

Creation of the European Community and European Union

study points

After reading this chapter, you will be able to understand:

- the original aims and objectives behind the creation of the European Community and European Union
- the twin-track approach of widening and deepening the European Union project
- the relationship between the United Kingdom and the European Union.

1.1 Introduction

The idea of the creation of a united Europe is not a new one. Yet until the end of the Second World War, all plans to establish such a union failed. The War served as a catalyst, States realising the full impact of two global wars on the European continent. In 1946, Sir Winston Churchill famously made a speech calling for the creation of a United States of Europe, to be based on reconciliation between France and Germany. Various motives linked to the aftermath of the Second World War (see **1.2** below) led to the creation of a number of international organisations, among them the European Economic Community (EEC, 1957), which, through a series of treaties expanding its membership and competences, transformed into the contemporary European Union (EU) based on the 2007 Treaty of Lisbon. The United Kingdom's (UK's) attitude towards the EU, as well as its membership of the EU, was always ambivalent. A referendum held on 23 June 2016 heralded the process of withdrawal of the UK from the EU under what is known as 'Brexit' (see further **1.6** below).

1.2 Motives for European integration

In the years following the end of the Second World War, responding to the interests and needs of European States but also to the threats and challenges they faced, an array of international organisations was created on the European continent. There were three main reasons for this:

- (a) The States were eager to build a peaceful and more stable future for Europe and themselves. The result of this wish to prevent further conflicts and to provide human rights to those living in European States, was the creation in 1949 of the Council of Europe, a forum within which the States of Europe could cooperate, especially on social, cultural and legal matters. Its greatest success was the adoption in 1950 of the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the European Convention on Human Rights (ECHR)) and its enforcement machinery.
- (b) The economies of the European States had been devastated by two wars and needed to be rebuilt. It was acknowledged that cooperation, rather than coexistence, was essential for economic growth. The United States (US) provided

financial assistance under the Marshall Plan, a European recovery programme that was administered by the Organisation for European Economic Cooperation (1948), which later became the Organisation for Economic Cooperation and Development (OECD). Undoubtedly this encouraged States to cooperate in the economic field.

- (c) Security issues were also high on the agenda. The Western European Union (WEU) was established in 1948 by Belgium, France, Luxembourg, The Netherlands and the United Kingdom as a security alliance to prevent another war. However, the Berlin blockade in 1948–49 (during which the Soviet Union denied the Western Allies access to the sectors of Berlin under allied control) and the strain on the relationship between the US and the Soviet Union triggered the creation of the North Atlantic Treaty Organisation (NATO) in 1949, the primary objective of which was to defend European States against the rising Soviet threat. In 1950 Pleven, then French Prime Minister, suggested the creation of a European Defence Community. Whilst the treaty was signed by France, Germany, Italy, Belgium, The Netherlands and Luxembourg, it failed owing to the lack of ratification by the French Parliament. This put an end to a European defence organisation. In 2011 the WEU ceased to exist.

Yet none of these organisations led to the creation of the EU.

1.3 The creation of international (European) organisations

The four organisations mentioned in 1.2 above are international organisations, ie structures established by States in order to fulfil a certain role:

- Council of Europe – peace, cultural/social/legal cooperation, protection of human rights
- OECD – economic cooperation
- NATO and WEU – military defence.

Likewise, the EU was set up to provide peace, security, a harmonious development of economic activities, economic stability, a raising of the standard of living and a guarantee of well-being for those living on the European continent.

International organisations are usually based on a treaty, an agreement between States that binds them on the international level once they have ratified it. Such organisations are endowed by States with powers (through a mechanism of transfer of sovereign powers) in order to achieve the aims and objectives set out in the specific treaty. This formal transfer of sovereign powers from the States to the international organisation was on several occasions recognised by the European Court of the Justice (ECJ), now the superior court of the Court of Justice of the European Union (CJEU), the judicial body of the European Union (see **Chapter 8**), in relation to the European Union (Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR 1; Case 6/64 *Costa v ENEL* [1964] ECR 585). An international organisation can act only if it has received such (delegated) powers. The treaty acts as the constitution of the international organisation, specifying its composition, its membership, its institutions and their working relations, its areas of competences, etc. Therefore it is important to read with care any treaty that establishes an international organisation.

