Complete EU Law: Text, Cases, and Materials (5th edn)
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1. The origins of the European Union and EU law

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Abstract

Titles in the Complete series combine extracts from a wide range of primary materials with clear explanatory text to provide readers with a complete introductory resource. This chapter discusses the history of the European Union. It covers the historical rationale for the EU; the aims of the EU; the four stages of economic integration; economic and political difficulties; expansion of membership; institutional developments; legal developments; closer European integration; the Treaty of Rome (1957); the Single European Act (1986); the Treaty on European Union (1992); the Treaty of Amsterdam (1997); the Charter of Fundamental Rights; the Treaty of Nice (2001); the Treaty of Lisbon (2007); and the potential process for and impact of 'Brexit'.

Keywords: economic integration, EU membership, institutional development, European integration, Treaty of Rome, Single European Act, Treaty on European Union, Treaty of Lisbon, Fundamental Rights, Brexit

Key Points

By the end of this chapter, you should be able to:

- describe the history of the European Union (EU);
- explain the basic principles of economic integration underlying the policies of the EU; and
- understand the legal development of the EU through its governing Treaties.

Introduction

The legal framework of the European Union (EU) has developed specifically in order to support and further its aims, and therefore an awareness of its aims and origins is essential in order to understand its institutions and legal structures (see Chapters 2 and 3), and the nature of its laws and their continuing impact on UK law, business, and society (see Chapter 4 onwards).

One point on terminology needs to be noted at the start. The EU has changed its name and its legal structure over the years. It began life on 1 January 1958 as the European Economic Community (EEC), but was renamed the European Community (EC) from 1987. In 1992, certain new functions were introduced, but transferred to a new body, the European Union (see 1.13 on the Treaty on European Union (TEU), which created the EU), and the two bodies existed in parallel until they finally became a single body again under the EU name in 2009 (see 1.18 on the Treaty of Lisbon, which achieved this). It is not necessary to remember this chronology in detail, but it explains why certain older cases or documents refer to the EEC or EC rather than the EU. For most purposes, you can read references to the EEC or EC as references to the EU.

The rationale for the creation of the EU is examined in detail in this chapter, but, to start, it is instructive to read the Preamble to the Treaty of Rome establishing the European Economic Community (1957) (the EEC Treaty). A further point on terminology arises in relation to this Treaty. You may sometimes find it referred to as the Treaty of Rome (after the city in which it was signed), but there have been many other treaties concluded in Rome and so a reference to the Treaty of Rome does not necessarily refer to the EEC Treaty. It is therefore more accurate to refer to it as the EEC Treaty. In parallel with the changes of name of the EEC/EC/EU itself, referred to above, the EEC Treaty has been renamed and substantially amended on a number of occasions, as will be explained later in this chapter. In particular, it became the EC Treaty from 1993 and the Treaty on the Functioning of the European Union (TFEU) from 2009.

The Preamble to the EEC Treaty set out the aspirations of the founders of the EEC.

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Treaty of Rome establishing the European Economic Community (1957)

Preamble

HIS MAJESTY THE KING OF THE BELGIANS,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS,

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

RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating,

HAVE DECIDED to create a European Economic Community and to this end have designated as their Plenipotentiaries:

[*List of plenipotentiaries omitted*]

> Who, having exchanged their Full Powers, found in good and due form, HAVE AGREED as follows:
>
> [*Then follows the text of the Treaty*]

The Preamble demonstrates that the founders had in mind both political and economic objectives.

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Thinking Point

> The EEC Treaty was concluded in 1957 after negotiations that took place over a number of years. What significant world event immediately prior to this period might have led European politicians to call for greater cooperation between European countries in economic and political matters?

The event that, above all, led European politicians to seek greater cooperation was the Second World War, and the political and economic devastation that it caused across Europe.

1.1 The historical rationale for the European Union

Although ideas of European political and economic integration had existed prior to the Second World War, these ideas began to look realistic only in the post-war years. Across Europe, memories were scarred by two devastating world wars centred on Europe, successive severe winters led to a fuel crisis, there was a series of bad harvests, and foreign reserves were drained by the lack of exports. It seemed that political cooperation might be the way to a better future.

The military threat from the then Union of Soviet Socialist Republics (USSR) at this time, which marked the beginning of the Cold War, was perceived as particularly acute and, in order to promote post-war stability in Europe, the United States offered support to Western European countries in the form of the Marshall Plan (which gave aid to those countries for post-war reconstruction) and the Truman Doctrine (which pledged military support to countries resisting aggression). The founding members of the EEC felt that the likelihood of a third world war centred on Europe would be further decreased by constructing close economic and political ties between European countries. A cooperative effort, including the pooling of resources, was needed for Europe to recover from the war and cope with the economic problems of the post-war years. In addition, while as individual countries each was too small to compete economically or militarily with either the United States or the then USSR (or, nowadays, China), the European countries felt that they might have more global influence if they worked together.

Review Question

> What other, non-EU, European legal initiatives (which you may have learned about in studies of constitutional or public law) came about as a result of the desire amongst Europeans that the horrors of the Second World War should never happen again?
>
> *Answer*: The European Convention on Human Rights (ECHR) (see further 9.1) was also signed in the post-war period. The ECHR, which operates under the auspices of the Council of Europe (see further 9.1) and which applies across a much wider geographical area than the EU and its Treaties, focuses on political human rights rather than economic rights. The relationship between the ECHR and EU law, and between the Council of Europe and the EU institutions, is explained in greater detail at 9.1.

p. 4 ↵ Despite these cogent reasons for a European union, its formation was delayed for over a decade after the war; the EEC Treaty, which ultimately led to the formation of the EU, was not signed until 1957 rather than a decade earlier. The problems of the immediate post-war era—depleted national reserves, decimated industries, and large numbers of unemployed ex-servicemen, together with a series of bad harvests—meant that national reconstruction took priority over more grandiose European plans. In addition, some of the most ardent supporters of the ideal of a European union were not in a position to influence events. The former West Germany (now part of a united Germany), which saw a European union as a way in which to gain re-acceptance by its neighbours, had, in the immediate post-war era, little political influence and Winston Churchill, the British prime minister who had argued for a United States of Europe, was no longer in power. However, during the late 1940s, a number of organizations were set up that involved the close cooperation of European and other states. These included the Organisation for European Co-operation (now the Organisation for Economic Co-operation and Development (OECD)), the North Atlantic Treaty Organization (NATO), and the Council of Europe (see further 9.1 on the Council of Europe). A European Defence Community was also proposed, but failed to materialize.

1.2 The EEC, ECSC, and Euratom Treaties

A number of countries, particularly France, recognized that if West Germany's coal and steel industries were tied to those of other countries, that country would be seriously hampered in any future war effort. In addition, it was recognized that cooperation in this area could be economically advantageous. As a result, in 1951, Belgium, the Netherlands, and Luxembourg (sometimes known as the Benelux countries), together with France, Italy, and Germany, signed the Treaty of Paris establishing the European Coal and Steel Community (ECSC) (see also 3.4.1). The ECSC Treaty expired in July 2002, but by then the ECSC had been successful in removing trade restrictions on coal and steel between the 15 Member States of the ECSC, and in creating a supranational authority (ie with powers over the Member States) to oversee the expansion of production.

