

The historical development of European integration

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1 - THE FIRST TREATIES - [1.1.1.]

The disastrous effects of the Second World War and the constant threat of an East-West confrontation meant that the Franco-German reconciliation had become a top priority. The decision to pool the coal and steel industries of six European countries, brought into force by the Treaty of Paris in 1951, marked the first step towards European integration. The Treaties of Rome of 1957 strengthened the foundations of this integration and the notion of a common future for the six European countries involved.

LEGAL BASIS

- The Treaty establishing the European Coal and Steel Community (ECSC), or Treaty of Paris, was signed on 18 April 1951 and came into force on 25 July 1952. For the first time, six European States agreed to work towards integration. This Treaty laid the foundations of the Community by setting up an executive known as the 'High Authority', a Parliamentary Assembly, a Council of Ministers, a Court of Justice and a Consultative Committee. The ECSC Treaty expired on 23 July 2002 at the end of the 50-year validity period laid down in its Article 97. In accordance with the Protocol (No 37) annexed to the Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union), the net worth of the ECSC's assets at the time of its dissolution was assigned to the Research Fund for Coal and Steel to finance research by Member States in sectors relating to the coal and steel industry.
- The Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC, otherwise known as 'Euratom'), or the Treaties of Rome, were signed on 25 March 1957 and came into force on 1 January 1958. Unlike the ECSC Treaty, the Treaties of Rome were concluded 'for an unlimited period' (Article 240 of the EEC Treaty and Article 208 of the EAEC Treaty), which conferred quasi-constitutional status on them.
- The six founding countries were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

OBJECTIVES

- The founders of the ECSC were clear about their intentions for the Treaty, namely that it was merely the first step towards a 'European Federation'. The common coal and steel market was to be an experiment which could gradually be extended to other economic spheres, culminating in a political Europe.
- The aim of the European Economic Community was to establish a common market based on the four freedoms of movement (goods, persons, capital and services).
- The aim of Euratom was to coordinate the supply of fissile materials and the research programmes initiated or being prepared by Member States on the peaceful use of nuclear energy.
- The preambles to the three Treaties reveal a unity of purpose behind the creation of the Communities, namely the conviction that the States of Europe must work

together to build a common future as this alone will enable them to control their destiny.

MAIN PRINCIPLES

The European Communities (the ECSC, EEC and Euratom) were born of the desire for a united Europe, an idea which gradually took shape as a direct response to the events that had shattered the continent. In the wake of the Second World War the strategic industries, in particular the steel industry, needed reorganising. The future of Europe, threatened by East-West confrontation, lay in Franco-German reconciliation.

1. The appeal made by Robert Schuman, the French Foreign Minister, on 9 May 1950 can be regarded as the starting point for European integration. At that time, the choice of coal and steel was highly symbolic: in the early 1950s coal and steel were vital industries, the basis of a country's power. In addition to the clear economic benefits, the pooling of French and German resources was intended to mark the end of the rivalry between the two countries. On 9 May 1950 Robert Schuman declared: 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.' It was on the basis of that principle that France, Italy, Germany and the Benelux countries (Belgium, the Netherlands and Luxembourg) signed the Treaty of Paris, which concentrated predominantly on ensuring:

- free movement of goods and free access to sources of production;
- permanent monitoring of the market to avoid distortions which could lead to the introduction of production quotas;
- compliance with the rules of competition and the principle of price transparency;
- support for modernisation and conversion of the coal and steel sectors.

2. Following the signing of the Treaty, and despite France being opposed to the reestablishment of a German national military force, René Pleven was giving thought to the formation of a European army. The European Defence Community (EDC), negotiated in 1952, was to have been accompanied by a Political Community (EPC). Both plans were shelved following the French National Assembly's refusal to ratify the treaty on 30 August 1954.

3. Efforts to get the process of European integration under way again following the failure of the EDC took the form of specific proposals at the Messina Conference (in June 1955) on a customs union and atomic energy. They culminated in the signing of the EEC and EAEC Treaties.

a. The EEC Treaty's provisions included:

- the elimination of customs duties between Member States;
- the establishment of an external Common Customs Tariff;
- the introduction of common policies for agriculture and transport;
- the creation of a European Social Fund;
- the establishment of a European Investment Bank;
- the development of closer relations between the Member States.

To achieve these objectives the EEC Treaty laid down guiding principles and set the framework for the legislative activities of the Community institutions. These involved common policies: the common agricultural policy (Articles 38 to 43), transport policy (Articles 74 and 75) and a common commercial policy (Articles 110 to 113).

The common market is intended to guarantee the free movement of goods and the mobility of factors of production (the free movement of workers and enterprises, the freedom to provide services and the free movement of capital).

b. The Euratom Treaty had originally set highly ambitious objectives, including the 'speedy establishment and growth of nuclear industries'. However, owing to the complex and sensitive nature of the nuclear sector, which touched on the vital interests of the Member States (defence and national independence), those ambitions had to be scaled back.

4. The Convention on certain institutions common to the European Communities, which was signed and entered into force at the same time as the Treaties of Rome, stipulated that the Parliamentary Assembly and Court of Justice would be common institutions. All that remained was for the 'Executives' to be merged; the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, known as the 'Merger Treaty', duly completed the process of unifying the institutions.

From then on, the EEC held sway over the sectoral communities, the ECSC and the EAEC. This amounted to a victory for the general EEC system over the coexistence of organisations with sectoral competence, and a victory for its institutions.

[Petr Novak](#)
[05/2018](#)

2 - DEVELOPMENTS UP TO THE SINGLE EUROPEAN ACT - [1.1.2.]