Many organisations go through a dynamic process, in the sense that their powers and competences change over time as treaties are amended to fit the interests of the

members. For example the Organisation for European Economic Cooperation mutated into the OECD. Likewise, the European Coal and Steel Community (ECSC, created in 1951 for a period of 50 years only) became part of the EC when the Treaty establishing it expired on 23 July 2002. The EU has transformed mainly through two mechanisms:

- *Functional integration*: the European organisation has been given more and more sectors/areas of competences.
- *Spill-over effect*: the European organisation was allowed to act in a certain field that nevertheless had effects on another one. States then endowed the European organisation with the powers to act in the latter field.

That being said, it must be borne in mind that this process was developed by States, and especially by statespersons, without the involvement of their citizens. Consequently, a pending and recurrent issue is the involvement of European citizens in the European integration project, and the challenge of making the EU a more democratic international organisation.

In Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR 1 and in Case 6/64 *Costa v ENEL* [1964] ECR 585, the ECJ explained that the States had voluntarily limited their sovereignty in favour of a *sui generis* legal order:



The objective of the [EU] Treaty, which is to establish [an internal] Market, the functioning of which is of direct concern to interested parties in the [EU], implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states ...

The [EU] constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. (Case 26/62 *Van Gend en Loos*, 12)

Consequently,

[b]y contrast with ordinary international treaties, the [EU] Treaty has created its own legal system which ... became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a [Union] of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the [Union], the Member States have limited their sovereign rights ... and have thus created a body of law which binds both their nationals and themselves.

... [T]he law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as [EU] law and without the legal basis of the [Union] itself being called into question.

The transfer by the states from their domestic legal system to the [Union] legal system of rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights against which a subsequent unilateral act incompatible with the concept of the [Union] cannot prevail. (Case 6/64 *Costa v ENEL*, 593–94)

1.4 Widening participation

The European project started with six Member States (France, Germany, Italy, The Netherlands, Belgium and Luxembourg). There are now 27 Member States in the EU (see **Figure 1.1**).

The UK, Ireland and Denmark joined in 1973. Norway had also agreed upon its terms for entry, but the Norwegian people rejected European Community membership in a referendum, mainly because of concerns about their principal industries, oil and fishing. Greece started accession negotiations in 1976 after the fall of the military junta and the restoration of democracy. She became a Member State in 1981. Two former dictatorships, Spain and Portugal, joined in 1986 after eight years of negotiations, complicated by the fact that Portugal was very poor, Spain had a huge fishing fleet, and both countries, as large-scale producers of fruits and vegetables, would compete with France and Italy. The next round of enlargement was straightforward, with the accession of Austria, Sweden and Finland in 1995. Norway also participated in the negotiations, but yet again its population rejected the proposal for membership. The Czech Republic, Slovakia, Latvia, Lithuania, Estonia, Hungary, Poland and Slovenia, all former Communist States, and Malta completed the process of preparing for EU membership, and were admitted as Member States in 2004. Cyprus was also admitted in 2004. That being said, the island is still divided between the Greek Cypriot south, whose government is legally recognised internationally as the only legitimate government of the whole island, and the Turkish Cypriot north, whose government is not legally recognised by any State except Turkey. It was hoped that enough pressure could be exerted by the EU to achieve a political settlement before Cyprus's entry, but this did not happen. In theory, the whole of Cyprus is part of the EU, but in practice only the Greek part is subject to EU law. Romania and Bulgaria were allowed to join in 2007 and Croatia in 2013.

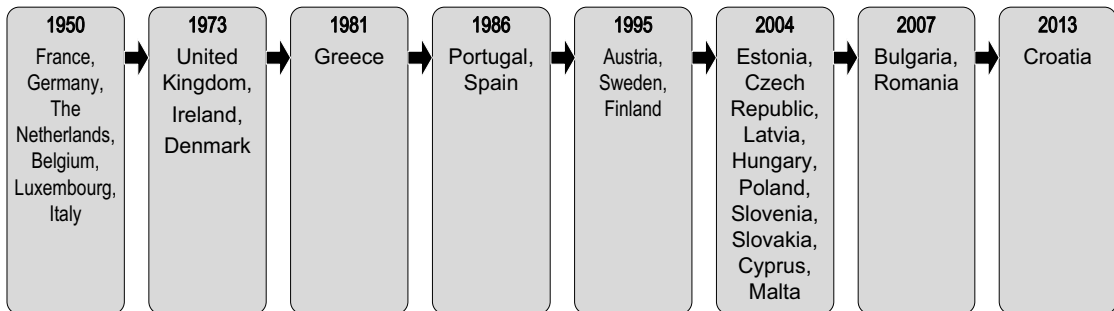


Figure 1.1 Membership of the EU (1950–2013)