In the Preamble to the ECSC Treaty, the six signatory Member States declared it to be only the first step towards a federal Europe, and those States (particularly the Benelux countries, which were already closely linked economically by their own Benelux Union) became increasingly anxious to extend their fledgling alliance to other economic and political areas. In 1957, the EEC Treaty (see also 3.4.1) was signed on the basis of the Report of the Spaak Committee on the feasibility of European integration, the EEC Treaty (see also 3.4.1) was signed. The Spaak Report proposed a common market (see further 1.4.3) and noted that the advantages of a common market could be achieved only if it included rules to prevent the distortion of competition between producers, and cooperation between states to ensure monetary stability, economic expansion, and social progress. This went much further than the brief of the UK representative on the Committee, the UK having the simpler aim of a free trade area (see 1.4.1).

↵ As noted in the Introduction to this chapter, the EEC Treaty has been subject to renaming and to considerable revision and supplementation over the years, and it now exists in the form of two Treaties: the Treaty on European Union (TEU), and the Treaty on the Functioning of the European Union (TFEU). These will be considered in detail throughout this book, as they now constitute the legal foundation of the EU.

Note

> Treaties are normally divided into Articles, just as UK Acts of Parliament are divided into sections. When you cite a particular Article of the TFEU, for example Article 267, the correct citation is 'Article 267 TFEU'. When you cite a particular Article of the TEU, for example Article 6, you should cite it as 'Article 6 TEU'.

Also in 1957, the six members of the ECSC and the EEC signed the Treaty establishing the European Atomic Energy Community (Euratom) (see also 3.4.1), formally agreeing to cooperate in the development of the peaceful use of atomic energy. Euratom now has the same Member States as the EU and shares its major institutions, as agreed in the Merger Treaty 1965 (see also 3.4.1). It continues to exist, but is a separate body to the EU and will not be considered further in this book. However, it should be noted that Article 106(a) of the Euratom Treaty provides that the provisions of Article 50 TEU, which allow a Member State to give notice of withdrawal from the EU, apply to the Euratom Treaty so as to allow a similar notice of withdrawal from Euratom to be given. When the UK government gave notice under Article 50 TEU of its intention to withdraw from the EU (see further Chapter 16), it also invoked Article 106(a) of the Euratom Treaty so as to give notice of its intention to leave Euratom.

Thinking Point

> Do you think that EU law could be classed as international law?

EU law may be regarded as a type of international law in that it governs the relations between sovereign States (the Member States of the EU) and regulates cross-border activities. However, it has a number of features not normally seen in international law, including the possibility of direct enforcement of its laws by individuals and businesses before national courts (see further Chapter 4), and the sovereignty of EU law over national law (see further Chapter 3). The term 'supranational' is sometimes used to refer to EU law because rather than governing relations between (*inter*) States, it puts in place institutions that are above (*supra*) the States. It has been suggested that there are occasions when the approach of the EU's Court of Justice (see 2.4 for an explanation of this court) is that of an international court (see eg Jed Odermatt, 'The Court of Justice of the European Union: International or Domestic Court?' (2014) 3(3) CJICL 696, 717–18).

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1.3 The aims of the EU

The original aims have been revised over the years; for example, the aim of economic and monetary union (EMU) was introduced only in 1992. The current formulation of the aims is to be found in Article 3 TEU.

Article 3 TEU

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.

   It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

   It shall promote economic, social and territorial cohesion, and solidarity among Member States.

   It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Many of these aims have already been at least partially fulfilled. For example, the internal market has largely been achieved (see further 1.4.3 on this stage of economic integration and, more generally, Chapters 10, 11, and 12), and substantial moves towards equality between men and women (and indeed more widely) have been made (see 1.12 on social policy more generally). Of course, the extent to which the EU and its policies have caused or contributed towards the fulfilment of its other aims is open to argument. For example, the

p. 7 Member States ↵ have enjoyed an unprecedented period of peace since the middle of the twentieth century, albeit with some conflicts on the fringes of the EU in the Balkans and further east, but the impact of the Cold War balance of power and the existence of NATO may have been at least as important as that of the EU in this respect. Similarly, Member States have, overall, enjoyed significant economic growth over this time, but this is also true of many other countries that are not members of the EU.

Thinking Point

> Article 3(1) and (5) TEU refers to the 'values' of the EU. While reading Article 2 TEU and in the light of what you have read about the historical rationale for the EU, what sort of 'values' do you think that the Member States might have agreed upon?

What the Member States actually agreed upon is set out in Article 2 TEU.

Article 2 TEU

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
>
> These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The Treaties contain hundreds of Articles, providing further detail of how the aims listed in Article 3 TEU are to be fulfilled. There is also a wide range of secondary legislation (see 3.4.2) providing still more detail.

1.4 Economic integration

Article 3(3) TEU (see 1.3) refers to an 'internal market' as one of the aims of the EU (see further 10.1 on the internal market) and, as explained at 1.1, economic integration as a means of avoiding military conflict was central to the creation of the EU. Since this forms the basis of much of the law explained in this book and, of course, the legal system that underpins it, it is necessary to have some understanding of the relevant economic theories.

Prior to any economic integration between countries, each country trades as an independent entity. It makes most sense for each country to concentrate on the goods or services that it can produce most efficiently.

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Review Question

> Suppose that two countries each produce both wine and beer. Vinland produces wine much more efficiently, and therefore cheaply, than Beeria, but Beeria produces beer much more efficiently and cheaply than Vinland. What might people in these countries, at least in theory, gain from trading with each other?
>
> *Answer*: Consumers in Vinland will be able to buy Beerian beer more cheaply than beer produced in their own country. Consumers in Beeria will benefit similarly from buying their wine from Vinland. This suggests that efficiency can be maximized if Vinland concentrates on wine production rather than beer and Beeria concentrates on beer production rather than wine. However, the two countries can only optimize their efficiency in this way if they trade with each other in order to meet demand for the product of which they now produce less.

Thinking Point

> Can you see any potential problems for the two countries in the review question scenario?

If there are no restrictions at all on this trade, then this may produce disadvantages. For instance, if Vinland produces less (or no) beer and Beeria produces less (or no) wine, there will be unemployed workers in those industries. Furthermore, few countries would wish to be totally dependent on a single country for supply if the commodity involved were an essential one, such as oil or grain. Of course, in the real world, free trade does not exist between all countries because of protectionist measures taken by some and economic integration between others.

The Member States of the EU have adopted the approach of economic integration, although they have retained some protectionist measures in relation to countries outside the EU.

Economic integration is a process in which the countries in question pass through several stages over time. These will now be examined.

1.4.1 A free trade area

The first stage of economic integration is a free trade area.

A free trade area exists when a number of countries agree to remove all customs duties (payments made to States where goods cross their borders) and quotas (numerical limits imposed by States on the amount of goods that may be imported or exported) between themselves, so that there are no restrictions on the movement of goods from one country to another *within* the free trade area, but each country keeps its own (ie different) duties and quotas on goods imported from, or exported to, countries *outside* the area.

The concepts of 'customs duties' and 'quotas' will be discussed further in Chapter 10. The economic boom experienced by the Member States of the EEC in the late 1950s and early 1960s made the then EEC's aim of economic integration easier to achieve, and many quotas and duties were removed.

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Review Question

> Suppose that Vinland and Beeria have established a free trade area between them, and that you are a winemaker in Beeria. You could either buy cheap grapes from Distillia, a country outside the free trade area, but pay a 40 per cent duty to import them, or slightly more expensive grapes from Vinland on which, of course, you do not have to pay duty. Which would you choose? Will this cause any problems?
>
> *Answer*: Owing to the abolition of duties, it is cheaper for you to buy from a less-efficient producer in another country within the free trade area (ie Vinland) than from a more efficient producer in a country outside it on whose products you then have to pay import duties (ie Distillia).

