental principles as the clashes with Poland over judicial reform and the rule of law, and with Hungary demonstrate.

It cannot, therefore, be taken for granted that the unity of the EU27 expressed in the 2017 Rome Declaration and evident in the UK withdrawal process will translate into enthusiastic responses to calls for ambition from the likes of Macron. That said, as noted, the EU remains a work-in-progress and a far from perfect set-up for addressing the policy challenges that it and its member states face. Pressure for reform will continue, whether out of need or ambition; and adjustments and additions will be made to the imperfect 'union' that is the evolving EU. So, the Treaty of Lisbon was always unlikely to be the last chapter in the history of EU treaty reform.



QUESTIONS

1. How and why did the EU move towards adopting the Treaty of Lisbon?
2. What were the main features of the consolidated TEU and TFEU?
3. How well have these consolidated treaties bedded down?
4. How has the EU's treaty base changed since the Treaty of Lisbon came into force?
5. Does Brexit necessitate further EU treaty change?
6. How well have the treaties coped with the eurozone crisis and the COVID-19 pandemic?
7. What are the prospects for future treaty revision?
8. What role do the treaties play in developing the EU?



GUIDE TO FURTHER READING

Craig, P. (2010) *The Lisbon Treaty: Law, Politics, and Treaty Reform* (Oxford: Oxford University Press). A comprehensive legal analysis of the Treaty of Lisbon.

Dinan, D., Nugent, N., and Paterson, W.E. (2017) *The European Union in Crisis* (Basingstoke: Macmillan). A collection of assessments of selected crisis and key challenges facing the EU.