Aims and objectives

At the end of this chapter you should understand:

- How and why the European Communities were established, and their aims and objectives.
- How the European Union has evolved from its initial six Member States to 27 Member States (rising to 28 Member States on 1 July 2013) and beyond.
- How the Single European Act amended the founding Treaties.
- What effect the Treaty on European Union had on the founding Treaties and how it established the European Union and its three pillars.
- What effect the Treaty of Nice had on the founding Treaties and the Treaty on European Union.
- How the Treaty of Lisbon amended the founding Treaties and the Treaty on European Union, including:
  - the renaming of the EC Treaty to the Treaty on the Functioning of the European Union (TFEU);
  - the renumbering of the TEU and TFEU; and
  - the European Community’s replacement and succession by the European Union, resulting in the merger of the three pillars of the European Union.
- The legal status, within the context of EU law, of the European Convention on Human Rights and the European Court of Human Rights.
- The role of the European Free Trade Association and the relevance of the European Economic Area.
The post-war years

The European Communities came into existence in the aftermath of the Second World War, but the impetus for their creation, to a large extent, came from a desire not to repeat the mistakes made by the victorious powers in the inter-war years. The Treaty of Versailles of 1919 recognised the new nation-states of Central and Eastern Europe that had emerged following the collapse of the Austro-Hungarian and Ottoman empires. It also imposed heavy reparations on Germany, which the new Weimar Republic was unable to pay. The hyper-inflation that followed, and the crash of 1929, wiped out the savings of the large German middle class and pushed unemployment in Germany to more than 40 per cent of the labour force (Hobsbawm, 1994). The instability that this created led directly to the rise of the Nazi Party and the outbreak of the Second World War. It also gravely affected the economies of the other Western European powers. The UK, France and Italy, the victors who were the architects of Versailles, suffered almost as much as the vanquished from its consequences. Attempts at protecting national economies by tariff barriers were largely unsuccessful and did little more than maintain the economies of Western Europe in a state of stagnation until they were lifted by preparations for another world war. The experience of the inter-war years made clear beyond doubt that it was no longer possible for the states of Western Europe, including states like the UK and France which still had large colonial markets, to operate their national economies without regard to the effect on their immediate neighbours.

Another important lesson of the First World War and its aftermath was learned from the failure of linked defence treaties and the new League of Nations to avert war. The French, above all, grasped the importance of binding Germany’s coal and steel industry, the sinews of its war machine, into a new political and economic alliance. At the same time, fear of the apparently expansionist Soviet Union that now occupied the whole of Eastern and Central Europe, including the former East Germany, impelled the democratic states of Western Europe and North America to come together in 1949 into the North Atlantic Treaty Organisation (NATO). The former West Germany did not join NATO until October 1954 (The Paris Agreements). The USA, instead of withdrawing from Europe as it had in 1919, was a founder member of NATO, the new defence organisation, and took a major part in European rehabilitation and reconstruction. Millions of dollars were poured into the former West Germany in grants and loans under the Marshall Plan, and it started on a rapid economic recovery. Other European states were also assisted under the Plan.

The recognition of the reality and, indeed, the need for mutual interdependence by Western European states, created a receptive atmosphere for resurgent ideas about European political unity. These were expressed with force and vision by Winston Churchill (the former UK Prime Minister) at Zurich in September 1946, when he proposed a ‘sovereign remedy’ to European tensions. He proposed the creation of ‘a European family, or as much of it as we can’, which would be provided with ‘a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe.’ Although he did not envisage the UK becoming a member of this ‘European family’, he stated that the first step in its creation should be based on a partnership between France and Germany. This would have required an imaginative leap by the French, who were only just beginning to recover from German occupation and who had been the victims of three wars of aggression by Germany. The idea of European federation, based on a
Franco-German partnership, was, however, taken up with enthusiasm by two French politicians, Jean Monnet and Robert Schumann, the former with responsibility for French economic planning and the latter as Foreign Minister. The first step in the construction of a new European order was the creation of the European Coal and Steel Community.

The remainder of this chapter contains a sequential historical examination of the development of the European Communities and the European Union (EU), from their humble beginnings through the establishment of the European Coal and Steel Community (with the participation of six Member States) to the establishment of the European Union (with the participation of 27 Member States, rising to 28 Member States on 1 July 2013). The rationale for this approach is to facilitate an understanding of how the EU has evolved, to eventually replace and succeed the European Community, in order to appreciate how it might evolve in the future. A table of key dates and events is included towards the end of this chapter.

The European Coal and Steel Community is considered first.

23 July 1952: the European Coal and Steel Community

Less than four years after Churchill made his Zurich speech, Robert Schumann (the former French Foreign Minister) stated on 9 May 1950 that a united Europe was essential for the maintenance of world peace. He further stated that a European alliance was essential and that would require the century-old opposition between France and Germany to be eliminated. He proposed that the first stage on this road to European integration would require the whole of France and Germany’s coal and steel production to be placed under one authority. His proposal provided that other countries within Europe could participate in the organisation which would be created.

France, Germany, Italy and the Benelux countries (i.e. Belgium, The Netherlands and Luxembourg) accepted the proposal in principle and negotiations started immediately. The UK was not a party to these negotiations, as it was not yet interested in joining the European family (at this time the UK still had strong connections with the Commonwealth). The negotiations progressed rapidly, and less than one year later, on 18 April 1951, the Treaty Establishing the European Coal and Steel Community (ECSC) was signed by these six countries in Paris. Because it was signed in Paris it is often referred to as the Treaty of Paris. However, its official title is ‘The Treaty Establishing the ECSC’. Ratification of the Treaty by the six states was a mere formality.

Following ratification (i.e. approval), the Treaty entered into force on 23 July 1952, thus establishing the ECSC. This Treaty had a 50-year lifespan and therefore this Community came to an end on 23 July 2002. It was one of the three Communities which were collectively referred to as the European Communities; this is discussed further below.

Earlier in the discussion of the historical evolution of the European Communities, it was stated that European integration was necessary to ensure world peace. So how did the ECSC further this aim? Coal and steel were, in the 1950s, essential components in the production of arms and munitions. Thus, by depriving France and Germany of their independence in the production of these commodities, it was widely believed that future conflicts between France and Germany would be avoided. However, the Preamble to the Treaty made it quite clear that the long-term aims of the participants went a great deal further than the control of the production of coal and steel. The Treaty recognised that ‘Europe can be built only through practical achievements which will first of all create
solidarity, and through the establishment of common bases for economic solidarity’. The participants were ‘resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a deeper and broader community among peoples long divided by bloody conflicts’ (Preamble). There was little UK enthusiasm for involvement, and successive UK governments (including the then Conservative administration under the Premiership of Winston Churchill) were prepared to support only the loosest association with their Continental neighbours. These fell far short of the aspirations of the six founding states and, for two decades, the UK remained on the sidelines of Community developments.

The ECSC Treaty created five institutions:

- an executive, called the High Authority;
- a Consultative Committee attached to the High Authority;
- a Special Council of Ministers;
- an Assembly; and
- a Court of Justice.

The most striking thing about this new Community was the fact that it had legal personality. The High Authority was responsible for policy relating to the coal and steel industries in the Member States and had the power to make decisions directly affecting the economic agents in each country without regard to the wishes of the governments of those states. Investment in the coal and steel industries was influenced by the High Authority, though not subject to much control. Powers were reserved to regulate prices and production, but only if there were crises of shortage or over-production. There was also a social dimension to this Community: policies were to be framed for training, housing and redeployment. Competition was, at the same time, stimulated by rules on price transparency, as well as anti-trust laws which were modelled on those of the United States. These decisions were enforceable against the Member States in the new Court of Justice.

1 July 1958: the European Economic Community and the European Atomic Energy Community

Three of the founding states of the ECSC (Belgium, The Netherlands and Luxembourg) had already formed themselves into the Benelux customs union. From 1 January 1948, customs barriers were removed between Belgium, The Netherlands and Luxembourg and a common customs tariff was agreed between them in relation to the outside world. The effect of this was that goods could freely pass between the three countries, with minimal formalities. Customs duties levied on goods originating within the three countries were abolished and goods entering from outside had a uniform customs tariff applied to them. In 1954 they also authorised the free flow of capital, which meant a freedom of investment and unrestricted transfer of currency between the three countries, and in 1956 they introduced the free movement of labour. The internal trade of these countries increased by 50 per cent between 1948 and 1956. This mini common market proved to be profitable to all three countries involved and its success whetted the appetites of neighbouring states and led to pressure to project this experiment on a European scale.

This pressure created the political climate for a much more ambitious project. On 25 March 1957 the EEC Treaty was signed in Rome by the six founding states of the
ECSC, the aim being to establish a European Economic Community (EEC) in goods, persons, services and capital among these six states. The common market established by the EEC Treaty was, at the time, the biggest free trade area in the world. At the same time, the Treaty Establishing the European Atomic Energy Community (Euratom) was signed, providing for cooperation in the use of atomic energy. The UK participated in the initial negotiations for both Treaties but withdrew because it feared a loss of national sovereignty and damage to its favourable trading links with the Commonwealth. The EEC and Euratom Treaties came into force on 1 July 1958, following their ratification (i.e. approval) by the six states. This resulted in the existence of three communities: EEC, ECSC and Euratom, which were collectively referred to as the European Communities. As stated above, the ECSC came to an end on 23 July 2002, and therefore from this date the EEC (later to be renamed the EC) and Euratom were collectively referred to as the European Communities.

The Preamble to the EEC Treaty set out the objective of the founding states:

...to lay the foundations of an ever closer union among the peoples of Europe... to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe... [to secure] the constant improvement of the living and working conditions of their peoples... [and] to strengthen the unity of their economies and to ensure their harmonious development by reducing differences existing between various regions... [and] by means of a common commercial policy, to [secure] the progressive abolition of restrictions on international trade.

The common market, which was created by the EEC Treaty, covered the whole economic field except those areas falling within the scope of the ECSC or Euratom. It involved the creation of a customs union, which required the abolition of all customs duties and quantitative restrictions in trade between the Member States, a common external tariff, and provisions for the free movement of persons, services and capital. These objectives reflected what had already largely been achieved in the Benelux states, the aim being to create, on a Community scale, economic conditions similar to those in the market of a single state; similar to the position in the UK where there is free movement of goods, persons, services and capital between England, Scotland, Wales and Northern Ireland.

As initially formulated, Art 3 EEC Treaty vested the Community with the power to pursue the following activities:

- the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- the establishment of a common customs tariff and a common commercial policy towards third countries (i.e. countries not within the Community);
- the abolition, as between Member States, of obstacles to the free movement of persons, services and capital;
- the adoption of a common agricultural policy;
- the adoption of a common transport policy;
- the creation of a Community competition policy;
- the approximation of the laws of the Member States to the extent required for the proper functioning of the common market; and
- the association of overseas countries and territories in order to increase trade and promote economic development.
Article 3 empowered the Community (through its institutions) to pursue these economic activities and thus secure the four features of the common market discussed above: the free movement of goods, persons, services and capital.

The main institutions of the EEC – the Commission, the Council of Ministers, the Assembly and the Court of Justice – were modelled on those of the ECSC, and the Community had a similar legal structure.

In contrast, the object of Euratom was to develop nuclear energy, distribute it within the Community and sell the surplus to the outside world. For political reasons originally associated with France’s nuclear weapons programme and, subsequently, as a result of widespread doubts about the safety and viability of nuclear power, Euratom never developed as originally envisaged. Euratom has, however, remained an important focus for research and the promotion of nuclear safety.

8 April 1965: merger of the institutions

Immediately after the EEC and Euratom Treaties were signed, agreement was reached so that there would be only one Parliamentary Assembly and one Court of Justice for the ECSC, EEC and Euratom. For some time after the new Treaties came into effect, however, there remained separate Councils of Ministers and separate executive bodies – a High Authority in the case of the ECSC, and a Commission each for the EEC and Euratom.

On 8 April 1965, the simplification of the institutional structure of the Communities was completed by the signature of a Merger Treaty, the result of which was that there was thereafter one Council, one European Commission, one European Court of Justice and one Assembly (later to be renamed the European Parliament) for all three Communities.

1 July 1973: enlargement

The UK’s response to the creation of the EEC in 1958 was to propose a much looser ‘free trade area’. This proposal was not welcomed by the Community, but in 1959 it resulted in the creation of a rival organisation, the European Free Trade Association (EFTA), comprising Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK. Although trade increased between these states, EFTA lacked the structure and coherence of the EEC, and its members’ economies grew only modestly by comparison. By 1961, the UK government had realised that its failure to join the European Communities had been a mistake and, in that year, the Macmillan government applied for membership. After prolonged negotiations, the application, which needed the unanimous agreement of the Member States, was vetoed by the French President, General de Gaulle. The French were reluctant to accept the UK’s membership because it was feared the UK would attempt to retain preferences for Commonwealth trade and also because the UK government was too close, politically, to the USA. France was afraid that the special relationship between the UK and the USA would obstruct French efforts to create a European defence community, free from US dominance. A further attempt was made by the government of Harold Wilson in 1967, but this was again vetoed by the French. In 1970, a third application was made by the Heath government and on this occasion the application was successful. The Treaty of Accession was signed on 22 January 1972 and the UK, together with Denmark and Ireland, became members of the European Communities on 1 January.
1973. Norway, which had participated in the accession negotiations, did not join, as a result of an adverse national referendum.

The Treaty of Accession bound the new Member States to accept the three Treaties and to accept the existing rules of the Communities. The UK Parliament, after a debate that split both the Conservative and Labour parties, enacted the European Communities Act 1972, which was intended to give effect to both present and future Community law in the UK. Divisions within the Labour Party about membership of the European Communities led the Labour government (which had been elected to office in 1974) to promise a referendum. This was held in 1975 and resulted in endorsement of continuing membership by a majority of almost 2:1.