One problem with a free trade area, from an economist's point of view, is that it can encourage inefficiency within the free trade area. Of course, from the point of view of an inefficient producer, being in a free trade area is not a problem at all. Another problem is that such integration can lead to international trade diversion, which may cause economic difficulties for countries outside the free trade area.

Fear about the resulting diversion of trade was a factor in the creation in 1960 of an alternative free trade area to the EU, the European Free Trade Area (EFTA). This was formed by a number of European countries who did not wish to join the EEC, in an attempt to counter the negative effects on their trade caused by the economic integration of their neighbouring countries. Some of EFTA's members subsequently joined the EU instead, but EFTA remains in existence and currently consists of Iceland, Liechtenstein, Norway, and Switzerland. It is discussed in more detail at 16.3.2 in the context of the variety of relationships that the EU operates with non-Member States.

Review Question

> Suppose that Vinland levies a duty of 10 per cent on goods imported from countries outside the free trade area, whereas Beeria levies a duty of 25 per cent on such imports. If you wished to export goods from Distillia (which is outside the area) to Beeria, how might you avoid the 25 per cent duty?
>
> *Answer*: If exporters in Distillia market their goods to the whole of the free trade area (Vinland and Beeria) through Vinland, duty will be charged on the goods at only 10 per cent when they enter Vinland and the free trade area means that those goods can then pass into Beeria without further payment. This can be seen in Figure 1.1.

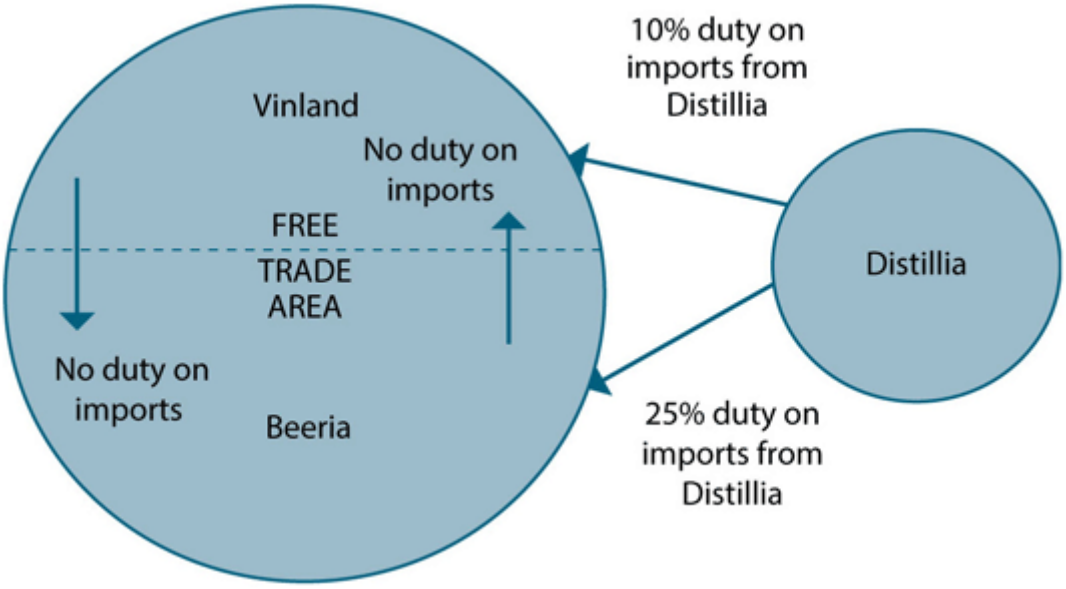

Figure 1.1 Impact of free trade area on third country imports

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Thinking Point

> Who will benefit in the review question scenario? Who might suffer?

Clearly, exporters in Distillia will benefit from being able to avoid the higher rate of duty. Consumers in the free trade area will also benefit if the saving to exporters is passed on through cheaper prices for the goods. However, it may affect the relative competitiveness of industry in Beeria, because it now has to compete with goods from Distillia (and other countries outside the free trade area), which are cheaper than before. It may

also affect the balance of trade, because Distillia's exports to Vinland will rise and its exports to Beeria will fall, while exports from Vinland to Beeria will also rise. Finally, it will reduce the amount of customs duties received by the government of Beeria on goods coming into it from countries outside the free trade area.

1.4.2 A customs union

The second stage of economic integration is a customs union.

A customs union consists of a free trade area (see 1.4.1) *plus* an agreement by countries in the area to impose a common level of duty on goods coming into the area from non-member countries.

In the EU, this common external duty is known as the Common Customs Tariff (CCT) (see further 10.1.2).

Thinking Point

> How might the addition of a common external duty solve some of the problems of a free trade area outlined in 1.4.1?

A customs union avoids a trade imbalance, such as that referred to earlier between Vinland, Beeria, and Distillia, because the same level of duty is charged by all the countries within the free trade area (ie Vinland and Beeria) to a particular country outside it (ie Distillia). So goods from Distillia would incur the same level of duty whether they enter the free trade area through Vinland or Beeria.

1.4.3 A common or internal market

The third stage of economic integration is a common market.

Although the term 'common market' is used by economists, the EU itself now uses a different term, the 'internal market', to describe the same concept. It has also sometimes used the term 'single market'.

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Thinking Point

> Where have you already come across the use of the term 'internal market'?

Article 3 TFEU (see 1.3) states that one of the EU's aims is to achieve an internal market. A common, or internal, market consists of a customs union (see 1.4.2) *plus* an agreement by all member countries to remove restrictions on the free movement of goods, persons, services, and capital (sometimes collectively known as the factors of production or, in the EU context, the four freedoms) between themselves. Within the EU, steps

were taken from the very beginning towards establishing the free movement of goods and workers between Member States, protecting the social security interests of such workers, regulating competition in goods, and establishing a Common Agricultural Policy (CAP)—and later a Common Fisheries Policy (CFP).

The definition of the EU's 'internal market' is contained in Article 26 TFEU.

Article 26 TFEU

> 1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
> 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.
> 3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

Thinking Point

> What benefits might the 'free movement' referred to in Article 26 TFEU confer on individuals living in the EU?

The benefits conferred by the principle of free movement on individuals living in the EU include being able to move to a different Member State to take up employment opportunities, being able to travel abroad to receive services in tourism or health care, and, in either case, being able to take currency with them without restriction on the amount they can import and export. Even without leaving their own Member State, people can often buy goods from other Member States more easily or cheaply as compared to goods from outside the EU, and can buy them directly from those other Member States with consumer protection guarantees equal to those available in their home Member State.

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1.4.4 Economic and monetary union

The fourth stage of economic integration, economic and monetary union (EMU), did not appear in the original EEC Treaty and was included only at a much later stage of the EU's history. It will therefore be considered (at 1.14) after discussing other developments that took place before EMU.

1.5 Economic and political difficulties

Despite the very many economic achievements of the then EEC in its early years, there was a falling away of interest among its Member States from the mid-1960s until well into the 1980s. The economic boom of the early 1960s had not been sustained and EEC membership no longer appeared to guarantee economic success, particularly when oil prices rose sharply and a worldwide recession set in during the 1970s. The original 1969 deadline for the completion of the internal market came and went, scarcely noticed and certainly unfulfilled.

A further difficulty that came to the fore during this period was the decision-making process amongst the Member States. Initially, all decisions were taken by consensus—in other words, they required unanimity.

Thinking Point

> Why might consensus decision-making prove problematic?