The main developments of the early Treaties are related to the creation of Community own resources, the reinforcement of the budgetary powers of Parliament, election of MEPs by direct universal suffrage and the setting-up of the European Monetary System. The entry into force of the Single European Act in 1986, substantially altering the Treaty of Rome, bolstered the notion of integration by creating a large internal market.

MAIN ACHIEVEMENTS IN THE FIRST STAGE OF INTEGRATION

Article 8 of the Treaty of Rome provided for the completion of a common market over a transitional period of 12 years, in three stages, ending on 31 December 1969. Its first aim, the customs union, was completed more quickly than expected. The transitional period for enlarging quotas and phasing out internal customs ended as early as 1 July 1968. Even so, at the end of the transitional period there were still major obstacles to freedom of movement. By then, Europe had adopted a common external tariff for trade with third countries.

Creating a 'Green Europe' was another major project for European integration. The first regulations on the common agricultural policy (CAP) were adopted and the European Agricultural Guidance and Guarantee Fund (EAGGF) was set up in 1962.

FIRST TREATY AMENDMENTS

A. Improvements to the institutions

The first institutional change came about with the Merger Treaty of 8 April 1965, which merged the executive bodies. This took effect in 1967, setting up a single Council and Commission of the European Communities (the ECSC, EEC and EAEC) and introducing the principle of a single budget.

B. Own resources and budgetary powers

The Council decision of 21 April 1970 set up a system of Community own resources, replacing financial contributions by the Member States ([1.4.1](#)).

- The Treaty of Luxembourg of 22 April 1970 granted Parliament certain budgetary powers ([1.3.1](#)).
- The Treaty of Brussels of 22 July 1975 gave Parliament the right to reject the budget and to grant the Commission a discharge for implementing the budget. The same Treaty set up the Court of Auditors, a body responsible for scrutinising the Community's accounts and financial management ([1.3.12](#)).

C. Elections

The Act of 20 September 1976 gave Parliament new legitimacy and authority by introducing election by direct universal suffrage ([1.3.4](#)). The Act was revised in 2002, introducing the general principle of proportional representation and other framework provisions for national legislation on the European elections.

D. Enlargement

The UK joined on 1 January 1973, together with Denmark and Ireland; the Norwegian people had voted against accession in a referendum. Greece became a member in 1981; Portugal and Spain joined in 1986.

E. EU budget

After the first round of enlargement there were calls for greater budgetary rigour and reform of the CAP. The 1979 European Council reached agreement on a series of complementary measures. The 1984 Fontainebleau agreements produced a sustainable solution based on the principle that adjustments could be made to assist any Member State with a financial burden that was excessive in terms of its relative prosperity.

PLANS FOR FURTHER INTEGRATION

Building on the initial successes of the economic community, the aim of also creating political unity for the Member States resurfaced in the early 1960s, despite the failure of the European Defence Community (EDC) in August 1954.

A. Failure of an attempt to achieve political union

At the 1961 Bonn summit, the Heads of State or Government of the six founding Member States of the European Community asked an intergovernmental committee, chaired by French ambassador Christian Fouchet, to put forward proposals on the political status of a union of European peoples. The study committee tried in vain, on two occasions between 1960 and 1962, to present the Member States with a draft treaty that was acceptable to all, even though Fouchet based his plan on strict respect for the identity of the Member States, thus rejecting the federal option.

In the absence of a political community, its substitute took the form of European Political Cooperation, or EPC. At the summit conference in The Hague in December 1969, the Heads of State or Government decided to look into the best way of making progress in the field of political unification. The Davignon report, adopted by the Foreign Ministers in October 1970 and subsequently enlarged upon by further reports, formed the basis of EPC until the Single Act entered into force.

B. The 1966 crisis

A serious crisis arose when, at the third stage of the transition period, voting procedures in the Council were to change from the unanimity rule to qualified majority voting in a number of areas. France opposed a range of Commission proposals, which included measures for financing the CAP, and stopped attending the main Community meetings (the 'empty chair' policy). Eventually, agreement was reached on the Luxembourg Compromise ([1.3.7](#)), which stated that, when vital interests of one or more countries were at stake, members of the Council would endeavour to reach solutions that could be adopted by all while respecting their mutual interests.

C. The increasing importance of European 'summits'

Though remaining outside the Community institutional context, the conferences of Heads of State or Government of the Member States started to provide political guidance and to settle the problems that the Council of Ministers could not handle. After early meetings in 1961 and 1967, the conferences took on increasing significance with the summit at The Hague on 1 and 2 December 1969, which allowed negotiations

to begin on enlarging the Community and saw agreement on the Community finance system, and with the Fontainebleau summit (in December 1974), at which major political decisions were taken on the direct election of the European Parliament and the decision-taking procedure within the Council. At that summit, the Heads of State or Government also decided to meet three times a year as the 'European Council' to discuss Community affairs and political cooperation ([1.3.6](#)).

D. Institutional reform and monetary policy

Towards the end of the 1970s there were various initiatives in the Member States to bring their economic and fiscal policies into line with each other. To solve the problem of monetary instability and its adverse effects on the CAP and cohesion between Member States, the Bremen and Brussels European Councils in 1978 set up the European Monetary System (EMS). Established on a voluntary and differentiated basis — the UK decided not to participate in the exchange-rate mechanism — the EMS was based on a common accounting unit, the ECU.