In order to become a Member State of the EU, a State must, under Article 49 TEU, 'respect the values referred to in Article 2 and [be] committed to promoting them' (see also Case C-619/18 *Commission v Poland* EU:C:2019:531, para 42). The first step is for the State to meet the key requirements that were set at the Copenhagen Summit in June 1993. The criteria are, first, that the State must have a stable government and institutions that are democratic and based on the rule of law and human rights (including the protection of minorities). It must also have a functioning market economy that is able to cope with the single market, which is the free trade and movement of labour, goods, services and capital. Moreover, the State must be able to accept the *acquis communautaire*, a French term that denotes all the rights and obligations that current members of the EU have (see 4.1). The negotiations focus on the conditions and timing of the candidate's adoption, implementation and enforcement of the *acquis* which is divided into 35 different policy fields (chapters), each of which is negotiated separately. Once all chapters have been negotiated, candidate States sign and ratify an accession treaty.

The prospect of EU membership has been offered to nine States: the Former Yugoslav Republic of Macedonia, Montenegro, Iceland, Albania, Bosnia-Herzegovina, Kosovo, Turkey and Serbia. Five of them have been granted official candidate status: Albania, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey. Although accession negotiations with Iceland were formally opened in June 2010, its Government requested in March 2015 that 'Iceland should not be regarded as a candidate country for EU membership'. Turkey made repeated applications to join the EC, but until 2005 these were always rejected for three main reasons:

- (a) Turkey's economy is underdeveloped;
- (b) Turkey's human rights record is poor; and, most importantly,
- (c) Greece would not contemplate Turkey's admission until there was settlement of the Cyprus problem (see above).

Turkey has now been allowed to begin negotiations, but until Turkey agrees to apply the Additional Protocol of the Ankara Association Agreement to Cyprus, eight negotiation policy fields will not be opened and no chapter will be provisionally closed. As Cyprus is now a Member State, it has the power to veto Turkish membership. Ukraine also expressed an interest in joining the EU, but owing to the ongoing armed conflict there, it is unlikely to become a Member State in the near future.

The only European States that seem happy to stay outside the EU are Norway and Switzerland. Norway is, however, a member of the European Economic Area (EEA), and Switzerland has signed a series of agreements with the EU; both are also part of the Schengen Area (see 1.5 below) and cooperation mechanism.

1.5 Deepening cooperation

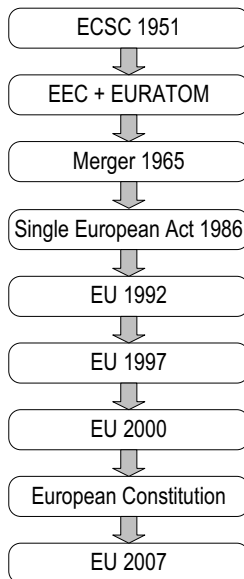


Figure 1.2 Deepening cooperation

The story of the European integration project started with the creation of the ECSC in 1951. A year earlier, Robert Schuman, the then French Foreign Minister, suggested a scheme (known to history as the Schuman Plan, although it was drafted by Jean Monnet) with the following aims:

- (a) to help the economic recovery and boost economic growth in Europe;
- (b) to remove competition between France and Germany that had led to two world wars;
- (c) to put the coal and steel industries of both Germany and France under the control of a supra-national body, ie a body that would be able to tell States what they could and could not do. This would ensure that Germany could not produce armaments.

Germany was happy to accept the scheme, and other States were invited to join. Belgium, The Netherlands, Luxembourg (which had already formed the Benelux economic union) and Italy all agreed, but the UK refused to join, partly out of insularity and partly because the then Labour Government had just nationalised both the coal and the steel industries.

In 1950, six States signed the Treaty of Paris, bringing into being the ECSC, the first genuinely supra-national body with a High Authority, an Assembly, a Council and a Court, organs that would later become the Commission, the European Parliament, the Council and the Court of Justice of the European Union (see **Chapter 2**). The aim of the ECSC was to remove barriers to trade in coal and steel, and to set up and manage common policies.