### 1 January 1981: enlargement

Greece became a member of the European Communities on 1 January 1981, increasing the number of Member States to ten.

### 1 January 1986: enlargement

Portugal and Spain became members of the European Communities on 1 January 1986, increasing the number of Member States to twelve.

### 1 July 1987: the Single European Act

The Single European Act (SEA) was a response to both the development and the lack of it in the three Communities. The SEA introduced the first major amendments to the founding Treaties. The SEA is not a UK Act of Parliament. It is a Treaty which was concluded between the Member States, the purpose of which was to amend the three founding Treaties: ECSC, EEC and Euratom. It was signed in February 1986 and came into force on 1 July 1987.

There now follows an overview of the main provisions of the SEA.

#### A European Union?

The Preamble to the SEA set out the Member States’ commitment to transform relations as a whole between the Member States into a European Union; a Union which would have activities way beyond the solely economic sphere. Political cooperation between the Member States was considered to be of paramount importance in the creation of this European Union.

The SEA separated provisions relating to political cooperation from those relating to economic integration. Those provisions relating to economic integration were implemented by amending the founding EEC Treaty. However, in relation to political cooperation, those provisions were implemented outside the existing Treaty. It was provided for the representatives of the Member States (i.e. Prime Minister/President and Foreign Secretary) to meet regularly for the purpose of drawing up common political objectives (through a body referred to as the European Council).
Therefore, at one level (the economic level) policies were implemented through the structure of the EEC (having its own special methods of decision-making and enforcement), whereas political policies were developed outside this structure, through cooperation between the Member States; an intergovernmental arrangement which did not bind the Member States unless all the Member States were in agreement.

Amendments to the EEC Treaty

The main amendments made to the EEC Treaty are considered below.

Completing the internal market and new policy objectives

The Treaties came into force during the 1950s when concerns about war in Western Europe and mass unemployment were high. However, by the mid-1970s and early 1980s, these concerns tended to have given way to pressure for greater consumer protection and protection at work. There were also growing anxieties about the degradation of the natural environment. The response to these new concerns was initially tackled at national level, rather than Community level, which resulted in a whole range of different national standards for both goods and industrial production that seriously threatened the growth in a genuinely common market in goods and services. The development of a multiplicity of national standards was accompanied by a slowing down of the economies of all the Member States, following the explosion of oil prices in 1973. Implementing the recommendations of the Commission’s White Paper, *Completing the Internal Market* (1985), the SEA attempted to tackle this problem on two fronts. It extended the competence of the EEC to enable it to legislate for the whole area of the Community on: environmental matters; economic and social cohesion, including health and safety; consumer protection; academic, professional and vocational qualifications; public procurement (i.e. competition for public contracts); VAT (i.e. Value Added Tax, which is a tax levied internally on goods and services); excise duties and frontier controls; and research and technological development. It also aimed to give the completion of the common market a new boost by setting a target for creating a new internal market by removing all the remaining legal, technical and physical obstacles to the free movement of goods, persons, services and capital by 1 January 1993. This objective was set out in the former Art 8a of the EEC Treaty (added by the SEA), where the internal market was described as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’. Article 8a EEC Treaty was renumbered Art 7a by the Treaty on European Union and Art 14 by the Treaty of Amsterdam. When the Treaty of Lisbon came into force on 1 December 2009 (see below), Art 14 was replaced by Art 26 of the Treaty on the Functioning of the European Union (TFEU).

Increasing the European Parliament’s legislative powers

Until 1979, members of the European Assembly were nominated by their national parliaments. The first direct elections to the newly named European Parliament took place in June 1979 (see Chapter 3), and their effect was that the Parliament became the only directly elected Community institution. It had, at the same time, only a consultative status in the legislative process (see Chapter 4). It was often said that the European Commission proposed legislation and the Council of Ministers disposed of it (i.e. adopted it). This situation generated pressure on the Member States to address the ‘democratic deficit’ in the Communities’ decision-making process. The SEA added a new ‘cooperation procedure’
to the Treaties, giving the Parliament a more important role in the legislative process in four areas:

- prohibition of discrimination on the grounds of nationality (Art 12 EC Treaty, which has been replaced by Art 18 of the Treaty on the Functioning of the European Union (TFEU), see below);
- the achievement of the free movement of workers (Art 40 EC Treaty, replaced by Art 46 TFEU);
- promotion of the right of establishment (Art 44 EC Treaty, replaced by Art 50 TFEU); and
- measures for implementation of the internal market (Art 95 EC Treaty, replaced by Art 114 TFEU).

This new legislative procedure required the Council of Ministers to cooperate with the European Parliament. The Parliament would for the first time have a real input into the legislative process (being able to propose amendments). In addition to Parliamentary input, legislative measures in these four areas could be adopted by the Council by ‘qualified majority’ rather than unanimity, thus overriding the objections of a Member State. The legislative process is considered in detail in Chapter 4.

1 November 1993: the Treaty on European Union

The next step in the constitutional development of the European Union was the adoption of the Treaty on European Union (TEU), which was negotiated at Maastricht and signed on 7 February 1992. It came into force on 1 November 1993 once it had been ratified by the Member States. An overview of the main provisions is followed by a more substantive discussion of the key features of the TEU.

Overview

The TEU was intended to extend further the competencies of the Communities by creating two new ‘pillars’ outside the legally binding, formal decision-making processes of the European Communities (the EC, ECSC and Euratom), which continued to exist. The two new ‘pillars’ of the European Union were: (i) Common Foreign and Security Policy (CFSP); and (ii) Cooperation in the fields of Justice and Home Affairs (JHA). These two pillars of the Union were really only intergovernmental in character and, like the foreign policy provisions of the SEA, created a broad framework for cooperation between the Member States rather than a process for the making of binding rules. The whole structure, which included the European Communities and the two new pillars, was called ‘the European Union’ (EU).

Of more constitutional and legal significance were the amendments to the EEC Treaty. The EEC was renamed ‘the European Community’ (EC), giving legal recognition to the fact that the activities and competencies of the former ‘economic’ Community ranged far beyond its original economic goals. The European Parliament’s role in the legislative process was further strengthened by the introduction of the co-decision procedure which, for the first time, gave the Parliament the power to veto legislation in certain circumstances. The re-unification of Germany in 1990 was reflected by an increased representation in the Parliament, so that Germany now had the largest allocation of MEPs.
It did not, however, gain any more votes in the qualified majority voting procedure within the Council of Ministers (see Chapter 4). A further institution was also created, the Committee of the Regions, having a role analogous to the Economic and Social Committee (see Chapter 3).

The central economic feature of the TEU was the section designed to lead to economic and monetary union by three stages. The UK and Denmark opted out of compulsory participation in the third stage. Sweden negotiated a similar opt-out when it joined the EU on 1 January 1995 (see below). The UK also refused to participate in the social chapter which incorporated principles that had previously been agreed by the heads of government (excluding the UK) in Strasbourg in December 1989: the Community Charter of Fundamental Social Rights of Workers. Both of these opt-outs are considered in further detail below.

Some of the key features of the TEU are now considered.

The TEU provisions

The TEU consisted of the following seven titles:

- **Title I:** Common provisions (Arts A to F);
- **Title II:** Provisions amending the EEC Treaty (Art G);
- **Title III:** Provisions amending the ECSC Treaty (Art H);
- **Title IV:** Provisions amending the Euratom Treaty (Art I);
- **Title V:** Provisions on a Common Foreign and Security Policy (Arts J.1 to J.11);
- **Title VI:** Provisions on Cooperation in Justice and Home Affairs (Arts K.1 to K.9);
- **Title VII:** Final Provisions (Arts L to S).

Titles II, III and IV of the TEU simply amended the three founding Treaties (as previously amended by the SEA).

The European Union

Title I contained common provisions which set out the basic objectives of the TEU. This title did not amend the founding Treaties, but simply set out the basic aims and principles of the newly formed European Union.

The three pillars of the European Union

Article A TEU provided for the establishing of a European Union:

> The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty.

It followed from this that the European Union (EU) was to be founded upon three pillars:

- the European Communities – EC, ECSC (now expired), Euratom;
- Common Foreign and Security Policy – Title V (Art J);
- Cooperation in Justice and Home Affairs – Title VI (Art K).

Figure 1.1 illustrates the structure of the European Union as at 1 November 1993.
Objectives of the European Union

Article B set out the objectives of the Union, some of which mirrored those contained in the founding Treaties as amended.

Protection of human rights

Article F(2) TEU provided that the Union would respect fundamental rights ‘as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms . . . as general principles of Community law’.

However, Art L TEU provided that all the common provisions (which included Art F(2) TEU) were not justiciable by the European Court of Justice, i.e. the Court did not have the power to rule on their application or validity. Despite this, it was possible that the Court of Justice would take the common provisions into account, including Art F(2), when interpreting the founding Treaties, as amended. This is considered further below and in Chapter 2.

The two intergovernmental pillars

The second and third pillars of the Union, not being inserted into the amended founding Treaties, remained outside the formal structures of the European Communities. These two pillars, as previously mentioned, related to: (i) Common Foreign and Security Policy (CFSP); and (ii) Cooperation in the fields of Justice and Home Affairs (JHA).

Although intergovernmental in nature, and thus falling outside the formal Community structure, they did have a connection in that some of the Community institutions (in particular the Council of Ministers) played a part in policy development.

It was argued that, over a period of time, these two pillars would be subsumed into the formal Community structure. This would be achieved by amending the founding Treaties. If this happened, all Community institutions could play a part in developing these policy areas, perhaps with a greater role for the European Parliament. Germany’s former Chancellor Kohl favoured this approach, which had already occurred in relation to the single European currency policy. Having initially been introduced by the SEA for development on an intergovernmental basis, the single European currency policy was subsequently incorporated into the formal EC structure (with its own special decision-making
and enforcement powers) following amendments to the EC Treaty by the TEU. Economic and monetary policy was governed by Arts 98–124 EC Treaty (now replaced by Arts 119–144 TFEU).

Under the TEU, prior to its amendment by the Treaty of Amsterdam, the Court of Justice was excluded from exercising its powers in matters dealt with under these two pillars (except in certain very limited situations) – Art L TEU.

As its name suggests, the second pillar (Common Foreign and Security Policy) provided for joint foreign and security (i.e. defence) action by the Member States. This action would be taken by the Council acting unanimously. However, there was provision for the Council to provide that certain decisions could be adopted by a qualified majority vote (Art J.3, para 2 TEU). There was minimal involvement of the European Parliament and the Commission in the process. Article L TEU excluded the Court of Justice from ruling on these provisions.

The third pillar (Cooperation in Justice and Home Affairs) provided for cooperation in policy areas such as asylum, immigration, ‘third country’ (i.e. non-EU) nationals, international crime (e.g. drug trafficking) and various forms of judicial cooperation. Action would again be taken by the Council of Ministers acting unanimously, with very limited provision for qualified majority voting (Art K.4, para 3 TEU). Once again there was little involvement of the European Parliament and the Commission, and Art L TEU excluded the Court of Justice from ruling on these provisions.

Amendments to the EEC Treaty

As discussed below, the EEC Treaty provisions were amended by the TEU to embrace tasks and activities which did not have a pure economic foundation. The TEU therefore amended the title of the EEC Treaty to the European Community Treaty (EC Treaty). From here on the EEC Treaty will be referred to as the EC Treaty (although as discussed below, when the Treaty of Lisbon came into force on 1 December 2009, the EC Treaty was renamed the Treaty on the Functioning of the European Union (TFEU)).

The EC Treaty is the most important of the three founding Treaties. Amendments made to the EC Treaty by Art G (i.e. Title II) TEU were as follows:

- creation of a citizenship of the European Union (Art 17 EC Treaty, which has been replaced by Art 20 TFEU);
- common economic and monetary policy, with a timetable for the implementation of a common currency (Arts 98–124 EC Treaty, replaced by Arts 119–144 TFEU);
- adoption of the principle of subsidiarity (Art 5 EC Treaty, replaced by Art 5 TEU when the Treaty of Lisbon came into force);
- amendment of the decision-making process – extension of qualified majority voting for the adoption of Council Acts into new policy areas, and further powers given to the European Parliament; and
- introduction of new areas of tasks and activities (the former Arts 2 and 3 EC Treaty were amended; these articles were replaced, in substance, by Art 3 TEU when the Treaty of Lisbon came into force).

Articles 2 and 3 EC Treaty, as amended by the TEU, extended the tasks and activities of the European Community beyond those with a purely economic base, now incorporating political and social goals. Article 2 (post-TEU, but pre-Treaty of Amsterdam and Treaty of Lisbon) provided that:
The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Article 3 (post-TEU, but pre-Treaty of Amsterdam and Treaty of Lisbon) provided that:

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all measures having equivalent effect;
(b) a common commercial policy;
(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
(d) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;
(e) a common policy in the sphere of agriculture and fisheries;
(f) a common policy in the sphere of transport;
(g) a system ensuring that competition in the internal market is not distorted;
(h) the approximation of the laws of the Member States to the extent required for the functioning of the common market;
(i) a policy in the social sphere comprising a European Social Fund;
(j) the strengthening of economic and social cohesion;
(k) a policy in the sphere of the environment;
(l) the strengthening of the competitiveness of Community industry;
(m) the promotion of research and technological development;
(n) encouragement for the establishment and development of trans-European networks;
(o) a contribution to the attainment of a high level of health protection;
(p) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
(q) a policy in the sphere of development cooperation;
(r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
(s) a contribution to the strengthening of consumer protection;
(t) measures in the spheres of energy, civil protection and tourism.