At the London European Council in 1981 the Foreign Ministers of Germany and Italy, Mr Genscher and Mr Colombo, put forward a proposal for a 'European Act' covering a range of subjects: political cooperation, culture, fundamental rights, harmonisation of the law outside the fields covered by the Community Treaties, and ways of dealing with violence, terrorism and crime. It was not adopted in its original form, but some parts of it resurfaced in the 'Solemn declaration on European Union' adopted in Stuttgart on 19 June 1983.

E. The Spinelli project

A few months after its first direct election in 1979, Parliament's relations with the Council were thrown into a serious crisis by the budget for 1980. At the instigation of Altiero Spinelli, MEP, founder of the European Federalist Movement and a former Commissioner, a group of nine MEPs met in July 1980 to discuss ways of revitalising the operation of the institutions. In July 1981 Parliament set up an institutional affairs committee, with Spinelli as its coordinating rapporteur, to draw up a plan for amendment of the existing Treaties. The committee decided to formulate plans for what was to become the constitution of the European Union. The draft Treaty was adopted by a large majority on 14 February 1984. Legislative power would come under a bicameral system akin to that of a federal state. The system aimed to strike a balance between Parliament and the Council, but it was not acceptable to the Member States.

THE SINGLE EUROPEAN ACT

Having settled the Community budget dispute of the early 1980s, the European Council decided at its Fontainebleau meeting in June 1984 to set up an ad hoc committee of the personal representatives of the Heads of State or Government, named the Dooge Committee after its chairman. The committee was asked to make proposals for improving the functioning of the Community system and of political cooperation. The June 1985 Milan European Council decided by a majority (7 votes to 3), in an exceptional procedure for that body, to convene an intergovernmental conference to consider the powers of the institutions, the extension of Community activities to new areas and the establishment of a 'genuine' internal market.

On 17 February 1986 nine Member States signed the Single European Act (SEA), followed later, on 28 February 1986, by Denmark (after a referendum vote in favour),

Italy and Greece. The Act was ratified by Member States' parliaments in 1986, but, because a private citizen had appealed to the Irish courts, its entry into force was delayed for six months until 1 July 1987. The SEA was the first substantial change to the Treaty of Rome. Its principal provisions were as follows:

A. Extension of the Union's powers

1. Through the creation of a large internal market

A fully operational internal market was to be completed by 1 January 1993, taking up and broadening the objective of the common market introduced in 1958 ([2.1.1](#)).

2. Through the establishment of new powers as regards:

- monetary policy,
- social policy,
- economic and social cohesion,
- research and technological development,
- the environment,
- cooperation in the field of foreign policy.

B. Improvement in the decision-making capacity of the Council of Ministers

Qualified majority voting replaced unanimity in four of the Community's existing areas of responsibility (amendment of the common customs tariff, freedom to provide services, the free movement of capital and the common sea and air transport policy). Qualified majority voting was also introduced for several new areas of responsibility, such as the internal market, social policy, economic and social cohesion, research and technological development, and environmental policy. Finally, qualified majority voting was the subject of an amendment to the Council's internal rules of procedure, so as to comply with a previous Presidency declaration that in future the Council could be called upon to vote not only on the initiative of its President, but also at the request of the Commission or a Member State if a simple majority of the Council's members were in favour.

C. Growth of the role of the European Parliament

Parliament's powers were strengthened by:

- making Community agreements on enlargement and association agreements subject to Parliament's assent;
- introducing a procedure for cooperation with the Council ([1.2.3](#)) which gave Parliament real, albeit limited, legislative powers; it applied to about a dozen legal bases at the time and marked a watershed in turning Parliament into a genuine co-legislator.

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05/2018

3 - THE MAASTRICHT AND AMSTERDAM TREATIES - [1.1.3.]

The Maastricht Treaty altered the former European treaties and created a European Union based on three pillars: the European Communities, the Common Foreign and Security Policy (CFSP) and cooperation in the field of justice and home affairs (JHI). With a view to the enlargement of the Union, the Amsterdam Treaty made the adjustments needed to enable the Union to function more efficiently and democratically.

I. THE MAASTRICHT TREATY

The Treaty on European Union, signed in Maastricht on 7 February 1992, entered into force on 1 November 1993.

A. The Union's structures

By instituting a European Union, the Maastricht Treaty marked a new step in the process of creating an 'ever-closer union among the peoples of Europe'. The Union was based on the European Communities ([1.1.1](#) and [1.1.2](#)) and supported by policies and forms of cooperation provided for in the Treaty on European Union. It had a single institutional structure, consisting of the Council, the European Parliament, the European Commission, the Court of Justice and the Court of Auditors which (being at the time strictly speaking the only EU institutions) exercised their powers in accordance with the Treaties. The Treaty established an Economic and Social Committee and a Committee of the Regions, which both had advisory powers. A European System of Central Banks and a European Central Bank were set up under the provisions of the Treaty in addition to the existing financial institutions in the EIB group, namely the European Investment Bank and the European Investment Fund.

B. The Union's powers

The Union created by the Maastricht Treaty was given certain powers by the Treaty, which were classified into three groups and were commonly referred to as 'pillars': The first 'pillar' consisted of the European Communities, providing a framework within which the powers for which sovereignty had been transferred by the Member States in the areas governed by the Treaty were exercised by the Community institutions. The second 'pillar' was the common foreign and security policy laid down in Title V of the Treaty. The third 'pillar' was cooperation in the fields of justice and home affairs laid down in Title VI of the Treaty. Titles V and VI provided for intergovernmental cooperation using the common institutions, with certain supranational features such as involving the Commission and consulting Parliament.