Achieving agreement between several different countries, each with different economic and political priorities, on every decision necessary for the functioning of the EEC, was often difficult and achieved only after protracted negotiations, and was sometimes impossible. The same is true today of the EU.

However, during the 1960s, the then EEC began to require certain decisions to be taken by a qualified majority vote. Qualified majority voting (QMV) requires a specific number of votes, rather than a simple majority, to be cast in favour of a measure in order for it to be passed (see further 1.15, 1.17, 1.18, and 2.2.3 on later reforms to QMV) and the number of votes given to each Member State is determined by the relative size of its population. Thus the larger States have greater power, but, crucially, no country has a veto. This means that decisions can be taken even if they are opposed by some Member States, and these decisions will nonetheless bind all Member States.

Qualified majority decisions were due to include, from 1966, those concerning agricultural prices, an area of key importance to France. By refusing to exercise France's vote in the final period of consensus voting (which required unanimity), so that no decisions at all could be taken—sometimes referred to as the 'empty chair' approach—the French government ↵ succeeded in forcing the other countries to compromise on the issue of QMV. This was known as the Luxembourg Compromise (or the Luxembourg Accords) and it stated that where the Treaty provided for QMV and the vitally important interests of one or more Member States were involved, the EEC must try to find a unanimously agreed solution.

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The extension of QMV in the Single European Act (1986) (see further 1.10 and 3.4.1 on the Single European Act) and subsequent Treaties (see further 1.13, 1.15, 1.17, 1.18, and 3.4.1 on these Treaties) led to further political difficulties and the adoption in 1994 of a further compromise, the Ioannina Compromise. An amended version of the Ioannina Compromise now appears in Article 238 TFEU which is discussed at 2.2.3.

In addition to QMV, an additional and separate formula has since been introduced by the Treaty of Amsterdam (see 1.15) into both the EC Treaty and the TEU (1992) (now the TFEU and TEU), allowing for decision-making where the usual legislative procedures (explained at 3.5) cannot be used due to the objections of some Member States. This formula was originally known as 'closer cooperation', but it was amended by the Treaty of Nice (see 1.17) and renamed 'enhanced cooperation' (see also 1.15, 1.17, and 1.18 on its introduction and subsequent reforms). Although this term may sound rather imprecise, it has in fact a very particular meaning in the context of the EU and is a formal decision-making procedure with its own rules, as explained at 3.5.3. Effectively, the 'enhanced cooperation' procedure allows a group of Member States to proceed with a particular course of action despite the absence of wider agreement within the EU.

Of course, difficulties for the EU have not been confined to this period of time, as demonstrated by the continuing arguments over whether the EU should be 'widened' (ie by expanding its membership—see 1.6) or 'deepened' (ie by closer integration—see 1.9), the political struggles over a European constitution (see 1.17), the economic difficulties and tensions between Member States caused, or at least exacerbated, by the single currency (see 1.14), and whether Turkey should be allowed to join the EU (see 1.6). Most recent is the challenge posed by the UK's withdrawal from the EU ('Brexit') (see further 1.9, 3.2, and 3.3).

1.6 Enlargement

Despite the economic stagnation of the 1970s and early 1980s, and the apparent loss of momentum by the then EEC, its membership began, and continued, to expand. In 1973, the UK, Denmark, and Ireland joined the original six members, followed by Greece in 1981.

Since then, what is now the EU has experienced almost continual expansion, with Spain and Portugal joining in 1986, Austria, Finland, and Sweden in 1995, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia in 2004, Bulgaria and Romania in 2007, and Croatia in 2013. The EU currently has 27 Member States and negotiations for the accession of a number of other States, including Albania, Montenegro, North Macedonia, Serbia, and Turkey, are ongoing.

Only one Member State has ever left the EU—the UK in 2020. However, the Danish territory of Greenland left the EU in 1995 (see further 16.3.2.7).

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1.7 Institutional developments

There were also important developments in the 1960s and 1970s affecting the EEC institutions. The Budgetary Treaties of 1970 and 1975 introduced a special procedure for drafting and approving the EEC's budget, which gave the European Parliament greater powers (see 2.1.2). The 'own resources' concept was also introduced—that is, in addition to money contributed by the Member States, the EEC had its own resources coming from the levies under the CAP, the CCT, and other EEC-inspired taxes. A Court of Auditors was appointed as a financial watchdog over EEC spending (see Chapter 2).

Note

> Do not be misled by the word 'Court' in the name of the Court of Auditors. It consists of a group of auditors and is not a court in the judicial sense, but more like a powerful committee.

Again, these developments continue and are discussed later in this chapter in the context of the various Treaties (see 1.10, 1.13, 1.15, 1.17, and 1.18).

1.8 Legal developments

The Court of Justice also pushed forward with the development of EEC law (now EU law) during the 1960s and 1970s. Some of the most significant judgments of this period included the following.

■ **Case 22/70 *Commission v Council (ERTA)* [1971] ECR 263** In this case, the Court ruled that once EEC measures had been taken in a particular area of law, Member States could no longer act independently in that area, since this would prevent the uniform application of EEC law. This continues to have important consequences for the powers and competences of the EU.

■ **Case 41/74 *Van Duyn v Home Office* [1974] ECR 1337** In this case, the Court ruled that, in certain circumstances, a type of EEC legislation called a Directive could be enforced in the national courts. As explained in 3.4.2, Directives are addressed to Member State governments, and the ruling that they could be enforced directly by ordinary individuals or businesses was controversial. (This case is discussed further at 4.1.1 and 4.1.4.)

■ **Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA ('Simmenthal II')* [1978] ECR 629** The Court ruled that, since it had previously ruled that EEC law was supreme and took precedence over national law, any conflicting national legislation should be disapplied. Again, this was controversial. (This case is discussed further at 3.1.2 and 4.2.5.)

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Review Question

> Make a note of these cases, some of which are discussed in more detail in other chapters as indicated. When you reach each of these cases in later chapters, think about the impact that they had on the development of EU law in those areas.

1.9 Closer integration

The momentum towards closer European integration was revived in the 1980s. First, in 1984, the draft EU Treaty, which was designed to create a federal Europe with a more powerful European Parliament (see 2.1), was proposed by the European Parliament. Although the draft Treaty was not accepted by the Council (see 2.2 on the Council), the Dooge Committee was set up to look into possible reforms of the original EEC Treaty.

Second, the long-running dispute over the UK's contribution to the EU's budget was resolved and the UK was pressured into accepting the work of the Dooge Committee.

Third, in 1985, the Schengen Agreements were adopted by a majority of the Member States (although not the UK or Ireland), and have since been extended to some other Member States and a small number of non-EU European states. The Agreements abolished internal frontier controls and included a number of other measures to enhance the free movement of persons between these countries (see further Chapter 11 on the free movement of persons).

Finally, a new President of the European Commission (see 2.3.1) was appointed, Jacques Delors, who oversaw the drafting of the White Paper on European Union, which became the Single European Act.

The process of integration has continued, with temporary setbacks, but without significant loss of momentum, as will be seen in the rest of this chapter.

1.10 The Single European Act (1986)

Reference has already been made in this chapter to the earliest Treaty, the EEC Treaty (later renamed the EC Treaty) and to the current Treaties, the TEU and the TFEU (see Introduction).

The Single European Act (SEA) (see also 3.4.1) was the first Treaty to amend the EEC Treaty, which had, at that time, been in force for over 30 years. It was not the last: there have been a further four Treaties (and counting). The SEA was not a stand-alone Treaty, but consisted largely of provisions amending the EEC Treaty, the ECSC Treaty, and the Euratom Treaty (see 1.2).