Article 2 provided that the Community’s tasks included the promotion of ‘a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity’. This is indicative of the fact that the European Community now had tasks and activities which were not purely economic-based, hence its change of title from EEC to EC.

Protocols

Annexed to the EC Treaty, as amended by the TEU, were a number of protocols. Protocols formed part of the Treaty by virtue of Art 311 EC Treaty, which provided that:

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.
Two highly controversial protocols provided for the UK to opt out of certain Community policies which the UK government of the day found unacceptable: those on social policy and economic and monetary union.

**Protocol on social policy**

All Member States, except the UK, supported an amendment to the EC Treaty for greater Community competence to legislate in the area of social policy (e.g. employee protection rights). Margaret Thatcher was the UK Prime Minister, and her government objected to this proposal and would not compromise its position. Therefore, the UK agreed to a protocol which enabled the remaining Member States to enter into an agreement allowing them to have recourse to the Community institutions and Treaty procedures and mechanisms when adopting acts and decisions in the social policy area not otherwise covered by the Treaties. The *Agreement on Social Policy* was annexed to the protocol.

Following the election of a Labour government in the UK on 1 May 1997, it was announced that the UK would no longer retain its opt-out, and would take the necessary steps to be bound by the Agreement on Social Policy. This was put into effect by the Treaty of Amsterdam which incorporated an amended version of the Agreement into the EC Treaty: see below.

**Protocol on economic and monetary union: UK and Denmark**

Under the SEA, economic and monetary policy, including working towards a single European currency, was introduced outside the formal structures of the Communities, to be dealt with on an intergovernmental basis. However, the TEU amended the EC Treaty to provide for this policy area (including a timetable for the introduction of a single European currency) to be dealt with under the formal structure of the Communities, thus making it more difficult for a recalcitrant Member State to block policy developments. The UK was not ready to sign up to full economic and monetary union, being somewhat cautious about agreeing to the single currency timetable. This protocol therefore provided the UK with an opt-out; the UK would not be:

...obliged or committed to move to the third stage of Economic and Monetary Union without a separate decision to do so by its Government and Parliament.

This protocol is often referred to as the UK’s opt-out from the single currency, but it is more akin to an ‘opt-in’. Denmark has a similar opt-out to the UK’s (provided for by the ‘Protocol on certain provisions relating to Denmark’). Denmark rejected entry to the single currency in a referendum held on 28 September 2000 by a 53 per cent to 46 per cent majority. Sweden negotiated a similar opt-out to the UK and Denmark when it became a member of the EU on 1 January 1995 (see below). Sweden rejected entry in a referendum held on 14 September 2003. The previous UK government (2005–2010) indicated its desire to join the single currency, provided the economic circumstances are favourable. The current UK government is unlikely to take the UK into the single currency.

The third and final stage on the road to economic and monetary union required the Member States to decide which of them had met the criteria laid down in the Treaty for the forming of a common currency. The third stage started on 1 January 1999 (Art 121(4) EC Treaty, pre-Treaty of Amsterdam and Treaty of Lisbon). All Member States satisfied the criteria, except Greece. However, Greece was subsequently adjudged to have satisfied the economic criteria and joined the original 11 qualifying states.
A European Central Bank was established which set a common European interest rate for these 12 Member States. The currencies of the States have fixed conversion rates, quoted in euros. Euro banknotes and coins were placed in circulation on 1 January 2002. From this date foreign exchange operations were completed in euros. Since 1 July 2002, national currencies in these 12 Member States ceased to be legal tender and all transactions are now completed in euros.

1 January 1995: enlargement

Three of the remaining EFTA members – Finland, Austria and Sweden – joined the European Union on 1 January 1995, increasing the number of Member States to 15. Norway, having once more successfully negotiated terms for entry, again failed to join after a second adverse national referendum.

1 May 1999: the Treaty of Amsterdam

The Treaty of Amsterdam (ToA) was agreed by the Member States in June 1997 and was formally signed by the Member States in Amsterdam on 2 October 1997. This Treaty was concluded on behalf of the UK by the Labour government which had been elected to office on 1 May 1997, under the Premiership of Tony Blair. The Treaty came into force on 1 May 1999 once it had been ratified (i.e. approved) by the then 15 Member States. An overview of the main provisions is followed by a more substantive discussion of the key features of the Treaty.

Overview

It was anticipated that the ToA would take the first major steps towards restructuring the institutions of the European Union. This was widely seen as essential if the institutions, which had originally been set up for a European Community of six states, were to continue functioning effectively in an enlarged European Union of 25-plus states. In the event, the Treaty achieved little in the way of institutional reform. A limit was set on the number of MEPs in the European Parliament, the powers of the President of the Commission were made more specific, and administrative support for the Council of Ministers was strengthened. The difficult decisions which further enlargement would inevitably bring were postponed. These decisions were partially addressed by the Treaty of Nice and were further addressed by the Treaty of Lisbon (see below).

The ToA did, however, broaden the objectives of the EU, moving it further away from the narrow economic base of its early years. There were specific commitments to a number of important non-economic goals, with much more emphasis placed on the rights and duties of EU citizenship, and the EU’s commitment to human and civil rights. Decisions within the EU were to be taken ‘as openly as possible’ and ‘as closely as possible’ to the citizen. The EU firmly proclaimed, in the common provisions of the revised TEU, that it was founded on respect for human rights, democracy and the rule of law, and respect for these principles was made an explicit condition of application for membership. Under a new Art 7 TEU the rights of Member States could be suspended if the Council of Ministers determined that a Member State had been in ‘serious and persistent breach’ of its obligation to respect civil, political and human rights. Article 2 EC Treaty (which
has been replaced by Art 8 TFEU) described equality between men and women as one of the principal objectives of the Community. Article 13 EC Treaty (now replaced by Art 19 TFEU) conferred power on the Community to legislate to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Environmental protection became one of the principal aims of the Community.

As discussed above, the TEU created a three-pillar structure for the Union, under which the European Communities (the EC, ECSC and Euratom) comprised the first pillar, Common Foreign and Security Policy (CFSP) the second pillar, and Cooperation in the fields of Justice and Home Affairs (JHA) the third pillar. Under the TEU, only the first pillar used the legally binding decision-making structures described in Chapter 4. Decisions made under the other two pillars were taken ‘intergovernmentally’ (i.e. politically) and they could not be enforced or challenged in the Court of Justice. The sharpness of this division between legally binding decisions and the political decision-making process was, unfortunately, blurred by the ToA. A large part of JHA (the third pillar) was brought within the framework of the Communities (the first pillar). Decisions in what remained of the third pillar (which was renamed: Police and Judicial Cooperation in Criminal Matters) had a limited input from the European Parliament and involvement by the Court of Justice was negligible. Decision-making in relation to the second pillar (CFSP) remained intergovernmental, outside the formal, legally binding Community decision-making structure.

Important changes were made to the decision-making structure of the Communities (the first pillar), giving the European Parliament greater powers to amend and block legislative proposals. Decision-making procedures are discussed in Chapter 4.

For anyone with any prior knowledge of EU law, the most obvious change brought about by the ToA was to renumber the provisions of the TEU and the EC Treaty. All the familiar landmarks from previous years disappeared (e.g. proceedings against Member States were now brought under Art 226 EC Treaty, and not under the former Art 169; references to the Court of Justice under what used to be Art 177 EC Treaty were now brought under Art 234). The wording of these provisions remained identical in most cases. A table of equivalent provisions is published at the beginning of this book.

### ToA provisions

The Treaty is divided into three parts:

- **Part One (Arts 1–5)** contains substantive amendments to, *inter alia*, the TEU and the EC Treaty.
- **Part Two (Arts 6–11)** contains provisions to simplify, *inter alia*, the TEU and the EC Treaty, including the deletion of lapsed provisions.
- **Part Three (Arts 12–15)** contains general and final provisions, including provisions to renumber articles of the TEU and the EC Treaty, see above.

Amendments made to the TEU by the ToA will be considered first, followed by those made to the EC Treaty.

### Amendments to the TEU

The TEU articles were renumbered by the ToA. Amendments made will be considered under the relevant Titles of the TEU.
Title I – common provisions

The articles of Title I were renumbered from Arts A–F TEU to 1–7 TEU. The provisions themselves were also amended. In particular, Art 6(1) TEU (which has been renumbered Art 2 TEU by the Treaty of Lisbon) provided that:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are upheld by the Member States.

A new Art 6(3) TEU (now renumbered Art 4(2) TEU by the Treaty of Lisbon) provided that:

The Union shall respect the national identities of its Member States.

A new Art 7 TEU was inserted, which provided for the Council of Ministers to suspend certain rights under the Treaty (including voting rights) of any Member State if the Council determined that the Member State had committed a ‘serious and persistent breach’ of the Art 6 TEU principles. As discussed above, Art 6(2) TEU (now renumbered Art 6(3) TEU by the Treaty of Lisbon) provided that:

The Union shall respect fundamental rights as guaranteed by the European Convention of Human Rights and Fundamental Freedoms . . . as general principles of Community law.

The former Art L TEU provided that all the common provisions (which included the former Art F(2)) were not justiciable by the Court of Justice. Article L TEU was renumbered Art 46 and was amended by the ToA to provide that Art 6(2) TEU would be justiciable by the Court of Justice. The Court could therefore explicitly take the Convention rights into account when interpreting and applying EU law.

Titles II, III, IV – amendments to the founding Treaties

The articles of Titles II, III and IV were simply renumbered from Arts G, H and I TEU to Arts 8, 9 and 10 TEU respectively.

The three pillars of the European Union

As discussed above, the EU was founded upon three pillars:

- the European Communities – EC, ECSC (now expired), Euratom;
- Common Foreign and Security Policy (Title V);
- Cooperation in Justice and Home Affairs (Title VI).

The major substantive change made by the ToA was to amend this structure and incorporate part of the third pillar (Justice and Home Affairs) into the EC Treaty, thus forming part of the first pillar. This is discussed further below, when considering the amendments made to the EC Treaty by the ToA.

Title V – common foreign and security policy

The articles of Title V were renumbered from J.1–J.11 TEU to Arts 11–28 TEU (now renumbered Arts 23–46 TEU by the Treaty of Lisbon). This remained the second pillar of the EU. Although the ToA made some amendments to the main provisions of Title V, the role of the European Parliament did not change and the exclusion of the Court of Justice from adjudicating on the provisions remained. The Secretary General of the Council of
Ministers would now act as the ‘High Representative’ (i.e. the spokesperson) for the Common Foreign and Security Policy.

**Title VI – police and judicial cooperation in criminal matters**

The articles of Title VI were renumbered from K.1–K.9 TEU to Arts 29–42 TEU (these provisions have subsequently been transferred into the Treaty on the Functioning of the European Union (TFEU), when the Treaty of Lisbon came into force on 1 December 2009; see below). This constitutes the third pillar of the EU. As discussed above, the title of this third pillar changed from ‘Cooperation in Justice and Home Affairs’ to ‘Police and Judicial Cooperation in Criminal Matters’. This was to reflect the fact that those provisions of the former third pillar relating to visas, asylum, immigration and other policies relating to the free movement of persons, were incorporated into the EC Treaty (Title VI EC Treaty).

This newly constituted third pillar stated the Union’s objective as being able to ‘provide citizens with a high level of safety within an area of freedom, security and justice’ (Art 29 TEU), and to develop ‘common action’ among the Member States in the field of police and judicial cooperation and by preventing and combating racism and xenophobia.

Article 29 TEU stipulated that this would be achieved by:

- Preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud . . .
- The European Parliament was given an increased consultative role in the decision-making process and the Court of Justice generally had jurisdiction over most of the provisions.
- Figure 1.2 illustrates the structure of the EU as at 1 May 1999, following the ToA’s amendments to the third pillar.

**Title VII – closer cooperation**

This new title was inserted into the TEU by the ToA and contained three articles (Arts 43–45, which have been renumbered Art 20 TEU by the Treaty of Lisbon). These provisions enabled Member States to establish closer cooperation between themselves and to use the institutions, procedures and mechanisms of the TEU and EC Treaty. However, Art 43(c) TEU provided that these provisions could only be used as a ‘last resort
where the objectives of the . . . Treaties could not be attained by applying the relevant procedures laid down therein’.

These provisions allowed flexibility in the future development of the European Communities and the European Union, recognising the right of Member States to ‘opt out’ from new policy initiatives not otherwise covered by the Treaties (this formalised the situation whereby the UK had opted out of the Social Policy Agreement and single European currency, for example).

A similar flexibility clause was inserted into the EC Treaty (Art 11 EC Treaty, which has now been replaced by Art 20 TEU and Arts 326–334 TFEU by the Treaty of Lisbon).

Title VIII – final provisions

The articles of Title VIII were renumbered from L–S TEU to Arts 46–53 TEU (now renumbered Arts 47–55 TEU by the Treaty of Lisbon). Article 49 TEU amended the procedure for the admission of new Member States. Applicant countries have to respect the fundamental principles set out in Art 6 TEU (now renumbered Art 2 TEU by the Treaty of Lisbon). The Council of Ministers would act unanimously after receiving the opinion of the Commission and the assent of the European Parliament.

Amendments to the EC Treaty

Article 2 EC Treaty was amended to include new tasks:

- promotion of equality between men and women;
- a high level of protection and improvement of the quality of the environment;
- promotion of a high degree of competitiveness; and
- economic development which must be ‘sustainable’ as well as ‘balanced and harmonious’.

The amended Art 2 EC Treaty provided that:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Article 3 EC Treaty listed the activities of the Community which could be undertaken in order to achieve the tasks set out in Art 2. Article 3 was amended to include a new activity (the other activities were already covered by the new Art 2 tasks):

The promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment.