As the ECSC had proved very successful in revitalising the economies of the Member States, an intergovernmental committee, headed by Paul-Henri Spaak, presented a report in 1956 suggesting the establishment of an economic community and an atomic energy community. The result was the creation of the EEC and the European Atomic Energy Community (EURATOM) in Rome in 1957 (the Treaties of Rome). The aim of the EEC was to establish a common market, based on a customs union, the free movement of goods, persons and capital and common policies. It was decided that the three international organisations, the ECSC, the EEC and EURATOM, would have their own institutions but would share the Court of Justice and the Parliamentary Assembly. Later, in 1965, the Merger Treaty saw the creation of a single Council (of Ministers) and a Commission. Slowly, but assuredly, the three organisations were becoming one (see **Figure 1.3**).

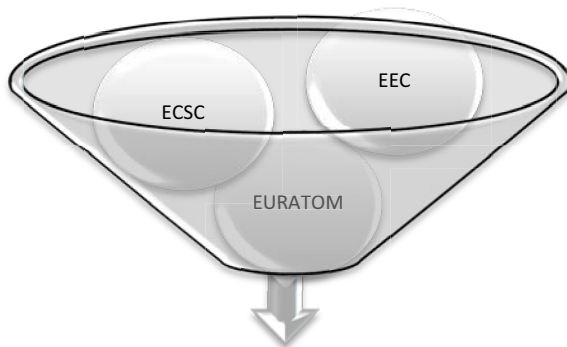
The Single European Act 1986 was the first substantial revision of the original EEC Treaty. Its amendments attempted to ensure increased efficiency (use of qualified majority voting) and democracy (increased powers given to the European Parliament) in the (now) European Community (EC), and introduced an internal market, also referred to as a 'single market', to be attained by 1 January 1993 (see **Chapter 11**).

At this juncture it was obvious that States' cooperation went beyond mere economic collaboration. In 1985 five Member States (Belgium, France, Germany, Luxembourg and The Netherlands) adopted the Schengen Agreement, which gradually abolished border checks. In 1990 these States went further by adopting the Schengen Convention, which provided for, inter alia, the abolition of internal border controls and a common visa policy, thereby creating the Schengen Area. These treaties were independent of those operating the EC (see **20.2.1**).

The next major step was the Maastricht Treaty in 1992 (formally, the Treaty on European Union or TEU) that created the EU with increased powers and expanded areas of

competences. In fact, the TEU worked as a framework treaty, setting up a three-pillar or temple structure to delineate these powers and competences (see **Figure 1.4**). The first pillar included the ECSC, EURATOM and the EC (the latter based on the European Community Treaty), ie the European Communities. The second pillar dealt with the Common Foreign Policy and Security, whilst the third pillar addressed issues relating to Justice and Home Affairs.

After two further amendments, the Treaty of Amsterdam 1997 and the Treaty of Nice 2000, the States agreed, in the Laeken Declaration in 2001, to set up a committee called 'European Convention' to draft a constitution for Europe. A European Constitution would have simplified matters since it aimed to incorporate all the aforementioned European Treaties into a single legal document. Although a text was agreed in 2004, it could not enter into force as it failed to be ratified by all the Member States. In 2007 the proposed treaty was formally abandoned and efforts were directed towards amending the Treaty of Nice.



European Communities

Figure 1.3 The European Communities

A reform treaty was adopted in Lisbon in 2007 and took effect in December 2009. The Lisbon Treaty amended the founding Treaties by renaming the European Community Treaty as the Treaty on the Functioning of the European Union (TFEU) and renumbering the articles of the TEU and TFEU. Among the main changes introduced were:

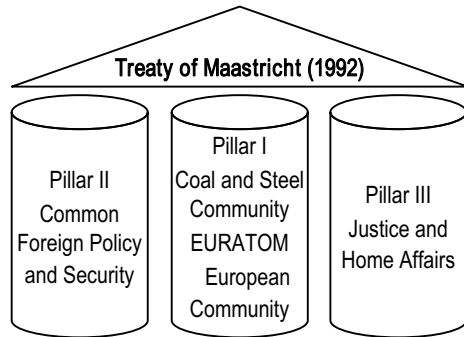


Figure 1.4 The three pillars of the EU under the Maastricht Treaty

- the creation of the High Representative of the Union for Foreign Affairs and Security Policy
- the recognition of the vital role played by the European Council
- a new definition of secondary EU law
- the insertion of the Charter of Fundamental Rights of the European Union into the TEU, giving it the same legal value as the Treaties
- the increased involvement of national parliaments in the law-making process, and
- the termination of the three-pillar structure described above.