1. The European Community (first pillar)

The Community's task was to make the single market work and to promote, among other things, a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection and equality between men and women. The Community pursued these objectives, acting within the limits of its powers, by establishing a common market and related measures set out in Article 3 of the EC Treaty and by initiating the economic and single monetary policy referred

to in Article 4. Community activities had to respect the principle of proportionality and, in areas that did not fall within its exclusive competence, the principle of subsidiarity (Article 5 of the EC Treaty).

2. The common foreign and security policy (CFSP) (second pillar)

The Union had the task of defining and implementing, by intergovernmental methods, a common foreign and security policy ([5.1.1](#)). The Member States were to support this policy actively and unreservedly in a spirit of loyalty and mutual solidarity. Its objectives were: to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter; to strengthen the security of the Union in all ways; to promote international cooperation; to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

3. Cooperation in the fields of justice and home affairs (third pillar)

The Union's objective was to develop common action in these areas by intergovernmental methods ([4.2.1](#)) to provide citizens with a high level of safety within an area of freedom, security and justice. It covered the following areas:

- rules and the exercise of controls on crossing the Community's external borders;
- combating terrorism, serious crime, drug trafficking and international fraud;
- judicial cooperation in criminal and civil matters;
- creation of a European Police Office (Europol) with a system for exchanging information between national police forces;
- controlling illegal immigration;
- common asylum policy.

II. THE AMSTERDAM TREATY

The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam on 2 October 1997, entered into force on 1 May 1999.

A. Increased powers for the Union

1. European Community

With regard to objectives, special prominence was given to balanced and sustainable development and a high level of employment. A mechanism was set up to coordinate Member States' policies on employment, and there was a possibility of some Community measures in this area. The Agreement on Social Policy was incorporated into the EC Treaty with some improvements (removal of the opt-out). The Community method now applied to some major areas which had hitherto come under the 'third pillar' such as asylum, immigration, crossing external borders, combating fraud, customs cooperation and judicial cooperation in civil matters, in addition to some of the cooperation under the Schengen Agreement, which the EU and Communities endorsed in full.

2. European Union

Intergovernmental cooperation in the areas of police and judicial cooperation was strengthened by defining objectives and precise tasks and creating a new legal

instrument similar to a directive. The instruments of the common foreign and security policy were developed later, in particular by creating a new instrument, the common strategy, a new office, the 'Secretary-General of the Council responsible for the CFSP', and a new structure, the 'Policy Planning and Early Warning Unit'.

B. A stronger position for Parliament

1. Legislative power

Under the codecision procedure, which was extended to existing 15 legal bases under the EC Treaty, Parliament and the Council became co-legislators on a practically equal footing. Excepting only agriculture and competition policy, the codecision procedure applied to all the areas where the Council was permitted to take decisions by qualified majority. In four cases (Articles 18, 42 and 47 and Article 151 on cultural policy, which remained unchanged) the codecision procedure was combined with a requirement for a unanimous decision in the Council. The other legislative areas where unanimity was required were not subject to codecision.

2. Power of control

As well as voting to approve the Commission as a body, Parliament also had a vote to approve in advance the person nominated as President of the future Commission (Article 214).

3. Election and statute of Members

With regard to the procedure for elections to Parliament by direct universal suffrage (Article 190 of the EC Treaty), the Community's power to adopt common principles was added to the existing power to adopt a uniform procedure. A legal basis making it possible to adopt a single statute for MEPs was included in the same article. However, there was still no provision allowing measures to develop political parties at European level (cf. Article 191).

C. Closer cooperation

For the first time, the Treaties contained general provisions allowing some Member States under certain conditions to take advantage of common institutions to organise closer cooperation between themselves. This option was in addition to the closer cooperation covered by specific provisions, such as economic and monetary union, creation of the area of freedom, security and justice and incorporating the Schengen provisions. The areas where closer cooperation was possible were the third pillar and, under particularly restrictive conditions, matters subject to non-exclusive Community competence. The conditions which any closer cooperation had to fulfil and the planned decision-making procedures had been drawn up in such a way as to ensure that this new factor in the process of integration would remain exceptional and, at all events, could only be used to move further towards integration and not to take retrograde steps.

D. Simplification

The Amsterdam Treaty removed from the European Treaties all provisions which the passage of time had rendered void or obsolete, while ensuring that this did not affect the legal effects which derived from them in the past. It also renumbered the Treaty articles. For legal and political reasons the Treaty was signed and submitted for ratification in the form of amendments to the existing Treaties.

E. Institutional reforms with a view to enlargement

a. The Amsterdam Treaty set the maximum number of Members of the European Parliament, in line with Parliament's request, at 700 (Article 189).

b. The composition of the Commission and the question of weighted votes were covered by a 'Protocol on the Institutions' attached to the Treaty. This provided that, in a Union of up to 20 Member States, the Commission would comprise one national of each Member State, provided that by that date, weighting of the votes in the Council had been modified. At all events, at least a year before the 21st Member State joined, a new IGC would have to comprehensively review the Treaties' provisions on the institutions.

c. There was provision for the Council to use qualified majority voting in a number of the legal bases newly established by the Amsterdam Treaty. However, of the existing Community policies, only research policy had new provisions on qualified majority voting, with other policies still requiring unanimity.

F. Other matters

A protocol covered Community procedures for implementing the principle of subsidiarity. New provisions on access to documents (Article 255) and greater openness in the Council's legislative work (Article 207(3)) improved transparency.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament was consulted before an intergovernmental conference was called. Parliament was also involved in the intergovernmental conferences according to ad hoc formulas; during the last three it was represented, depending on the case, by its President or by two of its members.