A new Art 3(2) EC Treaty provided that:

In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.

On 1 December 2009 when the Treaty of Lisbon came into force, Arts 2 and 3 EC Treaty were repealed and replaced, in substance, by Art 3 TEU.
The other main amendments to the EC Treaty by the ToA included:

- Article 11 EC Treaty (now replaced by Art 20 TEU and Arts 326–334 TFEU by the Treaty of Lisbon) inserted a flexibility clause similar to that in Title VII TEU (discussed above) allowing Member States to establish closer cooperation between themselves and to make use of the institutions, procedures and mechanisms laid down in the EC Treaty, provided the cooperation proposed did not, *inter alia*, ‘concern areas which fall within the exclusive competence of the Community’.

- Article 13 EC Treaty (now replaced by Art 19 TFEU) provided a new non-discriminatory provision which conferred legislative competence on the Community to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

- Articles 61–69 EC Treaty (now replaced by Arts 67–81 TFEU) incorporated part of the former third pillar of the European Union which covered visas, asylum, immigration and other policies relating to the free movement of persons.

- Articles 125–130 EC Treaty (now replaced by Arts 145–150 TFEU) inserted a new title on employment, reflecting the new activity set out in Art 3 EC Treaty.

- Articles 136–143 EC Treaty (now replaced by Arts 151–161 TFEU) incorporated an amended version of the Social Policy Agreement, which applied to all Member States. At Amsterdam the then newly elected UK Labour government agreed to end its opt-out.

- Titles XIII and XIV EC Treaty (now replaced by Titles XIV and XV TFEU) enhanced the provisions on public health and consumer protection, respectively.

- The decision-making process was amended to provide the European Parliament with a greater role in more policy areas.

- Minor amendments were made to the composition and/or role of some of the Community institutions.

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**1 February 2003: the Treaty of Nice**

The Treaty of Nice (ToN) was agreed by the Member States in December 2000. It was formally signed by the Member States on 26 February 2001 but it could only come into force once it had been ratified by all the Member States. In a referendum during June 2001, the Irish, by a majority of 54 per cent to 46 per cent, refused to ratify the Treaty. The other 14 Member States had already, or subsequently, ratified it. Ireland held a second referendum during October 2002, and this time there was a positive vote in favour of ratification (63 per cent to 37 per cent). Having now been ratified by the then 15 Member States, the Treaty came into force on 1 February 2003.

Below is an overview of the main amendments which the ToN made to the TEU and the EC Treaty.

**Institutional reform**

The main reason for the ToN was to reform the institutions, by amending the founding Treaties, in preparation for EU enlargement. The EC Treaty was amended to enable an enlarged membership of up to 27 Member States.
Fundamental rights

Article 7 TEU provided for the suspension of a Member State’s Treaty rights if there had been a ‘serious and persistent’ breach of the Art 6(1) TEU principles (i.e. the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law). The ToN amended Art 7 to provide that the suspension could be imposed if the Council of Ministers voted in favour by a four-fifths majority of its membership. Prior to the ToN it had required a unanimous vote by the Council. The role of the other institutions in this process remained unchanged.

Security and defence

Article 25 TEU (now renumbered Art 38 TEU by the Treaty of Lisbon) provided for the monitoring of the international situation within the areas covered by the second pillar (Common Foreign and Security Policy), and the development of associated policies. In a meeting of the European Council, immediately prior to the meeting at which the ToN was agreed, a policy for the establishment of a European rapid reaction force was adopted. This 60,000-strong force would be used primarily for peace-keeping and emergency missions within the region.

Eurojust

Articles 29 and 31 TEU (now replaced by Arts 67, 82, 83 and 85 TFEU by the Treaty of Lisbon) were amended to provide that in the application of the third pillar (Police and Judicial Cooperation in Criminal Matters) there would be cooperation with, inter alia, the European Judicial Cooperation Unit (Eurojust). A declaration specified that Eurojust would comprise national prosecutors and magistrates (or police officers of equivalent competence) who were detached from each Member State.

Enhanced cooperation

Articles 43–45 TEU (now replaced by Art 20 TEU and Arts 326–334 TFEU by the Treaty of Lisbon) were substantially amended to better enable a minimum of eight Member States to establish closer cooperation between themselves and to use the institutions, procedures and mechanisms of the TEU and EC Treaty. Similar to the existing provisions, the amended provisions provided that closer cooperation could be undertaken only if it was ‘aimed at furthering the objectives of the Union and the Community, at protecting and serving its interests’. This new provision also required that ‘enhanced cooperation may be engaged in only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of the Treaties’.

New policies

A limited number of new policies were introduced, and some of the existing policies were refined. One new policy which was introduced related to economic, financial and technical cooperation with third states (i.e. non-EU countries) following the insertion of a new Art 181a EC Treaty (now replaced by Arts 212–213 TFEU by the Treaty of Lisbon). It was stated that this new policy would ‘contribute to the general objective of developing and
consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms'.

**Decision-making process**

Some legal bases for the adoption of secondary Community instruments (see Chapter 2), which originally required a unanimous vote by the Council of Ministers in order to be adopted, were amended to provide for their adoption by a qualified majority. In addition, the role of the European Parliament was enhanced within selected policy areas.

### 1 May 2004: enlargement

On 1 May 2004 membership of the European Union increased to 25, with the admission of ten new Member States:

- Cyprus (South)
- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Malta
- Poland
- Slovakia
- Slovenia.

Political differences within Cyprus resulted in Northern Cyprus being excluded from membership. Cyprus has been divided between its Greek and Turkish Cypriot peoples since 1974, when Turkey invaded the north of the island. The United Nations attempted to broker an agreement between the two sides to reunite the island, but no agreement was forthcoming. The United Nations therefore drafted its own agreement which was voted on by the citizens from the north and south (in simultaneous referenda) on 24 April 2004. The Greek Cypriots rejected the agreement, whereas the Turkish Cypriots accepted the agreement. Given the Greek Cypriots' rejection, the agreement was not concluded and the division between north and south remains. This being the case, it is only Southern Cyprus which is a member of the European Union. However, accession negotiations with Turkey opened on 3 October 2005 (see below) and Turkey signalled an intent to recognise the Greek Cypriot southern part of the island. This intent may have a positive impact on future reunification negotiations.

**Economic and monetary union**

The ten new Member States did not join the euro on 1 May 2004. They are only eligible to do so once they achieve the high degree of sustainable economic convergence with the euro area which is required for membership of the single currency. They need to fulfil the same convergence criteria which were applied to the existing euro area members, namely a high degree of price stability, sustainable government finances (in terms of both public deficit and public debt levels), a stable exchange rate and convergence in long-term interest rates.

There is no pre-defined timetable for adoption of the euro by the new Member States, but the levels of convergence required for membership are assessed by the Council of Ministers on a proposal from the Commission and on the basis of convergence reports.
by the Commission and the European Central Bank. These reports are produced at least every two years or at the request of a Member State seeking to join the euro.

On 11 July 2006, the Council adopted a decision allowing Slovenia to join the euro area on 1 January 2007. Slovenia became the first of the ten new Member States to join. Slovenia was followed by Southern Cyprus and Malta who joined on 1 January 2008, Slovakia on 1 January 2009 and Estonia on 1 January 2011. Seventeen Member States have now joined the euro. The UK, Denmark and Sweden continue to exercise their opt-out from the single European currency (see above).

On 1 January 2007: enlargement

On 25 April 2005, the then 25 Member States, together with Bulgaria and Romania, signed the Accession Treaty (OJ 2005 L 157/01), paving the way for Bulgaria and Romania’s membership of the EU.

On 26 September 2006, the Commission approved the Monitoring Report on Bulgaria and Romania’s state of preparedness for EU membership. This enabled Bulgaria and Romania to become EU Member States on 1 January 2007, increasing the European Union from 25 to 27 Member States.

Economic and monetary union

Bulgaria and Romania did not join the euro on 1 January 2007. Similar to the ten states which joined the EU on 1 May 2004, Bulgaria and Romania are only eligible to join once they have achieved the high degree of sustainable economic convergence with the euro area which is required for membership of the single currency. They will therefore need to fulfil the same convergence criteria which were applied to the existing euro area members.

There is no pre-defined timetable for adoption of the euro by Bulgaria and Romania. As stated above, Slovenia joined the euro on 1 January 2007, followed by Southern Cyprus and Malta on 1 January 2008, Slovakia on 1 January 2009 and Estonia on 1 January 2011. The euro has been adopted, and is currently in circulation, in the following 17 Member States:

- Austria
- Belgium
- Cyprus (South)
- Estonia
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Luxembourg
- Malta
- Netherlands
- Portugal
- Slovakia
- Slovenia
- Spain.
The proposed Constitutional Treaty

At the European Council meeting in Laeken on 14 and 15 December 2001, a declaration on the ‘Future of the Union’ was adopted (SN 300/1/01). This declaration provided for the establishment of a Convention on the Future of Europe, to work towards the adoption of a Constitution for the European Union.

The Convention formed the basis of an Intergovernmental Conference (IGC) during 2004 when the ‘Future of the Union’ was the subject of detailed discussion. This resulted in the text of a Constitutional Treaty being agreed at the meeting of the European Council on 18 June 2004, and the ‘Treaty establishing a Constitution for Europe’ was formally signed in Rome on 29 October 2004 (OJ 2004 C 310/1). The proposed Constitutional Treaty, if it had come into force, would have replaced the TEU and the EC Treaty.

The ratification process

The Constitutional Treaty could only come into force once it had been ratified (i.e. approved) by all the then 25 Member States. The ratification process varies from Member State to Member State. The ratification process in an individual Member State depends upon its constitutional requirements. Some Member States were constitutionally required to hold a referendum before being able to ratify the Treaty. Although the UK’s constitution did not require a referendum to be held before the Treaty could be ratified, Tony Blair (the then UK Prime Minister) stated that he would hold a referendum. The UK’s referendum was not scheduled to be held before 2006, because in the first half of 2005 the government was preoccupied with the May 2005 general election, and in the second half the UK held the presidency of the European Union’s Council of Ministers.

On 29 May 2005, France held a referendum; 54.68 per cent rejected the Treaty. A few days later, on 1 June 2005, The Netherlands held a referendum; 61.7 per cent rejected the Treaty.

Despite the Treaty having been rejected by two Member States it was not officially abandoned. However, the UK stated that it was suspending the ratification process (i.e. no referendum would be held). Other Member States postponed their scheduled referenda: Czech Republic, Denmark, Ireland and Portugal. Two other Member States put the ratification process on hold: Poland and Sweden.

Abandoned

At the meeting of the European Council on 16–17 June 2005, the Heads of State and Government agreed to come back to the issue of ratification in the first half of 2006 in order to make an overall assessment of the national debates launched as part of a ‘period of reflection’, and to agree on how to proceed.

At its meeting on 15–16 June 2006, the European Council stated that the ‘period of reflection’ had been useful in enabling the EU to assess the concerns and worries expressed in the course of the ratification process and that further work was needed before decisions on the future of the Constitutional Treaty could be taken.

This was an implicit admission that the Constitutional Treaty would not come into force in its current form.
The Council stated that the Presidency would present a report to the European Council during the first half of 2007, based on extensive consultations with the Member States. This report would contain an assessment of the state of discussion with regard to the Constitutional Treaty and would explore possible future developments.

At the European Summit held in Brussels on 21–23 June 2007, the proposed European Constitution was formally abandoned. It was decided to proceed with a new Reform Treaty which would amend the TEU and the EC Treaty, rather than replace them.

**Ratification of the Treaty of Lisbon**

The Reform Treaty, titled the Treaty of Lisbon (ToL), was signed by the representatives of the 27 Member States on 13 December 2007 in Lisbon, Portugal. The ToL could only come into force once it had been ratified (i.e. approved) by each of the 27 Member States. Although it had been anticipated it would come into force on 1 January 2009, because of ratification problems it only came into force on 1 December 2009.

**Ratification by Ireland**

The ratification process varies from Member State to Member State. The ratification process in an individual Member State depends upon its constitutional requirements. Ireland was the only Member State constitutionally required to hold a referendum before being able to ratify the ToL.

On 12 June 2008, Ireland held a referendum; 53.4 per cent rejected the Treaty.

Following Ireland’s rejection of the ToL, the question to be answered was whether this would confine the ToL to the history books, or whether the EU would negotiate a compromise with Ireland to enable Ireland to ask the Irish people to approve the ToL in a second referendum. The second scenario was always considered more likely.

At a meeting of the European Council, which concluded on 19 June 2008, it was decided to continue with the ratification process. Ireland was required to bring proposals forward to the December 2008 meeting of the European Council to enable it to ratify the Treaty. The ToL could not be amended without requiring all Member States to start the ratification process again. At the meeting of the European Council, which concluded on 12 December 2008, a compromise was reached whereby Ireland would agree to hold a second referendum.

The compromise with Ireland provides that all Member States retain their Commissioner (the number of Commissioners would have been reduced from 1 November 2014; see below). Ireland also received guarantees on, for example, respect for the country’s neutrality, and an acknowledgement that it has control over its own policies relating to direct taxation and abortion.

Ireland held a second referendum on 2 October 2009: 67.13 per cent voted in favour of the Treaty with 32.87 per cent opposed. The Irish President (Mary McAleese) gave final approval to the Treaty on 16 October 2009.

**Ratification by Poland and the Czech Republic**

Ratification had been delayed in the Czech Republic while a legal challenge was pursued through the Czech courts. On 26 November 2008, the Czech Republic’s highest court ruled that the ToL was consistent with the country’s constitution, clearing the way for the Czech Republic’s Parliament to approve the Treaty. However, the Czech Republic’s President refused to give final approval pending the outcome of the second Irish referendum. The Polish President likewise refused to give final approval.
Following the positive referendum vote in Ireland, the Polish President (Lech Kaczyński) approved the Treaty on 10 October 2009.