The key provisions of the SEA, which came into force on 1 July 1987, were as follows.

■ **Amendments to the EEC Treaty to ensure completion of the internal market** The EEC Treaty had laid down a 12-year period for the establishment of an internal market, but, by the end of 1969, it was far from complete. The SEA therefore provided for:

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- a deadline of the end of 1992 for the completion of the internal market;
- a specific obligation on the EEC to adopt the necessary measures to achieve this; and
- a new law-making power to be applied to such measures, known as the cooperation procedure (now replaced by other procedures—see further 3.5).

■ **Amendments to the EEC Treaty to include new areas of EEC competence (in other words, EEC power), such as the environment**

■ **Amendments to the EEC Treaty to introduce a second EEC court to supplement the role of the original EEC court, the Court of Justice** (see 2.4 on the Court of Justice) This second court was originally called the Court of First Instance, but is now called the General Court (see further 2.4.2). It was intended to reduce the workload of the Court of Justice and thereby to ease the problem of delays in the judicial process. However, it largely failed to do this and further reforms became necessary (see further 6.11.4 on these reforms).

■ **Provisions (operating outside the EEC Treaty) formalizing the role of the European Council** (see further 2.5)

■ **Provisions (operating outside the EEC Treaty) for European Political Cooperation** These set out principles to bring about closer and more systematic cooperation in the formulation and implementation of foreign policy. They were built upon by subsequent Treaties, becoming the Common Foreign and Security Policy (CFSP) (discussed at 1.13, 1.15, 1.17, and 1.18).

1.11 Regional development

In 1988, the European Regional Development Fund (ERDF) and the European Social Fund (ESF) were restructured to channel more EEC funds away from the CAP and towards regional development, as part of the EEC's commitment to the harmonization of development throughout the EEC, and to counter fears that the internal market would exacerbate regional inequalities.

The ERDF aims to strengthen economic and social cohesion in the EU by correcting imbalances between its regions through investment in priority activities, such as the low-carbon economy and support for small and medium-sized enterprises (SMEs) in less-developed regions.

The ESF supports employment-related projects to improve skills, provide training, and assist those from disadvantaged groups to get jobs.

1.12 Employment and social policy

In 1989, all of the Member States, except the UK, adopted the Charter of Fundamental Social Rights of Workers. This stated basic rights such as freedom of movement, fair remuneration, and adequate social protection, which were in addition to the provisions in the EEC Treaty on free movement, health and safety at work, and the prohibition of discrimination at work ↵ on grounds of sex. However, the Charter was not binding and conferred no new powers, but simply stated recommended standards of worker welfare, which were to be a goal for its signatories. It was the basis for the Social Protocol of the Treaty on European Union 1992 (the so-called Social Chapter), which extended the ambit and powers of EC social policy and into which the UK eventually opted. These provisions were eventually incorporated into the TFEU.

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1.13 The Treaty on European Union (1992)

Although this Treaty is often known as the Treaty of Maastricht, its formal title is the Treaty on European Union (1992) (see also 3.4.1). Like the EEC Treaty (see 1.2), it has been amended several times, but unlike that Treaty it has not been renamed and so, in order to distinguish the current version, the Treaty on European Union 2009 (TEU), from the pre-2009 version, that pre-2009 version will be referred to as the 'TEU (1992)' in this book. Although some provisions of the TEU (1992) amended the EEC Treaty, others did not and instead formed part of a stand-alone Treaty. The two Treaties continue to exist in parallel today.

The key provisions of the TEU (1992), which came into force on 1 November 1993, were as follows.

■ **A change of name of the European Economic Community (EEC) to the European Community (EC)** The word 'Economic' was dropped from the name to reflect the change of emphasis within the organization, from a purely economic and market-oriented body to one with competences in areas such as education, equality, culture, and environmental and consumer protection.

Thinking Point

> What significance, if any, do you consider that this change of name might have?

■ **Introduction of a new organization, the European Union (EU)** The EU had the same membership and institutions as the three European Communities (the EC, the ECSC, and Euratom—see 1.2 on these bodies), but was effectively an umbrella organization, including not only those three Communities, but also two new policy areas—Cooperation on Justice and Home Affairs (JHA) (now Police and Judicial Cooperation in Criminal Matters) and a Common Foreign and Security Policy (CFSP). As a result, it was often described as having a three-pillared structure. The reason for keeping these new areas of competence outside the structure of the Communities was to retain more decision-making power in the hands of national governments meeting in Council (see further 2.2 on the Council), and to allow less power to the European Parliament (see further 2.1 on the Parliament) and the two Community Courts (now EU Courts—the Court of Justice and the General Court, collectively known as the Court of Justice of the European Union (CJEU)—see further 2.4). However, the structure was complicated both in theory and in practice, and was abolished by the Treaty of Lisbon (see further 1.18).

p. 18 ■ **The introduction of a new legislative procedure** Known originally as co-decision and now as the ordinary legislative procedure (OLP) (see 3.5.1), this gave greater power to the European Parliament in the decision-making process, so that certain decisions had to be taken jointly by it and the Council, instead of by the Council alone (see also 1.15, 1.17, and 1.18).

■ **The principle of subsidiarity** (see also 1.15 on further reforms to subsidiarity) Subsidiarity is the principle of dealing with a particular issue at the most local level possible—for example by a city council rather than a national government or by a national government rather than the EU. It is discussed in more detail at 3.3.

■ **The introduction of EU citizenship** (see further 11.2).

■ **Policies on economic and social cohesion** (see further 1.12, 1.15, and 1.17 for the detail of, and subsequent reforms to, these policies).

■ **Cooperation on Justice and Home Affairs (JHA)—now Police and Judicial Cooperation in Criminal Matters** The EU was given competence over the treatment of non-Member State nationals and aspects of law enforcement that fell outside EC competence, but which had the potential to affect the operation of the internal market. In particular, this included cooperation between police forces (which led to the setting up of the European Police Office (Europol), which supports cross-border law enforcement and the exchange of information on criminal activities), customs authorities, and the judicial authorities in criminal matters.

■ **The Common Foreign and Security Policy (CFSP)** (see further 1.15, 1.17, and 1.18 on the history and development of the CFSP). This built on European Political Cooperation, as introduced by the SEA (see also 1.10), and covers all areas of foreign and security policy, 'including the eventual framing of a common defence policy, which might in time lead to a common defence' (Article 1(4) TEU 1992). The defence role was originally fulfilled by the existing Western European Union (WEU), of which the majority (but not all) of the EC Member States were members, but this was dissolved in 2011, its institutions largely having been transferred to the European Defence Agency (EDA), which is part of the EU.

■ **Economic and Monetary Union (EMU)** (see further next).

1.14 Economic and monetary union

The final stage of the economic integration process discussed at 1.4 is economic and monetary union.

Review Question

> Can you recall the first three stages of economic integration?
>
> *Answer*: The first three stages of economic integration are a free trade area, a customs union, and a common market (or 'single' or 'internal' market) (see 1.4.1, 1.4.2, and 1.4.3).

p. 19 ↵ Economic and monetary union consists of a common market (explained at 1.4.3) *plus* unified monetary and fiscal policies. These include, inter alia, a single currency for all Member States, common policies on interest rates, and central control by the union of each country's budget.