The Lisbon Treaty is certainly not the last chapter in this chain of constitutional agreements. As the Court explains, ‘the implementation of the process of integration ... is the

raison d’être of the EU itself’ (*Opinion 2/13 [Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms]* EU:C:2014:2454, para 172). The combination of new political, economic and financial challenges, the celebration of 60 years of the European Union, and the UK’s withdrawal from the EU (see 1.6) have led the European Commission to launch a process of reforming the European Union. In its White Paper on the Future of Europe (COM(2017)2025 of 1 March 2017), the European Commission maps out the drivers of change in the next decade and presents five scenarios for how Europe could evolve by 2025. These scenarios are:

- Carrying on: The European Union focuses on delivering its positive reform agenda
- Nothing but the single market: The European Union is gradually re-centred on the single market
- Those who want more do more: The European Union allows willing Member States to do more together in specific areas
- Doing less more efficiently: The European Union focuses on delivering more and faster in selected policy areas, while doing less elsewhere
- Doing much more together: The European Union decides to do much more together across all policy areas.

While the European Commission opens a debate with citizens on how Europe should evolve in the years to come, the leaders of 27 Member States and of the European Council, the European Parliament and the European Commission have committed to the Rome Agenda and to work towards a safe and secure Europe, a prosperous and sustainable Europe, a social Europe, and a stronger Europe on the global scene (Rome Declaration of 26 March 2017).

in practice

The Lisbon Treaty renumbered the articles of the European Community Treaty and renamed it the Treaty on the Functioning of the European Union.

In parallel to the political and economic development in Europe, States attempted to create an economic and monetary union. In 1979 the European Exchange Rate Mechanism was established and the European Currency Unit (ECU) introduced with the aim to create monetary stability. The system operated outside of the then EEC. The Economic and Monetary Union (EMU) became a reality under the Maastricht Treaty. While its economic aspects were defined in rather general terms, its monetary part was expressed in more coercive and specific ones. Indeed, the economic policy remains decentralised, with emphasis on coordination (Articles 120 and 121(1) TFEU), whilst the monetary and exchange-rate policies were centralised leading to the creation of a single currency in 1999, the euro, and the transfer of monetary powers to the European System of Central Banks headed by the European Central Bank (ECB) (see 2.5), the primary objective of which is to ‘maintain price stability’ (Article 127(1) TFEU). This eurozone or euro area now consists of 19 Member States (Lithuania being the latest State to adopt the euro on 1 January 2015). While Denmark is still using its opt-out obtained under the Maastricht Treaty, ‘Member States with a derogation’ (Article 139(1) TFEU) – Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania and Sweden – are required, under the terms of their Accession Treaties, to adopt the euro and join the eurozone as soon as they satisfy the euro convergence (or Maastricht) criteria under Article 140(1) TFEU, including successful participation in the European Exchange Rate Mechanism (ERM II) for at least two years.

The world financial crisis of 2008 emphasised the weaknesses and the incompleteness of the institutional design of the EMU, notably in respect of the economic policies where there was no EU institutional equivalent to the ECB. The blatant disregard by Member States of Treaty requirements relating to budget deficits and government debt led to sovereign debt crisis in four southern European countries (Portugal, Italy, Greece and Spain) and Ireland (PIIGS), threatening to undermine the economies of the rest of the Union and the very existence of the euro. While interest rates and monetary easing fell within the exclusive domain of the ECB, taxation and government expenditures remained national. In other words, the EU had a monetary union but no fiscal union. Following a proposal by Jean-Claude Trichet, the then head of the ECB, to adopt a form of fiscal union to guarantee adequate and prudent fiscal policies across the EU, in March 2011 the Member States first reformed the 1997 Stability and Growth Pact (SGP), designed to maintain stability within the EMU, with a view to strengthening its procedure and imposing automatic penalties for non-compliance with its deficit or debt rules. This reform was then followed by the adoption outside the framework of the EU Treaties, on 2 March 2012, of a new intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (also referred to as TSCG or the Fiscal Stability Treaty). This Treaty, now known as the Fiscal Compact, signed by all Member States except the Czech Republic and the UK, entered into force on 1 January 2013 for the 16 Member States that ratified it before this date (a minimum of 12 ratifications were required). As from April 2019, the Treaty has been ratified by all EU States, of which two non-eurozone States (Denmark and Romania) are bound in full by it, one (Bulgaria) is

bound by all fiscal and governance provisions (Titles III and V) but none of the economic ones (Title IV), and the others (Hungary, Poland, Sweden, Croatia and the Czech Republic) are bound only by the governance provisions (Title V). The Fiscal Compact requires the ratifying States to keep their national budgets in balance or in surplus within a year of its entry into force for them, and to introduce a self-correcting mechanism to prevent future breaches. The Treaty also replicates the debt-brake rules contained in the SGP and requires States gradually to reduce their government debt to GDP ratio if it exceeds the 60% reference level.