The position in the Czech Republic was more problematic. Although the ToL had been approved by both houses of the Czech Parliament, the Czech President (Václav Klaus) continued to withhold his approval. He raised concerns about the implications for the Czech Republic once the Charter of Fundamental Rights of the European Union was given formal legal recognition by the ToL (see below). Article 6(1) TEU, as amended by the ToL, provides that the Union shall ‘recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union’. The UK and Poland had already sought assurances that the Charter would not be indirectly incorporated into their national law. Article 1, Protocol No 30 (which is annexed to the TEU and TFEU) provides as follows:

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it [i.e. the Charter] reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

The European Council sought to secure the Czech Republic President’s signature to the Treaty at its meeting held in Brussels on 29–30 October 2009. It was agreed that at the time of the conclusion of the next Accession Treaty a new Protocol would be added to both the TEU and TFEU to provide that Protocol No 30 (which applies to the UK and Poland) will also apply to the Czech Republic. [Note: an Accession Treaty is adopted to admit new Member States to the European Union. The next Accession Treaty was concluded at the end of 2011 to pave the way for Croatia’s entry to the EU on 1 July 2013 (see below).] This was sufficient to secure the support of the President of the Czech Republic.

A further complication arose following a second legal challenge on the compatibility of the Treaty with the Czech Constitution. The Czech Constitutional Court dismissed the application on 3 November 2009, and later the same day the Czech Republic President gave final approval to the ToL.

Having now been ratified by all 27 Member States, the ToL came into force on 1 December 2009.

The Treaty of Lisbon: introduction

Many of the changes which would have been implemented by the proposed Constitutional Treaty are replicated by the ToL. The changes which have been introduced by the ToL are set out below.

Whereas the proposed Constitutional Treaty would have replaced the TEU and EC Treaty, the ToL retains and amends both these Treaties. The EC Treaty has been renamed and succeeded the Treaty on the Functioning of the European Union (TFEU). The Union has replaced and succeeded the Community (Art 1 TEU). Throughout the TFEU, the word ‘Community’ has been replaced with the word ‘Union’. The following terms are therefore no longer used: European Community; European Communities; or Community law. Reference is made solely to the European Union (or Union) and European Union law (or Union law).
The TEU and the TFEU constitute the Treaties on which the Union is founded (Art 1 TEU). The articles within both the TEU and TFEU have been renumbered as part of a simplification exercise.

As stated above, the ToA renumbered the provisions of the TEU and the EC Treaty when it came into force on 1 May 1999. The renumbering of both these Treaties by the ToL was therefore the second time this had occurred. Two tables of equivalence are published at the beginning of this book. The first table relates to the renumbering made by the ToA, and the second relates to the renumbering made by the ToL. Care must be taken when referring to EU case law, legislation and documents, to ensure that the old numbering (i.e. pre-ToA, and pre-ToL) is distinguished from the numbering used post-ToA and post-ToL. The ToL renumbering came into effect when the ToL itself came into force (1 December 2009). For some time it will be necessary to be aware of both the old and new numbering. Subsequent chapters of this book are based on the new (post-ToL) Treaty numbers but, where appropriate, there are cross-references to old Treaty numbers (pre-ToL).

**Articles 1–7 Treaty of Lisbon**

The ToL is divided into three parts:

- Article 1 amends the TEU;
- Article 2 amends the EC Treaty, and renames it the Treaty on the Functioning of the European Union (TFEU); and
- Articles 3–7 contain the final provisions (e.g. Art 5(1) ToL concerns the renumbering of the TEU and the EC Treaty (which has been renamed the TFEU)).

The overview below considers some of the changes which have been made by the ToL. Reference is made to the relevant Treaty provisions, as amended and renumbered by the ToL. The TEU and TFEU are collectively referred to as ‘the Treaties’ (Art 1 TEU and Art 1(2) TFEU).

**The European Union: merger of the three pillars**

The construction of the European Union (and its three pillars), as discussed above, was both complex and cumbersome. The ToL has therefore established a single European Union, which has replaced and succeeded the European Community (Art 1 TEU). The three pillars have been merged even though special procedures have been maintained in the fields of foreign policy, security and defence (see below). Reference is no longer made to the three pillars of the European Union.

**The Union’s objectives**

The Union’s objectives, set out in Art 3 TEU, are much more succinct than the combined objectives in the former Art 3 EC Treaty (in respect of the European Community) and the former Art 2 TEU (in respect of the EU). Article 3 TEU has, in substance, replaced both of these provisions. Article 3 TEU now provides that:

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.

The Union’s values, democratic principles, and provisions having general application

Article 2 TEU provides that 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 right 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.

Article 49 TEU provides that: ‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.’

Democratic principles

Articles 9–12 TEU set out a number of democratic principles which regulate how the Union functions and operates. Given their importance they are set out in full.

Article 9 TEU sets out the principle of equality:

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies . . .

Article 10 TEU establishes the principle of ‘representative democracy’:

1 The functioning of the Union shall be founded on representative democracy.

2 Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.
3 Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4 Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 11 TEU provides an enhanced consultative role for citizens and representative associations, including a ‘citizens’ petition for action’:

1 The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2 The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3 The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

4 Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

Article 24 TFEU provides that a Regulation will be adopted to set out the procedures and conditions of the European Citizens’ Initiative (ECI). Regulation 211/2011 (OJ 2011 L 65/1) was subsequently adopted on 16 February 2011 and started to apply from 1 April 2012.

Article 11(4) TEU sets out the number of EU citizens who are needed to take the initiative: i.e. ‘not less than one million citizens who are nationals of a significant number of Member States’. This has been made more specific in Regulation 211/2011. Article 2(1), Regulation 211/2011 provides that an ECI requires a minimum one million eligible signatories coming from a minimum of one-quarter of the EU Member States. With current membership standing at 27 Member States, if the draft Regulation is adopted in its current form, an ECI will require not fewer than one million citizens who are nationals of at least seven Member States. This will remain the case when Croatia joins the EU on 1 July 2013. In addition, Art 7(2), Regulation 211/2011 requires that in at least one-quarter of the Member States, signatories will comprise at least the minimum number of citizens set out in Annex I. This minimum number of citizens per Member State corresponds to the number of Members of the European Parliament (MEPs) for the specific Member State, multiplied by 750. So, for example, the UK has 72 MEPs and therefore to comply with this requirement the minimum number of signatories from within the UK would be 54,000 (i.e. 72 × 750).

Article 12 TEU provides national parliaments with an enhanced and explicit role in the functioning of the Union:

National Parliaments contribute actively to the good functioning of the Union:

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
(b) by seeing to it that the principle of subsidiarity is respected in accordance with the
procedures provided for in the Protocol on the application of the principles of sub-
sidiarity and proportionality;
(c) by taking part, within the framework of the area of freedom, security and justice, in the
evaluation mechanisms for the implementation of the Union policies in that area, in
accordance with Article 70 of the Treaty on the Functioning of the European Union,
and through being involved in the political monitoring of Europol and the evaluation
of Europol’s activities in accordance with Articles 88 and 85 of that Treaty;
(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48
of this Treaty;
(e) by being notified of applications for accession to the Union, in accordance with Article 49
of this Treaty;
(f) by taking part in the inter-parliamentary cooperation between national Parliaments and
with the European Parliament, in accordance with the Protocol on the role of national
Parliaments in the European Union.

Provisions having general application

Part One, Title II TFEU sets out a number of provisions which are stated to have ‘general
application’:  
- general consistency of policy (Art 7 TFEU);
- elimination of inequalities and promotion of equality between men and women
  (Art 8 TFEU);
- social protection (Art 9 TFEU);
- combating all forms of discrimination (Art 10 TFEU);
- the requirements of environmental protection (Art 11 TFEU);
- consumer protection (Art 12 TFEU);
- animal welfare (Art 13 TFEU);
- services of general economic interest (Art 14 TFEU);
- openness and transparency (Art 15 TFEU);
- protection of personal data (Art 16 TFEU); and
- respect for churches and religious associations or communities (Art 17 TFEU).

Since these provisions have general application, they will be applied by the Court of Justice
of the European Union when interpreting and applying Union law.

Non-discrimination

With regard to the provision of general application which seeks to combat all forms of
discrimination (Art 10 TFEU), Art 18(1) TFEU (which has replaced the non-discrimination
provision in the former Art 12 EC Treaty) specifically provides that:

Within the scope of application of the Treaties, and without prejudice to any special
provisions contained therein, any discrimination on grounds of nationality shall be
prohibited.

The former Art 12 EC Treaty has been applied extensively by the Court of Justice,
particularly with regard to the Treaty provisions relating to Union citizenship and the
free movement of persons (see Chapters 11–15). Article 18(1) TFEU will undoubtedly be similarly applied by the Court.

**Charter of Fundamental Rights of the European Union**

The Charter of Fundamental Rights of the European Union was signed by the then 15 Member States during December 2000 at the meeting of the European Council held in Nice, France. The Charter combines in a single text the civil, political, economic, social and societal rights which had previously been laid down in a variety of international, European and national sources. It includes the following:

- rights of dignity (e.g. the right to life, and respect for private and family life);
- freedoms (e.g. freedom of assembly and of association);
- equality (e.g. respect for cultural, religious and linguistic diversity);
- solidarity (e.g. right of collective bargaining and action);
- citizens’ rights (e.g. freedom of movement and residence); and
- justice (e.g. presumption of innocence and right of defence).

Originally, the Charter was not legally binding. A Declaration annexed to the ToN provided that an Intergovernmental Conference would be held in 2004 to consider, *inter alia*, the status of the Charter. This resulted in the adoption of the proposed Constitutional Treaty and subsequently the adoption of the ToL.

The Charter, which was amended on 12 December 2007, is given legal recognition by the ToL. Article 6(1) TEU, as amended by the ToL, provides that the Union shall ‘recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union’. The Charter therefore becomes an integral part of EU law, setting out the fundamental rights which every EU citizen can benefit from. However, it does not create fundamental rights which are of general application in national law. It only applies within the scope of EU law. A Declaration on the Charter (which was annexed to the Final Act of the Intergovernmental Conference which adopted the ToL) states that:

The Charter of Fundamental Rights of the European Union, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

The latter paragraph explicitly provides that the Charter does not introduce any new EU powers or tasks. As stated above, the UK and Poland sought reassurance that the Charter would not be indirectly incorporated into their national law. Article 1, Protocol No. 30 (which is annexed to the TEU and TFEU) provides that:

1 The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it [i.e. the Charter] reaffirms.

2 In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.
As stated above, in order to secure the Czech Republic President’s signature to the ToL, it was agreed that at the time of the conclusion of the next Accession Treaty a new Protocol would be added to both the TEU and TFEU to provide that Protocol No. 30 (which currently only applies to the UK and Poland) will also apply to the Czech Republic. The next Accession Treaty was concluded at the end of 2011 to pave the way for Croatia’s membership of the EU on 1 July 2013.

The European Convention on Human Rights and Fundamental Freedoms (ECHR)

The European Convention on Human Rights and Fundamental Freedoms (ECHR) was drafted in 1950 under the auspices of the Council of Europe, an international organisation originally composed of 21 Western European states, and now comprising 47 states. The ECHR is intended to uphold common political traditions of individual civil liberties and the rule of law. All the Member States of the EU are signatories.

It is important to distinguish the international structure created by the ECHR from the quite separate supranational institutions of the EU. The media often talks loosely about taking a case ‘to Europe’ without identifying whether the case is a human rights matter involving the ECHR and to be dealt with by the European Court of Human Rights in Strasbourg, or a matter of Union law to be referred to the Court of Justice in Luxembourg. Decisions made by the European Court of Human Rights are not legally binding on national courts, although they will be taken into account by these courts. Decisions of the Court of Justice are legally binding on all national courts. Decisions of the European Court of Human Rights may result in compensation being awarded against a state, in favour of a victim of human rights abuses, but such decisions are not binding on the state, and could (in legal theory) be ignored.

The Court of Justice, like national courts, takes account of the ECHR when interpreting and applying Union law. The TEU formally acknowledged the ECHR as forming part of the EU’s fundamental principles. However, it has no application under Union law to matters outside the EU’s legal competence. Although the ECHR was recognised by the TEU as an important source of Union law, it was only important when interpreting and applying Union law. Although this remains the case post-ToL, Art 6(2) TEU now provides that the Union will accede to the ECHR.

EU accession to the ECHR

Article 6(2) TEU provides that the Union will accede to the ECHR, although it states that ‘such accession shall not affect the Union’s competences as defined in the Treaties’. This means that accession to the ECHR will not extend the Union’s powers and tasks. Application of the ECHR will be limited to those areas which come within the competence of the Union. Article 6(3) TEU further provides that the ‘fundamental rights guaranteed by the European Convention of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law’ [emphasis added]. This simply restates the previous position. However, once the Union accedes to the ECHR, EU law will have to be interpreted and applied in accordance with the ECHR, not simply as a ‘general principle of the Union’s law’, but because (i) the ECHR is directly applicable to the Union; and (ii) the Union is required (in international law) to adhere to the ECHR’s provisions. Following accession to the ECHR, it will be possible for a decision of the Court of Justice to be contested by taking the case to the European Court of Human Rights.
Rights in Strasbourg, claiming the Court of Justice has failed to correctly apply (or failed to apply) a provision of the ECHR.

Official ECHR accession talks started between the EU and the Council of Europe on 7 July 2010. The accession agreement was concluded by the Council of Europe and the European Council (acting unanimously) in late 2011. The European Parliament must also give its consent to the accession agreement. After the agreement is concluded it will have to be ratified (i.e. approved) by all 47 contracting parties to the ECHR (including the individual EU Member States) in accordance with their respective constitutional requirements. Given this ratification requirement, it is likely to be the second half of 2012 before the EU accedes to the ECHR and becomes its 48th signatory.