The philosophy behind the economic policies of the EU was (and still is) that every individual and business based in the EU should be free to invest, produce, work, buy, sell, or supply services wherever in the EU this can be done most efficiently and without competition being artificially distorted. When the EEC was founded, it was decided that this policy was to be achieved through the establishment of an internal market (see 1.4.3), but, in the TEU (1992), the Member States added EMU to its aims. This is now set out in Article 119 TFEU:

Article 119 TFEU

> 1. For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
> 2. Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.
> 3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

The UK negotiated and exercised an opt-out from this final stage of economic integration, and thus did not adopt the euro as its currency, although it adopted some other measures of integration belonging to this final stage. A number of other Member States have also remained outside this final stage of economic integration, either from choice or because they have not yet satisfied the fiscal criteria laid down by the EU for entry into EMU.

Thinking Point

> Do you consider that the EU has now achieved this final stage of economic integration?

It is evident that the EU has *not* achieved full economic integration. For instance, there are still more restrictions on the trade in goods between Member States than within a single Member State (see further Chapter 10 on restrictions on the free movement of goods) and on the rights of, for instance, an Italian to work in Germany than for a German to work there (see further ↵ Chapter 11 on restrictions on the free movement of persons). There are also different rates of income and corporation tax in the Member States that can affect the movement of workers and businesses. These are not features that one would expect to see in a fully economically integrated area.

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1.15 The Treaty of Amsterdam (1997)

Substantial further enlargement of the EU was anticipated as a result of the fall of the Berlin Wall in 1989 and the disintegration of the USSR, leading to its dissolution at the end of 1991, and it was against this background that the Treaty of Amsterdam (see also 3.4.1) and the subsequent Treaty of Nice (see 1.17) were negotiated. Enlargement required both institutional reform to ensure that institutional structures designed for six, 12 or 15 Member States would be administratively workable for 20 or 30 (see further 1.6 on expansion of membership) and greater flexibility to ensure that the smaller number of Member States that wished to proceed to greater integration could do so.

The key provisions of the Treaty of Amsterdam, which came into force on 1 May 1999, were as follows.

■ **Renumbering of the EC Treaty and the TEU (1992)**. For example, Article 177 EC became Article 234 EC as a result of the Treaty of Amsterdam, although its content was not changed. The Treaty of Lisbon caused a further renumbering (see 1.18) and so this is now Article 267 TFEU.

■ **Institutional reform**. This included the reform and extension of co-decision (now the ordinary legislative procedure—see 3.5.1) (see also 1.13, 1.17, and 1.18), the extension of QMV (see also 1.5, 1.17, 1.18, and 2.2.3 on the history of QMV and later reforms to it), and amendments to subsidiarity (see also 1.13 on the introduction of subsidiarity and 3.3 for further detail of the principle).

■ **The transfer of visas, asylum, immigration, and other policies relating to the free movement of persons from the TEU (1992) and thus EU competence, to the EC Treaty and thus EC competence** (see 1.13). This was significant at the time because the EU was then separate from the EC and largely under the control of the Member States acting in Council (see further 2.2 on the Council), rather than of the EC institutions. This transfer was part of a process known as 'communitization', and resulted in increased scrutiny of EC activities in these policy areas from the European Parliament and the then EC Courts.

■ **The renaming and amending of JHA to Police and Judicial Cooperation in Criminal Matters** (see 1.13, 1.17, and 1.18).

■ **The introduction of the concept of 'an area of freedom, security and justice' (AFSJ)**, to be established gradually through the provisions on the free movement of persons (including the newly communitized policy areas) and the provisions on Police and Judicial Cooperation in Criminal Matters.

p. 21 ■ **Amendments to the CFSP** (see further 1.13, 1.17, and 1.18 on its history and development).

■ **The creation of the role of EU High Representative for the CFSP**, to represent the EU overseas in this policy area (see also 1.18 on the subsequent development of this role).

■ **Introduction of new provisions on employment and social policy** (see 1.12 on the origins of this policy, and 1.15 and 1.17 on later reforms to it).

■ **Sanctions on Member States that breach fundamental EU values**. A Member State that seriously breaches the fundamental values of the EU—now set out in Article 2 TEU (see 1.3)—may have its Treaty rights, including voting rights, suspended (see also 1.17 on subsequent reform of this provision, which is now contained in Article 7 TEU). These sanctions are supplemented by the Rule of Law Framework introduced in 2014, which formalizes a dialogue between the EU Commission (see 2.3 for an explanation of the

Commission) and the Member State prior to the triggering of Article 7. The Commission first assesses whether there is a threat to the rule of law in the State. If the matter is not resolved, it addresses a Recommendation to the State. Finally, it monitors the State's follow-up to the Recommendation. If there is no satisfactory follow-up by the time limit set, recourse can be had to Article 7 TEU, which enables the Commission or the European Parliament to propose that the Council determines there to be a clear risk of a serious breach by a Members State of the values set out in Article 2. For example, in 2017, the Commission invoked the Article 7(1) procedure for the first time concerning reforms that Poland had made to its judicial system—in particular, the forced removal of senior court judges and the introduction of a discretionary presidential power, unfettered by any objective criteria, to prolong judges' terms in office. In 2018 the European Parliament invoked the procedure in relation to Hungary in respect of a number of concerns about judicial independence, freedom of expression, the rights of minorities, and other issues. However, although the Council conducted a number of hearings with Poland and with Hungary, it has not yet determined the existence of a breach of the Article 2 values or suspended the rights of either of those countries.

■ **Introduction of a new decision-making procedure known as 'closer cooperation'**, subsequently amended and renamed the 'enhanced cooperation' procedure, and now set out in Article 20 TEU and Articles 326–334 TFEU (see 1.5 for the context of this procedure, 1.17 and 1.18 on its reform, and 3.5.3 for further detail) This procedure is used to enable further integration between some, but not all, Member States where the other Member States do not wish to integrate, and measures taken in this way apply only to those Member States that agree to take part. It applies only where the EU's competence (ie its power to act) is shared with the Member States, for example in relation to the internal market (Article 3 TFEU) (see 1.4.3), and not where the EU has exclusive competence, for example in relation to competition law (Article 4 TFEU) (see further Chapters 13, 14, and 15). It has been used relatively infrequently; see, for example, Council Decision 2010/405/EU of 12 July 2010 authorizing enhanced cooperation in relation to the law applicable to divorce and separation, OJ 2010 L189/12, Council Decision 2011/167/EU of 10 March 2011 authorizing enhanced cooperation in relation to unitary patent protection, OJ 2011 L76/53 (challenged unsuccessfully in C-274/11 and C-295/11 *Spain and Italy v Council* EU:C:2013:240), Decision 2016/954 authorising enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions on the property regimes of international couples, OJ 2016 L159/16, and Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ 2017 L283/1.

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■ **Incorporation of the Schengen Agreements into the EC Treaty** (see 1.9 on the origin of these Agreements). The UK and Ireland negotiated an opt-out from these Agreements, so that they would not be automatically bound by them or by the associated Schengen ***acquis communautaire***, but could opt in to future developments. Denmark agreed to continue to be bound by the Schengen Agreements and the existing *acquis*, but not by any further developments of the *acquis* unless it chooses to opt in to them.

acquis communautaire

The term *acquis communautaire* is used to refer to the accumulated body of EU law, including its objectives, policies, legislation, and case law. It is sometimes shortened simply to 'the *acquis*'. In relation to the Schengen Agreements, the term 'Schengen *acquis communautaire*' is used similarly to refer to the cumulative laws, conventions, and decisions passed under those Agreements (see 1.9).

1.16 The Charter of Fundamental Rights

Neither the EC nor the EU originally had a formal human rights competence, although the Court of Justice developed and applied principles of human rights (see further Chapter 9). However, in 2000, the EU proclaimed the Charter of Fundamental Rights of the European Union (see further 9.4), although this was not given full legal effect until the Treaty of Lisbon came into force (see 1.18).