The Presidents of the Commission, the Euro Summit, the Eurogroup and the European Central Bank were invited by the Euro Summit of 24 October 2014 ‘to prepare next steps on better economic governance in the euro area’. The mandate given to Presidents Jean-Claude Juncker, Donald Tusk, Jeroen Dijsselbloem and Mario Draghi was confirmed by the European Council of 18 December 2014. They then decided also to associate the President of the European Parliament, Martin Schulz, to this work.

On 22 June 2015, following numerous consultations, they published the Report ‘Completing Europe’s Economic and Monetary Union’ (also known as the ‘Five Presidents’ Report’) (<https://ec.europa.eu/commission/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en>).

It is notably observed in the report that

For the euro area to gradually evolve towards a genuine Economic and Monetary Union, it will need to shift from a system of rules and guidelines for national economic policy-making to a system of further sovereignty sharing within common institutions, most of which already exist and can progressively fulfil this task. In practice, this would require Member States to accept increasingly joint decision-making on elements of their respective national budgets and economic policies. (at 5)

The report contains both medium- and long-term measures:

- Stage one: 1 July 2015 to 30 June 2017:
 - each country should create independent ‘competitiveness authorities’, national bodies ‘in charge of tracking performance and policies in the field of competitiveness’ (at 7) with a mandate to ‘assess whether wages are evolving in line with productivity and compare with developments in other euro area countries and in the main comparable trading partners’ (at 8);
 - other measures include an advisory European Fiscal Board, completion of the Banking Union, and a reorganisation of the European Semester.
- Stage two: 1 July 2017 to 31 December 2024 at the latest:
 - formalising and making more binding the convergence process;
 - setting up a macroeconomic stabilisation function for the euro area;
 - integrating the European Stability Mechanism (ESM) into the EU law framework; and
 - setting up a euro area treasury accountable at the European level.

While some of these changes should be possible within the current EU treaties, others, such as the last two, are likely to require treaty changes.

As the report says:

Euro area member states would continue to decide on taxation and the allocation of budgetary expenditures according to national preferences and political choices.

However, as the euro area evolves towards a genuine EMU, some decisions will increasingly need to be made collectively while ensuring democratic accountability and legitimacy. (at 18)

This Five Presidents' Report was followed by a Commission's Reflection Paper on the deepening of the Economic and Monetary Union setting out a roadmap for the completion of the Economic and Monetary Union by 2025 ('Further steps towards completing Europe's economic and monetary union: a roadmap' COM(2017) 821 final) in which the Commission identifies four complementary areas where progress is still needed:

- (1) *Financial Union*: risk-reduction package to strengthen the resilience of EU banks, common backstop for the Single Resolution Fund and European Deposit Insurance Scheme (see Commission Communication 'on completing the Banking Union' of 11 October 2017 COM(2017) 592 final).
- (2) *Fiscal Union*: stronger Structural Reform Support Programme (see COM(2017) 826 final) and adoption within the 2020 Multiannual Financial Framework of proposals for structural reform support, and a stabilisation function for the euro area (see COM(2017) 822 final).
- (3) *Economic Union*: continuation of the process of reforms for real convergence across the EU within the euro area and for countries on their way to joining the euro, reinforced budget for, and continuation beyond 2020 of, the Structural Reform Support Programme including dedicated convergence facility for non-euro Member States (see COM(2017) 825 final and Regulation (EU) 2018/1671 amending Regulation (EU) 2017/825 to increase the financial envelope of the Structural Reform Support Programme and adapt its general objective [2018] OJ L284/3), and further strengthening of coordination of national economic policies.
- (4) *Democratic accountability and strengthened governance*: incorporation of the Treaty on Stability, Coordination and Governance into Union law (see COM(2017) 824 final), creation of a European Monetary Fund (see COM(2017) 827 final), and creation of a unified representation of the euro area in the International Monetary Fund (see COM(2015) 603 final). There has been no visible progress to date, notably in the latter two proposals since the Member States prefer to maintain the ESM's intergovernmental character on the one hand and are reluctant to give up the current form of representation on the IMF on the other.