The UK’s Human Rights Act 1998

The ECHR was incorporated into the law of England, Wales, Scotland and Northern Ireland by the Human Rights Act 1998. All UK public bodies, including courts and tribunals, and even private bodies implementing public law, have to abide by the principles of the ECHR.

Therefore, ECHR rights may be applied either: (i) as a matter of Union law where they concern a measure within the competence of the Union; or (ii) under national law following the procedures set out in the Act where Union law is not involved. However, unlike the position of Union law which has immediate primacy within the UK, if there is a clear conflict between a UK statute and one of the ECHR provisions, UK courts will only be able to make a ‘declaration of incompatibility’. Ministers will then have to ensure that the offending legislation is amended to give full effect to the ECHR.

Relationship between the Union and the Member States

Article 4(2) TEU provides that the Union shall respect the ‘equality of Member States before the Treaties as well as their national identities’. The Union will also respect the essential State functions of each Member State, which includes ‘ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State’ (Art 4(2) TEU).

Similar to the former Art 10 EC Treaty, Art 4(3) TEU provides that:

Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.

Legal personality

Article 47 TEU provides that the Union shall have legal personality, enabling it to enter into international treaties and agreements on behalf of the Member States.

Union Citizenship

Article 20 TFEU establishes Union Citizenship, stating that Union citizens enjoy the rights, and are subject to the duties, provided for in the Treaties (Art 20(2) TFEU). Similar to the previous Arts 17 and 18 EC Treaty, Art 20(2) TFEU provides that ‘These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder’.

See pages 264–267 for an explanation of the principle of supremacy (i.e. primacy) of Union law.
Article 20(1) TFEU explicitly provides that: ‘Citizenship of the Union shall be additional to and not replace national citizenship.’

EU competences and the principle of conferral

Article 5(1) TEU provides that ‘the limits of Union competences are governed by the principle of conferral’. This means the Union shall act ‘only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein’ (Art 5(2) TEU). The corollary is that ‘Competences not conferred upon the Union in the Treaties remain with the Member States’ (Art 5(2) TEU). The exercise of Union competences is also governed by ‘the principles of subsidiarity and proportionality’ (Art 5(1) TEU). This provision is complemented by a Protocol on the application of these two principles (Protocol No. 2 which is annexed to the TEU and TFEU), which incorporates an ‘early-warning system’ involving national parliaments in the monitoring of how subsidiarity is applied. National parliaments are informed of all new legislative initiatives and if at least one-third of them are of the view that a proposal infringes the principle of subsidiarity, the Commission will have to reconsider the proposal.

Areas of exclusive competence, shared competence, and actions to support, coordinate or supplement Member States’ actions

The TFEU distinguishes between three categories of Union power:

1 areas of exclusive competence where only the EU may legislate and adopt legally binding acts. The Member States can only act if empowered to do so by the Union, or to implement Union acts. Article 3 TFEU provides that the EU has exclusive competence in the following areas:
   - customs union;
   - establishing competition rules necessary for the functioning of the internal market;
   - monetary policy for the Member States whose currency is the euro;
   - conservation of marine biological resources under the common fisheries policy;
   - common commercial policy; and
   - conclusion of specific international agreements.

2 areas of shared competence where the EU and the Member States may legislate and adopt legally binding acts. The Member States can only exercise this shared competence if the EU has not exercised its competence to act, or if the EU has ceased to exercise its competence. Article 4 TFEU provides that the EU and the Member States have shared competence in the following principal areas:
   - internal market;
   - certain aspects of social policy;
   - economic, social and territorial cohesion;
   - agriculture and fisheries;
   - environment;
   - consumer protection;
   - transport;
   - trans-European networks;
   - energy;
   - area of freedom, security and justice; and
   - certain aspects of common safety concerns in public health matters.
3 areas where the Union carries out actions to support, coordinate or supplement the actions of the Member States. Article 6 TFEU provides that this applies in the following areas:

- protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, vocational training, youth and sport;
- civil protection; and
- administrative cooperation.

Particular cases which do not fit into this threefold general classification are dealt with separately. The following two areas, for example, are dealt with separately: coordination of economic and employment policies (Art 2(3) TFEU); and common foreign and security policy (Art 2(4) TFEU).

**Legislative acts: ordinary legislative procedure and special legislative procedure**

The power of legislative initiative rests with the Commission, ‘except where the Treaties provide otherwise’ (Art 17(2) TEU).

Article 289 TFEU provides that a legislative act can be adopted by the ‘ordinary legislative procedure’ or a ‘special legislative procedure’. The ordinary legislative procedure, not surprisingly given its title, applies in the vast majority of cases. This procedure (which is set out in Art 294 TFEU) is practically a carbon copy of the former co-decision procedure; see Chapter 4.

The special legislative procedure refers to specific cases where the Treaties provide for the adoption of a regulation, directive or decision by the European Parliament with the Council’s involvement, or by the Council with the participation of the Parliament (Art 289(2) TFEU).

**General legislative power**

Article 352 TFEU provides the Union with a general legislative power: ‘If action by the Union should prove necessary . . . to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council . . . shall adopt the appropriate measures’ (Art 352(1) TFEU). Its scope appears wider than that of the former Art 308 EC Treaty, because Art 308 was confined to the internal market. However, the conditions under which Art 352 TFEU can be exercised are stricter in that, as well as requiring unanimity in the Council, the consent of the European Parliament must be obtained.

**The institutional framework**

Article 13(1) TEU provides that the Union shall have an ‘institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions’. The following seven Union institutions are recognised by Art 13(1) TEU:

- the European Parliament;
- the European Council;
- the Council;
- the European Commission (to be referred to as the ‘Commission’);
the Court of Justice of the European Union;
the European Central Bank; and
the Court of Auditors.

It should be noted that for the first time the European Council is treated as a Union institution in its own right.

Articles 13–19 TEU clarify the role of the Union institutions. Part Six, Title I TFEU contains the detailed provisions governing the institutions:

Part Six Institutional and Financial Provisions (Arts 223–334 TFEU)
Title I Institutional Provisions (Arts 223–309 TFEU)
Chapter 1 The Institutions (Arts 223–287 TFEU)
Section 1 The European Parliament (Arts 223–234 TFEU)
Section 2 The European Council (Arts 235–236 TFEU)
Section 3 The Council (Arts 237–243 TFEU)
Section 4 The Commission (Arts 244–250 TFEU)
Section 5 The Court of Justice of the European Union (Arts 251–281 TFEU)
Section 6 The European Central Bank (Arts 282–284 TFEU)
Section 7 The Court of Auditors (Arts 285–287 TFEU)

Changes which affect the institutions are discussed briefly below. These changes are considered in more detail in Chapters 3–5.

The European Parliament

The European Parliament has the power, jointly with the Council, to enact legislation and exercise the budgetary function, as well as exercise functions of political control and consultation as laid down in the Treaties (Art 14(1) TEU).

The European Council elects the President of the Commission on a proposal from the European Council (acting by qualified majority). The European Council is required to take into account the results of the elections of the European Parliament when deciding on who to propose (Art 17(7) TEU). The President, the High Representative of the Union for Foreign Affairs and Security Policy (see below), and the other members of the Commission are subject as a body to a vote of consent by the European Parliament, following which the European Council will appoint the Commission acting by a qualified majority (Art 17(7) TEU).

The number of Members of the European Parliament (MEPs) is limited to 750 plus the President (Art 14(2) TEU). The Treaties do not make provision for the allocation of seats to each Member State, as was previously the case. However, Art 14(2) TEU provides that the European Council will adopt a decision, acting unanimously, on the initiative of the European Parliament and with its consent, to establish the total number of MEPs and the allocation of seats to each Member State. Under this new system, the allocation of seats to each Member State will be distributed among Member States according to ‘degressive proportionality’ (Art 14(2) TEU). Degressive proportionality in this context means that MEPs from more populous Member States represent more people than those from less populated Member States. No Member State will have fewer than six nor more than 96 MEPs (Art 14(2) TEU).

The European Council

The European Council is, for the first time, formally recognised as a Union institution (Art 13(1) TEU). The European Council provides the impetus for the Union’s development
and defines its political directions and priorities, but it does not exercise a legislative function (Art 15(1) TEU). The general rule regarding the adoption of decisions is consensus, except where the Treaties provide otherwise (Art 15(4) TEU).

The European Council is now led by a President with specific powers. The President is elected by a qualified majority of the European Council’s members for a term of two-and-a-half years, renewable once (Art 15(5)–(6) TEU). The then Belgian Prime Minister, Herman Van Rompuy, was elected to the post on 20 November 2009. The President is not allowed to hold a national office at the same time as holding the Presidency (Art 15(6) TEU), and therefore Herman Van Rompuy had to relinquish his role as Belgian Prime Minister. The President is required to ‘ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy’ (Art 15(6) TEU). Article 15(6) TEU also provides that the President of the European Council:

(a) shall chair it and drive it forward;
(b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
(c) shall endeavour to facilitate cohesion and consensus within the European Council;
(d) shall present a report to the European Parliament after each of the meetings of the European Council.

The Council

Article 16(6) TEU provides for the Council to meet in different configurations. These configurations are determined by the European Council acting by a qualified majority (Art 236 TFEU). Article 16(6) TEU specifically provides for the creation of a Foreign Affairs Council. The High Representative of the Union for Foreign Affairs and Security Policy (see below) presides over the Foreign Affairs Council (Art 18(3) TEU). The General Affairs Council, which is another configuration specifically mentioned in Art 16(6) TEU, ensures ‘consistency in the work of the different Council configurations’ (Art 16(6) TEU). All configurations, other than the Foreign Affairs Council, are presided over by one of the Council’s Member State representatives, on the basis of a system of equal rotation (Art 16(9) TEU). The European Council, acting by a qualified majority, determines the Presidency of each configuration, other than that of Foreign Affairs (Art 236 TFEU).

In order to meet the requirement of transparency, Art 16(8) TEU provides that the Council will meet in public when it deliberates and votes on a draft legislative act.

Qualified majority

Depending upon the specific Treaty provision, the Council may act by a qualified majority. On 1 November 2014, the formula for determining a qualified majority will change to one based on the ‘double majority’ principle (i.e. a system based upon (i) number of Member States; and (ii) population).

Article 16(4) TEU provides that this double majority principle requires two thresholds to be achieved before a measure can be adopted: (i) the support of at least 55 per cent of the members of the Council (each Member State has one member) comprising at least 15 of them; and (ii) the support of Member States comprising at least 65 per cent of the population. In addition, a blocking minority must include at least four Member States, failing which the qualified majority will be deemed achieved. This provision will prevent
three or fewer of the larger Member States from being able to block a proposal. Article 238(2) TFEU provides a derogation from Art 16(4) TEU where the Council does not act on a proposal from either the Commission or the High Representative of the Union for Foreign Affairs and Security Policy. In this instance, the first threshold will be increased, requiring the support of at least 72 per cent of the Member States. Article 238(3) TFEU sets out the qualified majority formula where not all Member States participate in the voting (e.g. where they are using the enhanced cooperation procedure (see below)).

A decision adopted by the Council has incorporated a revised ‘Ioannina’ compromise (see Chapter 4). This decision enables a small number of Member States, which is close to a blocking minority, to demonstrate their opposition to a proposed measure. From 1 November 2014 to 31 March 2017, if members of the Council representing either (i) three-quarters of the population; or (ii) at least three-quarters of the number of Member States, necessary to constitute a blocking minority under Art 16(4) TEU or 238(2) TFEU, indicate their opposition to the Council adopting an act by qualified majority, the Council will have to delay adopting the act and enter into further discussions. The Council will be required to do all in its power, within a reasonable period of time, to find a satisfactory solution to address the concerns which the Member States have raised. From 1 April 2017, this three-quarters requirement will be reduced to 55 per cent in both instances (i.e. either (i) 55 per cent of the population; or (ii) at least 55 per cent of the number of Member States, necessary to constitute a blocking minority under Art 16(4) TEU or 238(2) TFEU).

Protocol No. 36, which is annexed to the TEU and TFEU, contains transitional arrangements which apply to qualified majority voting for the period to 31 October 2014 and from 1 November 2014 to 31 March 2017. These arrangements will be discussed in Chapter 4; suffice to say at this stage that during the transitional period 1 November 2014 to 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that it be adopted in accordance with the system which will apply until 31 October 2014, rather than the new double-majority system discussed above.

Qualified majority is now the general rule for the adoption of decisions within the Council: ‘The Council shall act by a qualified majority except where the Treaties provide otherwise’ (Art 16(3) TEU). Unanimity remains in areas of direct taxation, social security, foreign policy and common security policy.

Where the TFEU or Part V TEU, provides for the Council to act by unanimity, the European Council is empowered to adopt a decision, acting unanimously and after obtaining the consent of the European Parliament, authorising the Council to act by a qualified majority in the specified area or case (Art 48(7) TFEU). This provision does not apply to decisions with military implications or those in the area of defence. The formal opposition of a single national parliament will be enough to block the decision to change from unanimity to qualified majority (Art 48(7) TFEU). Previously, this change from unanimity to qualified majority could only be achieved by formally amending the Treaties.

**Enhanced cooperation**

Article 20 TEU provides for a system of ‘enhanced cooperation’, the detailed provisions of which are set out within Arts 326–334 TFEU. These provisions replace the former Arts 43–45 TEU and Art 11 EC Treaty, which were inserted into the Treaties by the ToN.