1.17 The Treaty of Nice (2001)

The reason for two Treaties in such short succession was predominantly that the Treaty of Amsterdam failed to make all of the necessary institutional reforms and so the Treaty of Nice was intended to achieve these reforms. However, the lack of success of the Treaty of Nice itself in this respect was highlighted by the subsequent need for the Treaty of Lisbon (see 1.18).

The key provisions of the Treaty of Nice (see also 3.4.1), which came into force on 1 February 2003, were as follows.

- **Institutional and decision-making reforms**, including:
- Further extension and reweighting of QMV (see also 1.5, 1.15, 1.18, and 2.2.3 on the history of QMV and later reforms to it) and the extension of the use of co-decision (now OLP—see 3.5.1) (see also 1.13, 1.15, 1.18, and 3.5.1 on co-decision)
- Reforms to the procedures of the Court of Justice and extension of the jurisdiction of the Court of First Instance (now renamed the General Court—see further 2.4.2 on the General Court)
- Alterations to the *locus standi* (standing) of the Parliament under Article 263 TFEU (discussed at 7.6.1 and 7.6.2)

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- Renaming and amending of the 'closer cooperation' procedure—now 'enhanced cooperation' (see also 1.5, 1.15, 1.18, and 3.5.3 on the history, development, and detail of this procedure)

- **Amendments to Police and Judicial Cooperation** (see also 1.13, 1.15, and 1.18 on the history and development of this policy), including:

- Establishing the European Judicial Cooperation Unit (EuroJust), composed of national prosecutors, magistrates, or police officers of equivalent competence, which facilitates coordination between national prosecuting authorities, supports international criminal investigations, and cooperates with the European Judicial Network (an EU-wide network of national contact points created in 1998 to facilitate judicial cooperation and provide information to the public)

- **Amendments to the CFSP** (see further 1.13, 1.15, and 1.18 on the history and development of this policy), including reduction of the role of the WEU (now replaced by the EDA—see 1.13) and emphasis instead of that of NATO (see 1.1)

- **Amendments to social policy** (see 1.12, 1.13, and 1.15 on the history and detail of this policy)

-

Amendments to the power to sanction Member States that breach fundamental EU values (see 1.15 on the introduction of this power) now contained in Article 7 TEU and the associated Rule of Law Framework

1.18 The Treaty of Lisbon (2007)

As mentioned at 1.17, the anticipated expansion of the EU led to calls for reform of its procedures to make them fit for an organization of over 20 countries. At the same time, there were calls for further integration.

Review Question

> List the original Member States. Which other Member States subsequently joined and when?
>
> *Answer*: The original six Member States were Belgium, Netherlands, Luxembourg, France, Italy, and Germany.
>
> Visit the Online Resources to see a timeline of the subsequent expansion of the EU, including accession dates for each of the newer Member States.

Review Question

> By what terms are the contrasting processes of (a) enlarging the EU to spread the benefits of peace and prosperity more widely and (b) increasing its economic and political integration often referred to?
>
> *Answer*: These two processes are often referred to, respectively, as ‘widening’ and ‘deepening’ the EU.

p. 24 ↵ The processes of widening and deepening the EU are very often in conflict, both because of the increasing difficulty of reaching unanimous agreement amongst an increasing number of Member States and because deeper integration becomes more difficult until and unless all of the newer Member States—which, with the accession of ten States in 2004 and a further two in 2007, represent almost half the total number of Member States—have caught up with the level of economic and political integration achieved by the more established Member States.

These conflicts were apparent in the various attempts to produce a new Treaty for the EU in the first decade of the twenty-first century. A proposed EU Constitution (see also 3.4.1 on the draft Treaty Establishing a Constitution for Europe) was abandoned after it was rejected in referenda in the Netherlands and Ireland, and

a subsequent proposal, the draft Reform Treaty, almost met the same fate after rejection by Irish voters. It was, however, amended and revived to become the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007) (see also 3.4.1).

The main changes introduced by the Treaty of Lisbon, which came into force on 1 December 2009, were:

- a merger of the EC and the EU to form the EU (see also Introduction and 1.13);
- the renaming of the EC Treaty to the TFEU (see also 1.13);
- the renaming, and further extension of the use, of the OLP (see further 3.5.1), formerly known as co-decision (see also 1.13, 1.15, and 1.17 on its introduction and its reform by other Treaties);
- the further extension of the use of QMV and amendments to the weighting of votes (see 1.5, 1.15, 1.17, and 2.2.3 on the history of QMV and later reforms to it);
- the renaming of the Court of First Instance as the General Court (see further 2.4.2 on the General Court);
- an increased role for national parliaments (see Protocol No 1 to the Treaties for further details);
- the possibility for citizens to call on the Commission to bring forward legislation (see 2.3.3.3 and 11.2.3);
- a new role of President of the European Council (see further 2.5.2.2);
- a reduction in the number of Commissioners (see further 2.3.1);
- clarification of the 'enhanced cooperation' procedure (see also 1.5, 1.15, 1.17, and 3.5.3 on the history, reform, and detail of this procedure);
- amendments to the Charter of Fundamental Rights and recognition that it has the same legal effect as the Treaties (see 1.16 on the introduction of the Charter and 9.4 for further detail of its provisions);
- supplementing of the CFSP (see further 1.13, 1.15, and 1.17 on the history and development of the CFSP) by a Common Security and Defence Policy (CSDP), which grew out of an Anglo-French initiative in 1999, the European Security and Defence Policy (ESDP); and
- expansion of the powers of the High Representative of the EU for the CFSP (introduced by the Treaty of Amsterdam—see 1.15) and a renaming of the post as High Representative of the EU for Foreign Affairs and Security Policy.

p. 25 ↵ The timeline of the EU, as discussed in 1.1–1.18, is summarized in Figure 1.2.