Petr Novak
05/2018

4 - THE TREATY OF NICE AND THE CONVENTION ON THE FUTURE OF EUROPE - [1.1.4.]

The Treaty of Nice prepared the European Union only partially for the important enlargements to the east and south on 1 May 2004 and 1 January 2007. Hence, following up on the questions raised in the Laeken Declaration, the European Convention made an effort to produce a new legal base for the Union in the form of the Treaty establishing a Constitution for Europe. Following 'no' votes in referendums in two Member States, that treaty was not ratified.

TREATY OF NICE

The Treaty was signed on 26 February 2001 and entered into force on 1 February 2003.

A. Objectives

The conclusions of the 1999 Helsinki European Council required the EU to be able, by the end of 2002, to welcome as new Member States those applicant countries which were ready for accession. Since only two of the applicant countries were more populous than the Member State average at the time, the political weight of countries with a smaller population was due to increase considerably. The Treaty of Nice was therefore meant to make the EU institutions more efficient and legitimate and to prepare the EU for its next major enlargement.

B. Background

A number of institutional issues (which became known as the 'Amsterdam leftovers') had been addressed by the Maastricht and Amsterdam Intergovernmental Conferences (IGCs) ([1.1.3](#)) but not satisfactorily resolved: size and composition of the Commission, weighting of votes in the Council, and extension of qualified majority voting. On the basis of a report by the Finnish Presidency, the Helsinki European Council decided in late 1999 that an IGC should deal with the leftovers and all other changes required in preparation for enlargement.

C. Content

The IGC opened on 14 February 2000 and completed its work in Nice on 10 December 2000, reaching agreement on the institutional questions and on a range of other points, namely a new distribution of seats in the European Parliament, more flexible arrangements for enhanced cooperation, the monitoring of fundamental rights and values in the EU, and a strengthening of the EU judicial system.

1. Weighting of votes in the Council

Taking together the system of voting in the Council, the composition of the Commission and, to some extent, the distribution of seats in the European Parliament, the IGC realised that the main imperative was to change the relative weight of the Member States, a subject that had been addressed by no other IGC since the Treaty of Rome.

Two methods of defining a qualified majority were considered: a new system of weighting (modifying the existing one) or application of a dual majority (of votes and of population), the latter solution having been proposed by the Commission and endorsed by Parliament. The IGC chose the first option. The number of votes was increased

for all Member States, but the share accounted for by the most populous Member States decreased: previously 55% of votes, it fell to 45% when the 10 new members joined and to 44.5% on 1 January 2007. This was why the demographic 'safety net' was introduced: a Member State may request verification that the qualified majority represents at least 62% of the total population of the Union. If it does not, the decision concerned will not be adopted.

2. The Commission

a. Composition

Since 2005 the Commission has comprised one Commissioner per Member State. The Council has the power to decide, acting unanimously, on the number of Commissioners and on arrangements for a rotation system, provided that each Commission reflects the demographic and geographical range of the Member States.

b. Internal organisation

The Treaty of Nice provides the President of the Commission with the power to allocate responsibilities to the Commissioners and to reassign them during his or her term of office, as well as to select, and determine the number of, Vice-Presidents.

3. The European Parliament

a. Composition

The Treaty of Amsterdam had set the maximum number of MEPs at 700. At Nice the European Council thought it necessary, with an eye to enlargement, to revise the number of MEPs for each Member State. The new composition of Parliament was also used to counterbalance the altered weighting of votes in the Council. The maximum number of MEPs was therefore set at 732.

b. Powers

Parliament was enabled, like the Council, the Commission and the Member States, to bring a legal challenge to acts of the Council, the Commission or the European Central Bank on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers.

Further to a proposal by the Commission, Article 191 was turned into an operational legal basis for the adoption, under the co-decision procedure, of regulations governing political parties at EU level and rules on their funding.

Parliament's legislative powers were increased through a slight broadening of the scope of the co-decision procedure and by requiring Parliament's assent for the establishment of enhanced cooperation in areas covered by co-decision. Parliament must also be asked for its opinion should the Council adopt a position on the risk of a serious breach of fundamental rights in a Member State.

4. Reform of the judicial system

a. The Court of Justice of the European Union

The Court of Justice was empowered to sit in a number of different ways: in chambers (where it consists of three or five judges), in a Grand Chamber (eleven judges) or as the full Court. The Council, acting unanimously, may increase the number of Advocates-General. The Court of Justice of the EU retained jurisdiction over questions referred

for a preliminary ruling, but it may, under its Statute, refer to the Court of First Instance types of matters other than those listed in Article 225 of the EC Treaty.

b. Court of First Instance

The powers of the Court of First Instance were increased to include certain categories of preliminary ruling, with the possibility of judicial panels being established by unanimous decision of the Council. All these operating provisions, notably on the powers of the Court of First Instance, were thenceforth set out in the Treaty itself.

5. Legislative procedures

Although a considerable number of new policies and measures (27) now required qualified majority voting in the Council, co-decision was extended only to a few minor areas (covered by former Articles 13, 62, 63, 65, 157, 159 and 191 of the EC Treaty); for matters covered by former Article 161 assent was now required.

6. Enhanced cooperation

Like the Amsterdam Treaty, the Treaty of Nice contained general provisions applying to all areas of enhanced cooperation and provisions specific to the pillar concerned. Whereas the Amsterdam Treaty provided for enhanced cooperation under the first and third pillars only, the Treaty of Nice encompassed all three pillars.