Although some significant improvements were made in line with recommendations formulated in the Presidents' Report and the Commission's Reflection paper, the Commission noted that some important gaps remain (see Communication from the Commission 'Deepening Europe's Economic Monetary Union: Taking stock four years after the Five Presidents' Report' of 12 June 2019). The Commission notably observed that convergence and competitiveness of the euro area could be fostered by further strengthening the resilience of eurozone Member States' economies through targeted structural reforms and investment. To this end, the Commission proposed on 24 July 2019 a new regulation 'on a governance framework for the budgetary instrument for convergence and competitiveness for the euro area' (see COM(2019) 354 final) designed to respond 'to the need to reinforce the coordination of the economic policies of the euro area and to the need to foster reforms and investment that address the challenges of the euro area as a whole and contribute to its economic and social convergence' by providing 'economic policy guidance for reforms and

investment to be supported by the new budgetary instrument in line with the overall economic policy coordination framework of the Union' (at 2).

1.6 The UK's attitude towards the European Union

The UK made its first application to join the then EEC in 1961, but this was rejected, mainly because of the opposition of De Gaulle, then President of France. A second application was made in 1967, but failed again due to France's hostility towards British membership. In January 1973, following the resignation of De Gaulle, the UK acceded to the EEC, and the European Communities Act 1972 took effect on 1 January 1973.

As the structure of the (now) EU underwent a number of changes in the course of its development, each treaty had to be ratified by every Member State. In 1988, UK Prime Minister Margaret Thatcher delivered a speech in Bruges setting out her view of Europe, which focused on opening the EU to Eastern European States and on criticising the intrusive nature of the European Commission. Whilst the pound joined the exchange rate mechanism of the European Monetary System in 1990, the UK made it clear that it would not join a single currency.

In 1992 the UK ratified the Maastricht Treaty that established the EU, but not without turmoil, as the vote in Parliament almost brought down the UK Government. Since then the UK has been able to negotiate agreement that certain issues be appended in a protocol to be separately agreed upon (Social Chapter in the Maastricht Treaty) or that opt outs be specifically granted (see now Protocol No 20 on the Application of Certain Aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland; Protocol No 21 on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice; and Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom). This method allows EU States to enhance their cooperation (such as the incorporation of the Schengen Agreements into the Treaty of Amsterdam 1997) whilst giving the UK the right to opt out of participation in some policies. In 2000, as the EU institutions adopted the Charter of Fundamental Rights, the UK expressed its reservations about endowing it with legal status (though this was later given under the Lisbon Treaty) (see 4.6).

Throughout this period of time the UK supported the Eastern enlargement of the EU, probably in the hope that a physical expansion of the Union would stymie further deepening of the European project. In 2008 the UK Parliament ratified the Treaty of Lisbon after a failed legal challenge to demand a referendum. In 2011 it passed the European Union Act, which not only requires any further transfer of powers to the EU to be accepted by way of referendum but also restates UK parliamentary sovereignty.

In 2012 the Government announced a review of the balance of competences in order to assess the impact of EU powers and competences on the UK. The review was completed in December 2014. Moreover, in light of growing discontent with EU migration and what is viewed as a lack of (parliamentary) sovereignty over domestic issues, the British Prime Minister sent in November 2015 a letter to the President of the European Council seeking reform in four fields: economic governance, competitiveness, sovereignty and immigration. The European Council replied in February 2016 by agreeing on a new settlement for the UK within the EU to be effective as soon as the UK notified its intention to remain a member of the EU (EUCO 1/16 of

19 February 2016). On 23 June 2016 a referendum on the UK's membership resulted in the British population voting to leave the EU.

By a letter dated 29 March 2017 the British Prime Minister notified the European Council of the UK's intention to leave the European Union, thereby starting the process under Article 50 TEU. It must be noted that until the Treaty of Lisbon, the possibility of withdrawing from the EU was not made explicit in the Treaties. In line with the Article 50 TEU procedure, guidelines which 'define[d] the framework for [the] negotiations ... and set out the overall positions and principles that the Union will pursue throughout the negotiation' (XT 21004/17 of 29 April 2017) were adopted by the European Council on 29 April 2017.

Following the Commission recommendation (COM(2017) 218 final of 3 May 2017), the Council adopted Decision (EU, Euratom) 2017/... authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union (XT 21016/17, ADD 1 REV 2 of 22 May 2017). The annex to this Decision contained the directives for the negotiation of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union.

The European Council guidelines set out a two-phased negotiation process: phase 1 on the negotiations on the withdrawal; and phase 2 on the preliminary and preparatory discussions on a framework for future relations and transitional arrangements. As stated in para 10 of the negotiating directives of 22 May 2017, these were only intended for the first phase of the negotiations. Matters not yet covered by these directives and phase 2 are 'part of subsequent sets of negotiating directives'.