Enhanced cooperation requires the involvement of at least nine Member States (Art 20(2) TEU). It applies to the Union’s non-exclusive competences (Art 20(1) TEU). Authorisation to proceed with enhanced cooperation is granted by a decision of the Council acting by a qualified majority, after obtaining the consent of the European
Parliament, on a proposal from the Commission (Art 329(1) TFEU). With regard to the common foreign and security policy (see below), authorisation to proceed will be granted by a decision of the Council acting unanimously, after obtaining the opinion of: (i) the High Representative of the Union for Foreign Affairs and Security Policy; and (ii) the Commission. In this case, the European Parliament is simply informed (Art 329(2) TFEU). In both cases, the Council's decision authorising enhanced cooperation can only be adopted ‘as a last resort when it has established that the objectives of such cooperation cannot be obtained within a reasonable period by the Union as a whole’ (Art 20(2) TEU). Member States not participating in enhanced cooperation are able to take part in relevant Council meetings, ‘but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote’ (Art 20(3) TEU and Art 330 TFEU). Acts adopted within the framework of enhanced cooperation will only bind the participating Member States (Art 20(4) TEU).

Article 333(1) TFEU provides that where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Member States taking part in enhanced cooperation may, acting unanimously, change over to qualified majority voting. Article 333(2) TFEU provides that where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt acts under a special legislative procedure, the Member States taking part in enhanced cooperation may, acting unanimously and after consulting the European Parliament, change over to the ordinary legislative procedure. However, these provisions do not apply to decisions having military or defence implications (Art 333(3) TFEU).

The Commission

The Commission’s power of legislative initiative is clearly restated: ‘Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise’ (Art 17(2) TEU). Until 31 October 2014, the Commission consists of one national from each Member State (Art 17(4) TEU). From 1 November 2014, the Commission will consist of a number of members corresponding to two-thirds the number of Member States, unless the European Council, acting unanimously, decides to alter this number. As discussed above, in order to satisfy the concerns of Ireland and to pave the way for the second Irish referendum on the ToL, the European Council stated that it would make the necessary decision to revert to the current composition (i.e. the Commission will continue to consist of one national from each Member State). If there had been a reduction in the number of Commissioners, the members would have been chosen on the basis of a system of ‘strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States’ (Art 17(5) TEU). The European Council would have set up the system, acting unanimously (Art 17(5) and Art 244 TFEU).

The political role of the President of the Commission, who is elected by the European Parliament (Art 14(1) TEU), has been reinforced. The role now includes:

- the appointment of Vice-Presidents, other than the High Representative (Art 17(6)(c) TEU);
- laying down guidelines within which the Commission is to work (Art 17(6)(a) TEU);
- deciding on the internal organisation of the Commission (Art 17(6)(b) TEU); and
- the right to request the resignation of a Commissioner (Art 17(6) TEU).
The President is also involved in the appointment of the individual Commissioners: ‘The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission’ (Art 17(7) TEU).

The High Representative of the Union for Foreign Affairs and Security Policy

Article 18 TEU provides for the appointment of the High Representative of the Union for Foreign Affairs and Security Policy. Although clearly not one of the EU institutions, it is an appropriate point to consider the High Representative. The High Representative is appointed by the European Council, acting by a qualified majority, with the agreement of the President of the Commission (Art 18(1) TEU). Catherine Ashton, the UK’s former European Commissioner for Trade, was appointed by the European Council to this post on 20 November 2009.

The High Representative will:

- conduct the Union’s common foreign and security policy (Art 18(2) TEU);
- chair the Foreign Affairs Council (Art 18(3) TEU); and
- serve as one of the Vice-Presidents of the Commission (Art 18(4) TEU).

As a Vice-President of the Commission, the High Representative is subject to a collective vote of approval by the European Parliament (Art 17(7) TEU) and, possibly, a vote of censure (Art 234 TFEU and Art 17(8) TEU).

In this ‘two-hatted’ role (Commission–Council), the High Representative ensures the consistency of the Union’s external action as a whole (Art 18(4)). The High Representative conducts the Union’s common foreign and security policy, and common security and defence policy, contributing to policy development (Art 18(2) TEU). The High Representative is aided by a European External Action Service (Art 27(3) TEU). This Service consists of officials from relevant departments of the Council’s General Secretariat and the Commission, as well as staff seconded from Member States’ national diplomatic services (Art 27(3) TEU).

The Court of Justice of the European Union

Article 19(1) TEU provides that ‘the Court of Justice, the General Court and specialised courts’ shall be collectively referred to as the Court of Justice of the European Union. The former Court of First Instance has been renamed the General Court. The Court of Justice’s competence has been broadened, particularly in the area of freedom, security and justice and certain aspects of foreign policy (see below).

Other institutions and advisory bodies

The provisions relating to the Union’s other institutions (the European Central Bank and the Court of Auditors) and advisory bodies (the Committee of the Regions, and the Economic and Social Committee) are contained solely within the TFEU.

Internal policies: area of freedom, security and justice

Of all the policies referred to as internal policies, it is in the area of freedom, security and justice that the ToL makes the most changes to the status quo, not least as a result of the removal of the distinction between measures covered by the former EC Treaty and those covered by the former ‘third pillar’, and the general application of co-decision
(now referred to as the ‘ordinary legislative procedure’) and qualified majority voting (see above).

The Union’s actions in the area of freedom, security and justice have been clarified. Such actions respect ‘fundamental rights and the different legal systems and traditions of the Member States’ (Art 67(1) TFEU).

Policy-making has been deepened: asylum and immigration policy are a common Union policy governed by the principles of solidarity and fair sharing of responsibility between Member States (Art 80 TFEU). This ‘fair sharing of responsibility between Member States’ includes fair sharing of any financial implications (Art 80 TFEU).

It is with regard to judicial cooperation in criminal matters that the most innovative changes are found, above all because measures are adopted by qualified majority. Article 83(1) TFEU provides for the approximation of criminal legislation:

The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis... [emphasis added]

Article 83(1) refers to ‘areas of particularly serious crimes with a cross-border dimension’, and lists these as:

- terrorism;
- trafficking in human beings and sexual exploitation of women and children;
- illicit drug trafficking;
- illicit arms trafficking;
- money laundering;
- corruption;
- counterfeiting of means of payment;
- computer crime; and
- organised crime.

The Council is empowered to adopt a decision, acting unanimously and after obtaining the European Parliament’s consent, to extend this list to other crimes which meet the criteria set out in Art 83(1) TFEU.

In order to allay the fears of certain Member States, Art 83(3) TFEU provides a special ‘emergency brake’ procedure. If a Member State considers that a draft directive proposed under Art 83(1) may affect fundamental aspects of its criminal justice system, it has the power to request that the draft directive be referred back to the European Council. In this case, the ordinary legislative procedure will be suspended. Within a period of four months, if there is a consensus within the European Council, the proposal will be referred back to the Council and the suspension of the ordinary legislative procedure will be terminated so that the procedure can continue. However, if during this four-month period no consensus is reached within the European Council, if at least nine Member States want to establish enhanced cooperation on the basis of the draft directive, they will notify the European Parliament, the Council and the Commission accordingly. In such a case, authorisation to proceed will be deemed to have been granted, such that the provisions on enhanced cooperation will apply (see above).
The Court of Justice has a general role in monitoring the Union’s activities in this area. However, Art 276 TFEU provides that:

In exercising its powers regarding the provisions of Chapters 4 [judicial cooperation in criminal matters] and 5 [police cooperation] of Chapter V of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. [emphasis added]

The following provisions are illustrative of the complex system which has been adopted for the development and implementation of policy and law in the area of freedom, security and justice:

- the definition by the European Council (and therefore by consensus) of strategic guidelines for legislative and operational planning, without European Parliament involvement (Art 68 TFEU);
- sharing the legislative initiative between the Commission and a quarter of the Member States (a Member State is no longer able to submit a proposal on its own) in the area of judicial cooperation in criminal matters and police cooperation (Art 76 TFEU);
- retaining unanimity in certain areas, particularly as regards cross-border aspects of family law (Art 81(3) TFEU) and all forms of police cooperation (Art 87(3) TFEU); and
- the definition of a more prominent role for national parliaments, with particular regard to monitoring whether the principle of subsidiarity is being respected (Art 69 TFEU).

The following two provisions enable EU law to be further developed in the area of family law and serious crimes:

- measures which concern family law with cross-border implications may be adopted by the Council acting unanimously after consulting the European Parliament (Art 81(3) TFEU); and
- the list of serious crimes for which a directive may lay down minimum rules may be extended by the Council, acting unanimously after obtaining the consent of the European Parliament (Art 83(1) TFEU); see above.

Finally, the Council is empowered to adopt a regulation, acting unanimously after obtaining the consent of the European Parliament, to establish a European Public Prosecutor’s Office (Art 86(1) TFEU). If established, the European Public Prosecutor’s Office will be responsible for combating offences which affect the Union’s financial interests and to prosecute those responsible for such infringements (Art 81(1) and 81(2) TFEU). Article 81(4) TFEU provides that the remit of the European Public Prosecutor’s Office can be extended to combating and prosecuting serious crime with a cross-border dimension, by means of a decision adopted unanimously by the Council after obtaining the consent of the European Parliament, and after having consulted the Commission.

Protocol No. 21: UK and Ireland opt-out; Protocol No. 22: Denmark opt-out

Article 1 Protocol No. 21 (which is annexed to the TEU and TFEU) provides that the UK and Ireland will not take part in the adoption by the Council of any proposed measures relating to Title V of Part Three TFEU (i.e. all the TFEU provisions which relate to the area of freedom, security and justice). Article 2 provides that:
In consequence of Article 1 . . . none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision, measure or decision shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States . . .

Article 3(1) Protocol No. 21 provides that the UK or Ireland may notify the President of the Council in writing if it wishes to take part in the adoption and application of any proposed measure under Title V of Part Three. If it notifies the President within three months of the proposal or initiative being presented to the Council, it will be entitled to participate.

Protocol No. 22 provides Denmark with a similar opt-out.

External policies and action

It is in the area of external action that the ToL makes the most radical changes, more by means of institutional modifications, notably in the creation of the post of High Representative of the Union for Foreign Affairs and Security Policy (see above), than by improvement of procedures, which will remain practically unchanged. The role of the European Parliament in foreign policy has not changed fundamentally, although it now plays a more prominent role in common commercial policy and the conclusion of international agreements.

Articles 21 and 22 TEU set out general provisions which govern the Union’s external action. Articles 23–46 TEU are specifically concerned with the Union’s common foreign and security policy.

Article 21(1) TEU states that the Union’s action on the international scene is guided by the following principles:

- democracy;
- the rule of law;
- the universality and indivisibility of human rights and fundamental freedoms;
- respect for human dignity;
- the principles of equality and solidarity; and
- respect for the principles of the United Nations Charter and international law.

The Union will seek to develop relations and build partnerships with third countries (i.e. non-EU countries), and international, regional and global organisations which share the above principles, to promote multilateral solutions to common problems (Art 21(1) TEU).

Article 21(2) TEU provides that the Union will define and pursue common policies and actions, and work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;
(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
(g) assist populations, countries and regions confronting natural or man-made disasters; and
(h) promote an international system based on stronger multilateral cooperation and good global governance.

Article 22(1) TEU provides that ‘on the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union’. The European Council will make decisions on these strategic interests and objectives in relation to ‘common foreign and security policy and to other areas of external action of the Union’ (Art 22(1) TFEU). The European Council will act unanimously on a recommendation from the Council; the Council will then formally adopt the decision (Art 22(1) TEU). Article 22(2) TEU provides that joint proposals may be submitted to the Council by the High Representative (with regard to common foreign and security policy) and the Commission (with regard to other areas of external action).

**Common foreign and security policy**

Some new legal bases have been introduced:

- a solidarity clause between Member States in the event of a terrorist attack or natural disaster (Art 222 TFEU); and
- international agreements may be concluded with one or more states or international organisations in areas covered by the common foreign and security policy (Art 37 TEU).

Security policy has been modernised in a number of areas, in particular in the area of defence. Article 24(2) TEU provides that:

> Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions.

Article 26(1) TEU provides that:

> The European Council shall identify the Union’s strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.

Article 26(3) TEU provides that ‘The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by the Member States, using national and Union resources’.

Article 32 TEU provides that:

> Member States shall consult one another within the European Council and the Council on any foreign and security policy of general interest in order to determine a common approach. Before undertaking any action on the international scene or entering into any
commitment which could affect the Union’s interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

Decisions relating to the common foreign and security policy are adopted by the European Council and the Council acting unanimously, except where otherwise provided (Art 31 TEU). It is not permissible to adopt legislative acts (Art 31 TEU). Any Member State, the High Representative, or the High Representative with the Commission’s support, has the power to refer any question relating to the common foreign and security policy to the Council (Art 30(1) TEU).

Common security and defence policy

Article 42 TEU provides that:

1 The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2 The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

   The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3 Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

   Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as ‘the European Defence Agency’) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4 Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5 The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union’s values and serve its interests. The execution of such a task shall be governed by Article 44.

6 Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

7 If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

**Solidarity clause**

As discussed above, Art 222 TFEU establishes a solidarity clause:

1 The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

   (a) – prevent the terrorist threat in the territory of the Member States;
   – protect democratic institutions and the civilian population from any terrorist attack;
   – assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

   (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2 Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3 The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

4 The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

**The Union and its neighbours**

Article 8(1) TEU provides that the Union will develop a ‘special relationship with neighbouring countries aiming to establish an area of prosperity and good neighbourliness,
founded on the values of the Union and characterised by close and peaceful relations based on cooperation’. The Union is empowered to conclude specific agreements with the countries concerned, in order to achieve this special relationship (Art 8(2) TEU).