The Treaty of Nice made further changes: referral to the European Council ceased to be an option, the concept of 'a reasonable period of time' was clarified, and the assent of Parliament was now required in all areas where enhanced cooperation related to a question covered by the co-decision procedure.

7. Protection of fundamental rights

A paragraph was added to Article 7 TEU to cover cases where a patent breach of fundamental rights has not actually occurred but where there is a 'clear risk' that it may occur. The Council, acting by a majority of four fifths of its members and after obtaining the assent of Parliament, determines the existence of the risk and addresses appropriate recommendations to the Member State in question. A non-binding Charter of Fundamental Rights was proclaimed ([4.1.2](#)).

D. Role of the European Parliament

As with earlier intergovernmental conferences, Parliament was actively involved in preparations for the 2000 IGC, giving its views on the conference agenda and its progress and objectives. Parliament also expressed its opinion on the substance and judicial implications of the Charter of Fundamental Rights ([4.1.2](#)). Parliament insisted that the next IGC should be a transparent process, involving European and national parliamentarians and the Commission, as well as input from ordinary people, and that what it produced should be a constitution-type document.

CONVENTION ON THE FUTURE OF EUROPE

A. Basis and objectives

In accordance with Declaration No 23 annexed to the Treaty of Nice, the Laeken European Council of 14 and 15 December 2001 decided to organise a Convention bringing together the main parties concerned for a debate on the future of the European Union. The objectives were to prepare for the next IGC as transparently as possible and to address the four main issues concerning the further development of the EU: a better

division of competences; simplification of the EU's instruments for action; increased democracy, transparency and efficiency; and the drafting of a constitution for Europe's citizens.

B. Organisation

The Convention comprised a chair (Valéry Giscard D'Estaing), two vice-chairs (Guiliano Amato and Jean-Luc Dehaene), 15 representatives of the Member States' heads of state or government, 30 members of the national parliaments (two per Member State), 16 members of the European Parliament and two members of the Commission. The countries that had applied to join the Union also took part in the debate on an equal footing, but could not block any consensus which might emerge among the Member States. The Convention thus had a total of 105 members.

In addition to the chair and vice-chairs, the Praesidium comprised nine members of the Convention and an invited representative chosen by the applicant countries. The Praesidium had the role of lending impetus to the Convention and providing it with a basis on which to work.

C. Outcome

The work of the Convention comprised: a 'listening phase', in which it sought to identify the expectations and needs of Member States and Europe's citizens, a phase in which the ideas expressed were studied, and a phase in which recommendations based on the essence of the debate were drafted. At the end of 2002, eleven working groups presented their findings to the Convention. During the first half of 2003, the Convention drew up and debated a text which became the draft Treaty establishing a Constitution for Europe.

Part I of the Treaty (principles and institutions; 59 articles) and Part II (Charter of Fundamental Rights; 54 articles) were laid before the Thessaloniki European Council on 20 June 2003. Part III (policies; 338 articles) and Part IV (final provisions; 10 articles) were presented to the Italian Presidency on 18 July 2003. A subsequent IGC adopted this text on 18 June 2004, retaining the basic structure of the Convention's draft, albeit with a considerable number of amendments. However, as a result of two 'no' votes in referendums in France and the Netherlands, the ratification procedure for the Treaty establishing a Constitution for Europe was not completed ([1.1.5](#)).

D. Role of the European Parliament

The impact of MEPs during the work of the European Convention was seen by most observers as decisive. Thanks to several factors, including their experience of negotiating in an international environment and the fact that the Convention was meeting on Parliament's premises, MEPs were able to leave a strong imprint on the debates and on the outcome of the Convention. They were also instrumental in the formation of political families comprising MEPs and national MPs. Parliament thus achieved a considerable number of its original aims, and most of that achievement is now safeguarded in the Treaty of Lisbon.

Petr Novak
05/2018

5 - THE TREATY OF LISBON - [1.1.5.]

This fact sheet presents the background and essential provisions of the Treaty of Lisbon. The objective is to provide a historical context for the emergence of this latest fundamental EU text from the ones which came before it. The specific provisions (with article references) and their effects on European Union policies are explained in more detail in the fact sheets dealing with particular policies and issues.

LEGAL BASIS

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007); entry into force on 1 December 2009.

HISTORY

The Lisbon Treaty started as a constitutional project at the end of 2001 (European Council declaration on the future of the European Union, or Laeken declaration), and was followed up in 2002 and 2003 by the European Convention which drafted the Treaty establishing a Constitution for Europe (Constitutional Treaty) ([1.1.4](#)). The process leading to the Lisbon Treaty is a result of the negative outcome of two referenda on the Constitutional Treaty in May and June 2005, in response to which the European Council decided to have a two-year 'period of reflection'. Finally, on the basis of the Berlin declaration of March 2007, the European Council of 21 to 23 June 2007 adopted a detailed mandate for a subsequent Intergovernmental Conference (IGC), under the Portuguese presidency. The IGC concluded its work in October 2007. The Treaty was signed at the European Council of Lisbon on 13 December 2007 and has been ratified by all Member States.

CONTENT

A. Objectives and legal principles

The Treaty establishing the European Community is renamed the 'Treaty on the Functioning of the European Union' and the term 'Community' is replaced by 'Union' throughout the text. The Union takes the place of the Community and is its legal successor. The Lisbon Treaty does not create state-like Union symbols like a flag or an anthem. Although the new text is hence no longer a constitutional treaty by name, it preserves most of the substantial achievements.