The negotiations under Phase 1 led to a draft Withdrawal Agreement (Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community) including provisions on the financial settlement, the protection of the status and rights of EU citizens in the UK and UK citizens in the EU27, and a solution for preventing the return of the physical border between Northern Ireland and the Republic of Ireland, together with three protocols (the Protocol on Ireland/Northern Ireland, the Protocol on the Sovereign Base Areas in Cyprus, the Protocol on Gibraltar) and nine annexes ([2019] OJ C661/1). Finalised on 14 November 2018, the Agreement was endorsed on 25 November 2018 at a European Council summit. However, as the UK Parliament rejected it on three occasions, the Prime Minister had to ask for a first extension until 30 June 2019 and a second until 31 October 2019. Following a change of governments in the UK, an amended/new Withdrawal Agreement together with a revised/new protocol on Ireland/Northern Ireland was agreed upon by the UK and the EU27 on 17 October 2019 ([2020] OJ L29/7). Its rejection in Parliament was followed by general elections on 12 December 2019 which produced a new majority in Parliament that eventually approved the Agreement on 23 January 2020. The UK then notified the EU on 29 January 2020 that it had ratified the Agreement. With regard to the EU, in accordance with Article 50(2) TEU, the Agreement was 'concluded on behalf of the European Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament'. Indeed, following the European Parliament's consent given on 29 January 2020, the Council adopted the Agreement on 30 January 2020 (Council Decision (EU) 2020/135, [2020] OJ L29/1), thereby leading to its entry into force on 1 February 2020. The UK thus officially left the EU on 31 January 2020.

The Agreement also contains provisional arrangements in order to bridge the time between the UK's withdrawal from the EU and the entry into force of a new treaty outlining the relationship between the UK and the EU post-Brexit. According to Article 126 of the Withdrawal Agreement, the transition (also known as 'implementation') period runs until 31 December 2020 unless the Joint Committee established by the Agreement agreed, before 1 July 2020, to extend 'the transition period for up to one or two years' (Article 132 of the Withdrawal Agreement). This extension was not requested by the UK Government.

As for Phase 2, the EU27 and the UK agreed on a Statement on the future relations between the UK and the EU (Political Declaration Setting out the Framework for the Future Relationship between the European Union and the United Kingdom ([2019] OJ C66I/185)) at the same time as the draft Withdrawal Agreement. As a result, the European Council adopted on 23 March 2018 Guidelines 'with a view to the opening of negotiations on the overall understanding of the framework for the future relationship' (EU XT 20001/18, 23 March 2018, para 5). However, owing to the stalemate in the UK Parliament, the Political Statement suffered the same fate as the draft Withdrawal Agreement: it was amended ([2020] OJ C34/1) and then adopted by the UK Parliament and the relevant EU institutions (see above).

On 25 February 2020, the Council adopted, upon recommendation from the Commission, a Decision Authorising the Opening of Negotiations with the United Kingdom of Great Britain and Northern Ireland for a New Partnership Agreement (5870/20, 13 February 2020). According to preambular paragraph 7, the negotiations are based on the Political Declaration, 'the previously agreed European Council's guidelines, as well as statements and declarations, notably those of 25 November 2018' (see in particular the Council's Guiding Principles for Transparency in the Negotiations on the Future Relationship with the UK (XT 21010/20, 22 January 2020)). The Decision sets out that the new 'partnership should cover trade and economic cooperation, and also other areas, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy' (preambular paragraph 4) and the Union negotiator is the Commission (Article 2).

1.7 Further reading

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 summary

The EU is an international organisation created by States. It has evolved through a dynamic process involving further integration and expansion. Undoubtedly, the EU is a unique entity and has a complex structure. Often based on similarities rather than differences, the Member States have managed to create an integrated Europe. However, they do not always agree on the extent of such integration or 'deepening' of the Union. Furthermore, the European integration process seems to continue to be led by States rather than by the people it is supposed to bring together. That being said, a combination of factors, including the withdrawal of the UK from the EU, may bring a set of new reforms.


 test your knowledge

- 1 Have the initial aims of the EEC been achieved?
- 2 Has the Lisbon Treaty brought the EU closer to its citizens?
- 3 What are the reasons for amending the Treaties, and do these amendments contribute to the process of the European integration?
- 4 What is the withdrawal procedure under the TEU?