Union membership

Article 49 TEU sets out the conditions of eligibility, and the procedure, for accession to the Union. Any European State ‘which respects the values referred to in Article 2 and is committed to promoting them’ can apply to become a member of the Union. The application will be addressed to the Council, which will act unanimously after consulting the Commission and after obtaining the consent of the European Parliament, which will act by a majority of its component members. The conditions of admission and any amendments to the Treaties will be subject to agreement between the applicant State and the Member States. This agreement will require ratification by all the Member States in accordance with their constitutional requirements.

Article 7 TEU provides for the suspension of certain rights resulting from Union membership, along similar grounds to those contained in the former Art 7 TEU (pre-ToL).

Article 50 TEU sets out, for the first time, the procedure for a Member State’s voluntary withdrawal from the Union.

1 July 2013: enlargement

At the end of 2011 the 27 Member States, together with Croatia, signed an Accession Treaty paving the way for Croatia’s membership of the EU. This will enable Croatia to become an EU Member State on 1 July 2013, increasing the European Union from 27 to 28 Member States.

Future enlargement

Four countries have applied for membership of the European Union: Turkey, the Former Yugoslav Republic of Macedonia, Montenegro and Iceland. In order to join the Union, each prospective Member State is required to fulfil the economic and political conditions known as the ‘Copenhagen criteria’ (which were adopted in 1993), according to which they must:

● be a stable democracy, respecting human rights, the rule of law, and the protection of minorities;
● have a functioning market economy; and
● adopt the common rules, standards and policies that make up the body of EU law.

Turkey applied for EU membership as long ago as 14 April 1987, but its passage to entry has not been smooth. At its December 2004 meeting, the Council invited the Commission to present to the Council a proposal for a framework for negotiations with Turkey, on the basis set out below. Within the Commission’s proposal, the Council was requested to agree on that framework with a view to opening negotiations on 3 October 2005. The framework for negotiations (which will also apply to future candidate countries) is as follows:
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The European Council agreed that accession negotiations with individual candidate states will be based on a framework for negotiations. Each framework, which will be established by the Council on a proposal by the Commission, taking account of the experience of the fifth enlargement process and of the evolving acquis [i.e. the total body of EU law accumulated so far], will address the following elements, according to own merits and specific situations and characteristics of each candidate state:

1 As in previous negotiations, the substance of the negotiations, which will be conducted in an Intergovernmental Conference (IGC) with the participation of all Member States on the one hand and the candidate State concerned on the other, where decisions require unanimity, will be broken down into a number of chapters, each covering a specific policy area. The Council, acting by unanimity on a proposal by the Commission, will lay down benchmarks for the provisional closure and, where appropriate, for the opening of each chapter; depending on the chapter concerned, these benchmarks will refer to legislative alignment and a satisfactory track record of implementation of the acquis as well as obligations deriving from contractual relations with the European Union.

Long transition periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered. The Commission will include these, as appropriate, in its proposals for each framework, for areas such as freedom of movement of persons, structural policies or agriculture. Furthermore, the decision-taking process regarding the eventual establishment of freedom of movement of persons should allow for a maximum role of individual Member States. Transitional arrangements or safeguards should be reviewed regarding their impact on competition or the functioning of the internal market.

3 The financial aspects of accession of a candidate state must be allowed for in the applicable Financial Framework. Hence, accession negotiations yet to be opened with candidates whose accession could have substantial financial consequences can only be concluded after the establishment of the Financial Framework for the period from 2014 together with possible consequential financial reforms.

4 The shared objective of the negotiations is accession. These negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand. While taking account of all Copenhagen criteria, if the Candidate State is not in a position to assume in full all the obligations of membership it must be ensured that the Candidate State concerned is fully anchored in the European structures through the strongest possible bond.

5 In the case of a serious and persistent breach in a candidate state of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard the Candidate State, whether to suspend the negotiations and on the conditions for their resumption. The Member States will act in the IGC in accordance with the Council decision, without prejudice to the general requirement for unanimity in the IGC. The European Parliament will be informed.

Parallel to accession negotiations, the Union will engage with every candidate state in an intensive political and cultural dialogue. With the aim of enhancing mutual understanding by bringing people together, this inclusive dialogue also will involve civil society.

An Accession Partnership was concluded between the EU and Turkey on 23 January 2006 (Council Decision 2006/35/EC). The objective of the Partnership is to set out:
priority areas which Turkey needs to address in preparation for accession; and 
financial assistance guidelines for the implementation of these priority areas.

Accession negotiations opened on 3 October 2005. However, they were halted in June 2006 because of a trade dispute between Turkey and Southern Cyprus. The negotiations subsequently resumed in March 2007 but on 8 December 2009 the Commission decided to progress slowly with negotiations because Turkey was still refusing to open its ports and airports to Southern Cyprus.

The Former Yugoslav Republic of Macedonia (FYRM) applied for EU membership on 22 March 2004 and was granted candidate-country status by the European Council on 17 December 2005. A European Partnership (the precursor to an Accession Partnership) was concluded between the EU and the FYRM on 30 January 2006 (Council Decision 2006/57/EC). During October 2009 the Commission made a recommendation that formal accession negotiations should be opened.

Montenegro applied for EU membership on 15 December 2008. On 9 November 2010 the Commission adopted its Opinion on Montenegro’s application (COM (2010) 670). The Commission has recommended that negotiations for Union accession should only be opened with Montenegro once it has achieved the necessary degree of compliance with the membership criteria. Because of progress made so far, the Commission has recommended that the European Council should grant Montenegro the status of candidate country.

Iceland is a member of EFTA and the EEA (see below). During the global credit crunch in 2008, Iceland suffered a severe financial crisis which pushed the country to the brink of bankruptcy. Iceland, which has never seriously considered EU membership before, applied for membership on 16 July 2009. On 24 February 2010 the Commission adopted its Opinion on Iceland’s application (COM (2010) 62). Following the Commission’s recommendation, the European Council opened accession negotiations with Iceland on 17 June 2010. Iceland’s application could move swiftly through this accession procedure because of its membership of EFTA and the EEA.

The following countries are potential candidates (with the prospect of membership when they meet the conditions):

- Albania
- Bosnia and Herzegovina
- Kosovo
- Serbia.

The Commission’s website on enlargement is available at:

http://ec.europa.eu/enlargement/index_en.htm

Every autumn the Commission adopts a set of documents explaining EU policy on accepting new members:

- setting out the objectives and prospects for the coming year; and
- assessing the progress made over past year by each country concerned.

The Enlargement Strategy and individual Progress Reports are available at:

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Key dates and events

23 July 1952  The European Coal and Steel Community (ECSC) comes into force.
1 July 1958  The European Economic Community (EEC) and the European Atomic Energy Community (Euratom) come into force.
8 April 1965  Merger of the Community institutions.
1 January 1973  EU enlargement from six Member States to nine. The new Member States are Denmark, Ireland and the UK.
1 January 1981  EU enlargement from nine Member States to ten. The new Member State is Greece.
1 January 1986  EU enlargement from ten Member States to twelve. The new Member States are Portugal and Spain.
1 July 1987  The Single European Act (SEA) comes into force.
1 January 1993  The target date for completion of the internal market: ‘an area without frontiers where the free movement of goods, persons, services and capital is ensured’.
1 November 1993  The Treaty on European Union (TEU) comes into force.
1 January 1995  EU enlargement from 12 Member States to 15. The new Member States are Austria, Finland and Sweden.
1 May 1999  The Treaty of Amsterdam (ToA) comes into force.
1 January 2002  The euro becomes legal tender in 12 Member States.
23 July 2002  The European Coal and Steel Community (ECSC) comes to an end.
1 February 2003  The Treaty of Nice (ToN) comes into force.
1 May 2004  EU enlargement from 15 Member States to 25. The new Member States are Cyprus (South), Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.
3 October 2005  The EU open formal accession negotiations with Turkey and Croatia.
17 December 2005  The Former Yugoslav Republic of Macedonia (FYRM) is granted candidate-country status by the European Council although formal accession negotiations are not yet opened.
1 January 2007  EU enlargement from 25 Member States to 27. The new Member States are Bulgaria and Romania.
1 January 2007  Slovenia joins the euro.
1 January 2008  Cyprus (South) and Malta join the euro.
1 January 2009  Slovakia joins the euro.
16 July 2009  Iceland applies for membership of the EU.
1 December 2009  The Treaty of Lisbon (ToL) comes into force.
1 January 2011  Estonia joins the euro.
1 July 2013  EU enlargement from 27 to 28 Member States. The new Member State is Croatia.
A TWO-SPEED EUROPE?

The idea of a ‘two-speed Europe’ was much canvassed before the Amsterdam Intergovernmental Conference, at which the ToA was adopted. The concept of a ‘two-speed Europe’ meant that those states who were keen to embrace closer political and economic cooperation would be free to do so, while the other more reluctant states could follow at their own pace. To some extent, this had already happened in relation to economic and monetary union, with the UK, Denmark and Sweden negotiating opt-outs (see above).

The ToA went some way to formally recognising this kind of ‘variable geometry’. Under the former Art 11 EC Treaty, the Council could authorise ‘closer cooperation’ between Member States. The Council would act on a proposal from the Commission. The ToN substantially amended this provision, and the former Arts 43–45 TEU established a system of ‘enhanced cooperation’.

When the ToL came into force on 1 December 2009, it incorporated ‘enhanced cooperation’ into both the TEU and TFEU. Article 20 TEU provides for a system of ‘enhanced cooperation’, the detailed provisions of which are set out within Arts 326 to 334 TFEU.

As discussed above, enhanced cooperation requires the involvement of at least nine Member States (Art 20(2) TEU). It only applies to the Union’s non-exclusive competencies (Art 20(1) TEU). Authorisation to proceed with enhanced cooperation is granted by a decision of the Council acting by a qualified majority, after obtaining the consent of the European Parliament, on a proposal from the Commission (Art 329(1) TFEU). With regard to the common foreign and security policy, authorisation to proceed may only be granted by a decision of the Council acting unanimously, after obtaining the opinion of: (i) the High Representative of the Union for Foreign Affairs and Security Policy; and (ii) the Commission. In this case, the European Parliament is simply informed (Art 329(2) TFEU). In both cases, the Council’s decision authorising enhanced cooperation may only be adopted ‘as a last resort when it has established that the objectives of such cooperation cannot be obtained within a reasonable period by the Union as a whole’ (Art 20(2) TEU).

No use was made of the former provisions and this will arguably remain the case post-ToL. It is unlikely that the Commission will favour, or want to initiate, a process of separate development.

There are two main reasons for this. First, a European Union in which there are different rules between the ‘outer’ and ‘inner’ areas will be extremely difficult to operate in practice. The Commission would not be in favour of having a body of rules which operates in different parts of the Union. Second, any further development of an ‘inner core’ of Member States, which is moving towards greater integration, will tend to accentuate what is already a tendency in the Union: the serious drift of commerce and industry towards the geographical centre of Western Europe. If Germany is in the ‘inner core’, because its economy is usually strong and it enjoys the largest market of all the Member States, businesses may tend to re-establish themselves nearer to the heart of Europe. Businesses from outside the Union which are seeking to circumvent the EU’s external tariff wall may tend to look for locations in states which are in the inner core rather than in states which are on the periphery. For both these reasons, the Commission is likely to resist any further measures which may make the integration of Union markets more difficult rather than less difficult, which is likely to be the case if a body of rules is adopted which only applies within part of the Union.

See pages 36–37 for an explanation of the Union’s non-exclusive competencies.
The European Economic Area

The remaining states within the European Free Trade Association (EFTA) continued to work together as a free-trade area after the departure of Ireland, Denmark and the UK in 1973 (see above). On 2 May 1992, the then seven EFTA states, the EU and the Member States, signed an agreement to establish the European Economic Area (EEA). The EEA, which some initially saw as an alternative to full membership of the European Union, was intended to integrate the EFTA states economically into the Union without giving them a role in its institutions. The EEA gave the EFTA states access for their goods, persons, services and capital to the markets of the Union. Equally, the same facilities were granted by EFTA states in their territories to Member States of the EU. Only Switzerland refused to participate in the EEA, after a hostile national referendum. In this new trading area, all the economic rules of the EU apply, although the Member States of EFTA are not represented in any of the EU institutions and do not participate in the EU’s decision-making process. Four bodies were established to coordinate the functioning of the EEA:

- the EEA Council;
- Joint Committee;
- Joint Parliamentary Committee; and
- Consultative Committee.

The EEA came into effect on 1 January 1994. On 1 January 1995, three of the remaining EFTA members became full members of the EU, so that the EEA states now comprise the existing 27 EU Member States (which will increase to 28 Member States on 1 July 2013 when Croatia becomes the latest member) together with Iceland, Liechtenstein and Norway.

Summary

Now you have read this chapter you should be able to:

- Outline the aims and objectives of the European Communities, explaining how and why they came into existence.
- Evaluate the impact the following Treaties have had on the founding Treaties and the composition, role and function of the European Communities and the European Union:
  - Single European Act;
  - Treaty of European Union;
  - Treaty of Amsterdam; and
  - Treaty of Nice.
- Explain how the Treaty of Lisbon amended the founding Treaties, with a specific reference to:
  - the renaming of the EC Treaty to the Treaty on the Functioning of the European Union (TFEU);
  - the renumbering of the TEU and TFEU;
  - the European Community’s replacement and succession by the European Union, resulting in the merger of the three pillars of the European Union; and
• Understand the nature of the European Free Trade Association and the European Economic Area in terms of their membership, reason for existence, role and relevance.

Reference

Further reading

Textbooks

Journal articles
CHAPTER 1 AN INTRODUCTION TO THE EUROPEAN COMMUNITIES AND THE EUROPEAN UNION


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