No additional exclusive competences are transferred to the Union by the Lisbon Treaty. However, it changes the way the Union exercises its existing powers and some new (shared) powers, by enhancing citizens' participation and protection, creating a new institutional set-up and modifying the decision-making processes for increased efficiency and transparency. A higher level of parliamentary scrutiny and democratic accountability is therefore attained.

Unlike the Constitutional Treaty, the Lisbon Treaty contains no article formally enshrining the supremacy of Union law over national legislation, but a declaration was

attached to the Treaty to this effect (Declaration No 17), referring to an opinion of the Council's Legal Service which reiterates consistent case-law of the Court.

The Lisbon Treaty for the first time clarifies the powers of the Union. It distinguishes three types of competences: exclusive competence, where the Union alone can legislate, and Member States only implement; shared competence, where the Member States can legislate and adopt legally binding measures if the Union has not done so; and supporting competence, where the EU adopts measures to support or complement Member States' policies. Union competences can now be handed back to the Member States in the course of a treaty revision.

The Lisbon Treaty gives the EU full legal personality. Therefore, the Union obtains the ability to sign international treaties in the areas of its attributed powers or join an international organisation. Member States may only sign international agreements that are compatible with EU law.

The Treaty for the first time provides for a formal procedure to be followed by Member States wishing to withdraw from the European Union in accordance with their constitutional requirements, namely Article 50 TEU.

The Treaty of Lisbon completes the absorption of the remaining third pillar aspects of the area of freedom, security and justice (FSJ), i.e. police and judicial cooperation in criminal matters, into the first pillar. The former intergovernmental structure ceases to exist, as the acts adopted in this area are now made subject to the ordinary legislative procedure (qualified majority and codecision), using the legal instruments of the Community method (regulations, directives and decisions) unless otherwise specified.

With the Treaty of Lisbon in force, the European Parliament is able to propose amendments to the Treaties, as was already the case for the Council, a Member State government or the Commission. Normally, such an amendment would require the convocation of a Convention which would recommend amendments to an IGC (the European Council could, however, decide not to convene such a Convention, subject to Parliament's consent (Article 48(3) TEU, second paragraph)). An IGC could then be convened to determine amendments to the Treaties by common accord. It is, however, also possible to revise the Treaties without convening an IGC and through simplified revision procedures, where the revision concerns the internal policies and actions of the Union (Article 48(6) and 48(7) TEU). The revision would then be adopted as a decision of the European Council, but might remain subject to national ratification rules.

B. Enhanced democracy and better protection of fundamental rights

The Treaty of Lisbon expresses the three fundamental principles of democratic equality, representative democracy and participatory democracy. Participatory democracy takes the new form of a citizens' initiative ([4.1.5](#)).

The Charter of Fundamental Rights is not incorporated directly into the Lisbon Treaty, but acquires a legally binding character through Article 6(1) TEU, which gives the Charter the same legal value as the Treaties ([4.1.2](#)).

The process of the EU's accession to the European Convention on Human Rights (ECHR) was opened when the 14th protocol to the ECHR entered into force on 1 June 2010. This allows not only states but also an international organisation, i.e. the European Union, to become signatories of the ECHR. Accession still requires ratification by all states that are parties to the ECHR, as well as by the EU itself.

Negotiations between Council of Europe and EU representatives led to the finalisation of a draft agreement in April 2013, which, however, was deemed incompatible with Article 6 TEU by the Court of Justice of the European Union in its Opinion 2/2013. Further negotiations will be necessary before accession can take place.

C. A new institutional set-up

1. The European Parliament

Pursuant to Article 14(2) TEU, the EP is now 'composed of representatives of the Union's citizens', not of representatives of 'the peoples of the States' (Article 189 TEC).

The EP's legislative powers have been increased through the 'ordinary legislative procedure', which replaces the former codecision procedure. This procedure now applies to more than 40 new policy areas, raising the total number to 73. The assent procedure continues to exist as 'consent', and the consultation procedure remains unchanged. The new budgetary procedure creates full parity between Parliament and the Council for approval of the annual budget. The multiannual financial framework has to be agreed by Parliament (consent).

The EP now elects the President of the Commission by a majority of its members on a proposal from the European Council, which is obliged to select a candidate by qualified majority, taking into account the outcome of the European elections. The EP continues to approve the Commission as a college.

The maximum number of MEPs has been set at 751. The maximum number of seats per Member State is reduced to 96; the minimum number is increased to 6. Germany kept its 99 MEPs until the 2014 elections.

2. The European Council

The Lisbon Treaty formally recognises the European Council as an EU institution, responsible for providing the Union with the 'impetus necessary for its development' and for defining its 'general political directions and priorities'. The European Council has no legislative functions. A long-term presidency replaces the previous system of six-month rotation. The President is elected by a qualified majority of the European Council for a renewable term of 30 months. This should improve the continuity and coherence of the European Council's work. The President also represents the Union externally, without prejudice to the duties of the High Representative of the Union for Foreign Affairs and Security Policy (see below).

3. The Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR)

The VP/HR is appointed by a qualified majority of the European Council with the agreement of the President of the Commission and is responsible for the EU's common foreign and security policy, with the right to put forward proposals. Besides chairing the Foreign Affairs Council, the VP/HR also has the role of Vice-President of the Commission. The VP/HR is assisted by the European External Action Service, which comprises staff from the Council, the Commission and national diplomatic services.

4. The Council

Lisbon maintains the principle of double majority voting (citizens and Member States). However, the previous arrangements remained in place until November 2014; since 1 November 2014, the new rules apply. The use of previous voting weights could still be requested by any Member State until 31 March 2017.