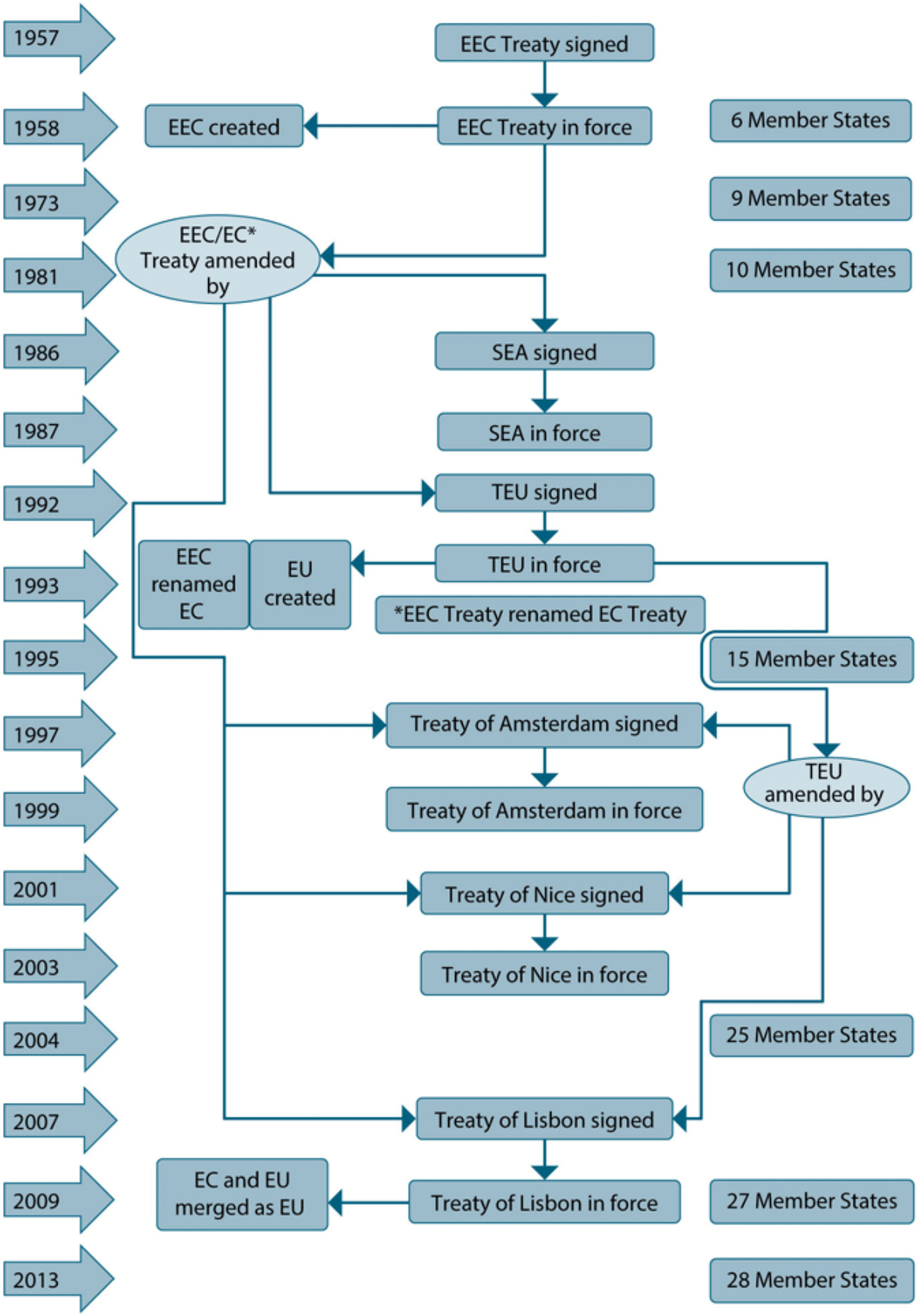

Figure 1.2 Summary of the development of the EU through its Treaties and its membership

1.19 Brexit

This will be discussed in detail in Chapter 16.

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1.20 Conclusions

The EU is a remarkable and unique organization. It has tied together the economies of almost 30 disparate countries to create an enormous internal market and contributed towards the raising of living standards, as well as developing a comprehensive legal system to support its activities. It has also been instrumental in creating and maintaining the unprecedented half-century of peace in Europe that has prevailed since its inception. Yet it continues to face significant challenges, not only economic and political, but also (as demonstrated in the rest of this book) legal. The most recent of these is 'Brexit', which poses challenges not only for the UK and its future relationship with the EU, but also for its impact on the economies of the remaining EU Member States and for the future direction of the EU—in particular, its relationship with its more Eurosceptic Member States.

Summary

■ In this chapter, you have learned about the history of the European Union (EU). This underlies the form and substance of EU law, and the EU's legislative and judicial structures.

■ The EU, originally known as the European Economic Community (EEC) and then as the European Community (EC), was founded in 1957 and governed for much of its history by the EC Treaty (originally the EEC Treaty). Its origins lie in the desire of the original Member States to avoid another major war developing in Europe and to develop a trading bloc with global influence. It was preceded by the European Coal and Steel Community (ECSC), which attempted to integrate the traditional war industries, coal and steel, so that no Member State could engage in a war effort against another.

■ Since then, the EU has proceeded along the path of economic integration (see further Chapter 10), and the Treaty on European Union 1992 (TEU 1992) established economic and monetary union (EMU) as an objective of the Member States.

■ The TEU (1992)—and, to a lesser extent, the Single European Act (SEA) and the Treaties of Amsterdam and Nice—fundamentally changed the political, economic, and legal assumptions underlying the EU. The Treaty of Lisbon added a significant human rights dimension to the EU.

■ However, there have been, and remain, difficulties. As the number of Member States increases, decision-making becomes more complex, not least because of the corresponding increase in the diversity of views as to what the EU should be about. How (and indeed whether) the tension between 'deepening' the level of integration and 'widening' the number of countries to be integrated will be resolved remains to be seen.

■ The first major amending Treaty, the SEA, provided momentum to achieve the single market within the EC. It also extended the competences of the then EEC and set up the Court of First Instance (now the General Court) as part of the two-court structure of the Court of Justice of the European Union (CJEU).

■ Perhaps the most important amending Treaty, the EU Treaty (1992) or TEU (1992), established a new aim of economic and monetary union, and provided new competences in foreign and defence policy, and justice and home affairs, under a new body, the EU. It also renamed the EEC as the EC.

■ The Treaties of Amsterdam and Nice were primarily intended to streamline the institutional structures of the EC in anticipation of enlargement. However, they were not entirely successful in enabling the EC to function more efficiently.

p. 27 ■ The Treaty of Lisbon merged the EC and the EU, so that there is now a single entity called the EU, although there are still two Treaties.

■ The EU has 27 Member States (at time of writing), with accession negotiations continuing for further expansion.

Brexit

■ The economic, political, and legal impact of the withdrawal of the UK from the EU, and the future relationship between the UK and the EU, remain to be established.

Further Reading

Articles

M Aubelj, 'Theory of European Union' (2011) 36(6) EL Rev 818

Discusses the nature of European integration.

P Craig, 'The Treaty of Lisbon: Process, Architecture and Substance' (2008) 33(2) EL Rev 137

Discusses key provisions of the Treaty of Lisbon (2007).

B de Witte, 'An Undivided Union? Differentiated Integration in Post-Brexit Times' (2018) 55(2) Supp (Special Issue) CMLR 227

Considers whether the EU will still engage in differentiated integration projects after the UK's withdrawal and the likelihood of a 'two-speed' EU.

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Explores the possibility that there are occasions when the approach of the EU's Court of Justice is that of an international, rather than a supranational, court.

Books

I Bache, S Bulmer, S George, and O Parker, *Politics in the European Union*, 4th edn (Oxford: Oxford University Press, 2014)

See especially Chapter 1 on theories of economic integration and Chapters 5–11 on the history of the EU.

MJ Dedman, *The Origins and Development of the European Union 1945–95: A History of European Integration* (Oxford: Routledge, 1996)

Analyses the political and economic events leading up to the founding of the EEC and its subsequent progress.

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F Ilzkovitz, A Dierx, V Kovacs, and N Sousa, 'Steps towards a Deeper Economic Integration: The Internal Market in the 21st Century—A Contribution to the Single Market Review' (2007) European Commission, Directorate-General for Economic and Financial Affairs, Publication No 291, available at http://ec.europa.eu/economy_finance/publications/publication_summary788_En.htm *<http://ec.europa.eu/economy_finance/publications/publication_summary788_En.htm>*

Analyses progress towards achievement of the single market.

Web Links

'The history of the European Union', available at https://europa.eu/european-union/about-eu/history_en *<https://europa.eu/european-union/about-eu/history_en>*

The EU's own account of its history.

Questions

1. Explain the reasons for the formation of the EEC in 1957.
2. What is the single market?
3. Why was the Single European Act (1986) necessary and how did it provide for achievement of its objectives?
4. What significant developments were introduced by the TEU (1992)?
5. What major changes were made by the Treaty of Lisbon (2007)?

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