A qualified majority is reached when 55% of members of the Council, comprising at least 65% of the population, support a proposal (Article 16(4) TEU). When the Council is not acting on a proposal from the Commission or the VP/HR, the necessary majority of Member States increases to 72% (Article 238(2) TFEU). To block legislation, at least four Member States have to vote against a proposal. A new scheme inspired by the 'Ioannina compromise' will allow 55% (75% until 1 April 2017) of the Member States necessary for the blocking minority to ask for reconsideration of a proposal during a 'reasonable time period' (Declaration 7).

The Council meets in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting is divided into two parts, dealing respectively with legislative acts and non-legislative activities. The Council Presidency continues to rotate on a six-month basis, but there are 18-month group presidencies of three Member States in order to ensure better continuity of work. As an exception, the Foreign Affairs Council is continuously chaired by the VP/HR.

5. The Commission

Since the President of the Commission is now chosen and elected taking into account the outcome of the European elections, the political legitimacy of the office is increased. The President is responsible for the internal organisation of the college (appointment of commissioners, distribution of portfolios, request to resign under particular circumstances).

6. The Court of Justice of the European Union

The jurisdiction of the Court is extended to all activities of the Union with the exception of the CFSP. The number of Advocates-General can be increased from eight to eleven. Specialised courts can be set up with the consent of Parliament. Access to the Court is facilitated for individuals. A European Public Prosecutor's Office should be set up in order to investigate, prosecute and bring to judgment offences against the Union's financial interests.

D. More efficient and democratic policy-making with new policies and new competencies

Several so-called 'passerelle clauses' allow a change from unanimous decision-making to qualified majority voting and from the consultation procedure to codecision (Article 31(3) TEU, Articles 81, 153, 192, 312 and 333 TFEU, plus some passerelle-type procedures concerning judicial cooperation in criminal matters) ([1.2.4](#)). In areas where the Union has no exclusive powers, at least nine Member States can establish enhanced cooperation among themselves. Authorisation for its use must be granted by the Council after obtaining the consent of the European Parliament. On CFSP matters, unanimity applies.

The Lisbon Treaty considerably strengthens the principle of subsidiarity by involving the national parliaments in the decision-making process ([1.3.5](#)). A certain number of new or extended policies have been introduced in environment policy, which now includes the fight against climate change, and energy policy, which makes new references to solidarity and the security and interconnectivity of supply. Furthermore, intellectual property rights, sport, space, tourism, civil protection and administrative cooperation are now possible subjects of EU law-making.

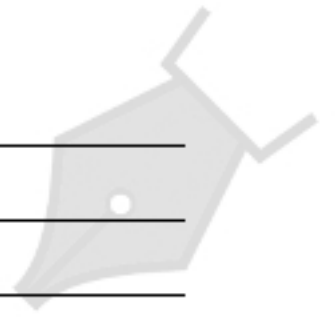
On the common security and defence policy (CSDP) ([5.1.2](#)), the Lisbon Treaty introduces a mutual defence clause which provides that all Member States are obliged

to provide help to a Member State under attack. A solidarity clause provides that the Union and each of its Member States have to provide assistance by all possible means to a Member State affected by a human or natural catastrophe or by a terrorist attack. A 'permanent structured cooperation' is open to all Member States which commit themselves to taking part in European military equipment programmes and to providing combat units that are available for immediate action. To establish such cooperation, it is necessary to obtain a qualified majority in Council after consultation with the VP/HR.

ROLE OF THE EUROPEAN PARLIAMENT

See [1.1.4](#) for Parliament's contributions to the European Convention and its implication in previous IGCs. With respect to the 2007 IGC, leading to the signature of the Treaty of Lisbon, Parliament for the first time sent three representatives to the conference under the Portuguese presidency. In February 2017, Parliament approved two major resolutions aimed at reviewing the constitutional framework set out by the Lisbon Treaty: one on improving the functioning of the European Union by building on the potential of the Lisbon Treaty, and the other on the possible evolution of and adjustments to the current institutional set-up of the European Union.

[Roberta Panizza](#)
[05/2018](#)



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THE EUROPEAN UNION AT A GLANCE

The aim of the Fact Sheets is to provide an overview of European integration and of the European Parliament's contribution to that process.

Created in 1979 for Parliament's first direct elections, the Fact Sheets are designed to provide non-specialists with a straightforward, concise and accurate overview of the European Union's institutions and policies, and the role that the European Parliament plays in their development.

The Fact Sheets are grouped into five chapters.

- **How the European Union works** addresses the EU's historical development and the successive treaties, its legal system, decision-making procedures, institutions and bodies, and financing.
- **Economy, science and quality of life** explains the principles of the internal market and consumer protection and public health, describes a number of EU policies such as social, employment, industrial, research, energy and environment policies, outlines the context of the economic and monetary union (EMU) and explains how competition, taxation and economic policies are coordinated and scrutinised.
- **Cohesion, growth and jobs** explains how the EU addresses its various internal policies: regional and cohesion policy, agriculture and fisheries, transport and tourism, and culture, education and sport.
- **Citizens: fundamental rights, security and justice** describes individual and collective rights, including the Charter of Fundamental Rights, and freedom, security and justice, including immigration and asylum, and judicial cooperation.
- **The EU's external relations** covers foreign policy, security and defence policies, external trade relations, and development policy; the promotion of human rights and democracy; the enlargement and relations beyond the EU's neighbourhood.

Drafted by the policy departments and the Economic Governance Support Unit, the Fact Sheets are available in 23 languages. The online version is reviewed and updated at regular intervals throughout the year, as soon as Parliament adopts any important positions or policies.

