

# THE EUROPEAN UNION

Constitutional History

## THE EUROPEAN UNION



# THE UNIFICATION OF EUROPE



*"Europe will not be made all at once or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity."*

Robert Schuman, 1947

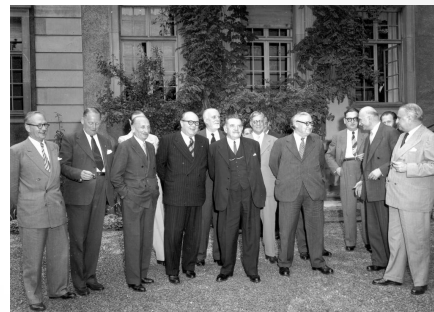
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## Why did Europe Unify?

- I. Globalisation being deemed more important than state sovereignty.
- II. Inter-state cooperation being sought to rebuild Europe following World War II.
- III. Organisation of Europe to strengthen bonds in order to act as a deterrent.

## IN THE BEGINNING...

- Initially three institutions were established in close succession of each other:
  - I. Organisation for the European Economic Cooperation (1948)
  - II. Western European Union (1948/1954)
  - III. Council of Europe (1949)
- The only one of these institutions to still exist is the Council of Europe.



The first sitting of the Council of Europe took place on 10 August 1949. The aim of the Council is to "achieve a greater unity between its members for the **purpose** of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress." Article 1(a) of the Statute of the Council of Europe.

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# THE TREATY OF PARIS 1951



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- Set up the European Coal and Steel Community (ECSC).
- Established to integrate the industries and promote cross border communication and economic partnership.
- A court, council, parliament & commission was established (Art 7 & 9)
- A failed attempt was made to establish an European Defence Community.
- The community lacked physical powers but the normative powers it did have were the foundation of the supranational power of the EU today.

## ECSC; THE FOUNDATION OF THE EU

### The Schuman Plan

- Sought to establish an economic friendship across member states.
- Deemed the ECSC to be the first step in the federation of Europe.

### The ECSC

- **The Commission:** supranational heart of the ECSC and decisions made were binding in their entirety.
- **The Parliament:** advisory function no real powers. (Art 22)
- **The Council:** to harmonise governments with representatives from member states (Art 26/27)
- **The Court:** established with 7 judges to rule on interpretation of the treaty. (Art 31)

### Supranationalism

- Decisions made by the **Commission & Court** were binding in their entirety.
- Established *direct applicability*.
- Departure from international ideal of sovereign equality.



Signatories of the Treaty of Paris on the 18<sup>th</sup> April 1951.

## TREATY OF ROME 1957

- Established the European Economic Community after the Spaak Report
- Created a common market with a customs union that was protected through the four freedoms (**Art 3**);

*Free movement of goods*  
*Free movement of persons*  
*Free movement of services*  
*Free movement of capital*

- Enhanced supremacy through **Article 189** that introduced direct applicability of regulations & executive decisions.
- Instigated major constitutional change to the institutions of the Community.

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## THE EUROPEAN ECONOMIC COMMUNITY

### The rise in supremacy:

- *Van Gend En Loos* [1963] established direct effect, which extended the applicability of Community law.
- *Costa v ENEL* [1964]: The EEC created its own legal system; by introducing the concept that member states cannot introduce measures that are not in accordance with the **law, principles or objectives** of the EEC.

### Decisional & Institutional Changes:

- Parliament replaced member state contributions with own resources and all members within had to be directly elected (Art 138 (3))
- The Council became the main decision-making body rather than the Commission (Art 145 EEC)
- Commission retained the power as the only body that could enact bills. (Initial period of unanimous majority required; Art 43 (2), this advanced to Qualified Majority Voting which resulted in a French boycott.)
- The Luxembourg Compromise; Introduced the shadow of a veto (Weiler) and the necessity for state interests to be heard.

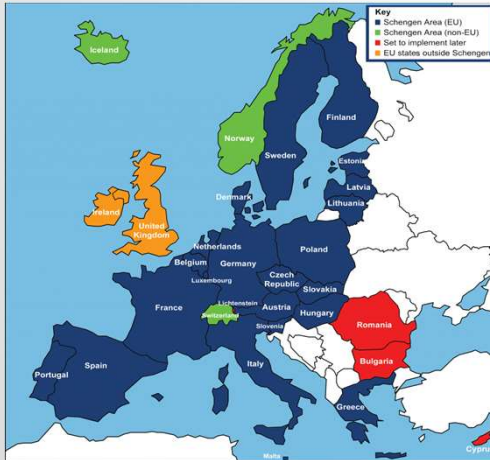
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The Treaty of Rome signing ceremony on the 25<sup>th</sup> of March 1957.



## THE COMMON MARKET & THE SCHENGEN AGREEMENT.



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- The journey towards the four freedoms was gradual, trade barriers were gradually eliminated, common policies regarding transportation, agriculture, and economic relations with were implemented.
- Labour and capital were eventually permitted to move freely within the boundaries of the community.
- Some European countries such as Britain declined to join the Common Market and formed the; **European Free Trade Association (EFTA)**. Britain joined the European Community formally in 1973.
- *Cassis de Dijon* [1979] The integration of the Common Market rules could be done **negatively**. If no national harmonisation had occurred in a member state, the member state could not impose their legislation on imports unless it met the common market rules/public interest requirements.
- The **European Monetary System** was established in 1979 outwith the EEC.
- The was made in 1985 to introduce **Schengen Agreement** ommon rules on visas, police & judicial co-operation (outwith the EC)

## THE SINGLE EUROPEAN ACT 1986

- Was the **first major** constitutional treaty reform since the EEC treaty in 1957.
- Sought to **complete** the Internal Market by 1992. (Art 13)
- It **did not succeed** in bringing everything under the supranational control of the EC; *foreign affairs, monetary systems and home affairs* were still separate.
- Formally recognised the **European Council** (Art 2) but it was not considered a Community institution.

### Key Successes:

It expanded the supranational decision making of the Commission by adding a legal basis for **Qualified Majority Voting**.

Now Art 114 (TFEU)

It introduced the **Co-operation procedure** into Legislation making.

*(The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position. Art 252(a))*

It was **Art 252 (TFEU)** now replaced by the co-decisional procedure.

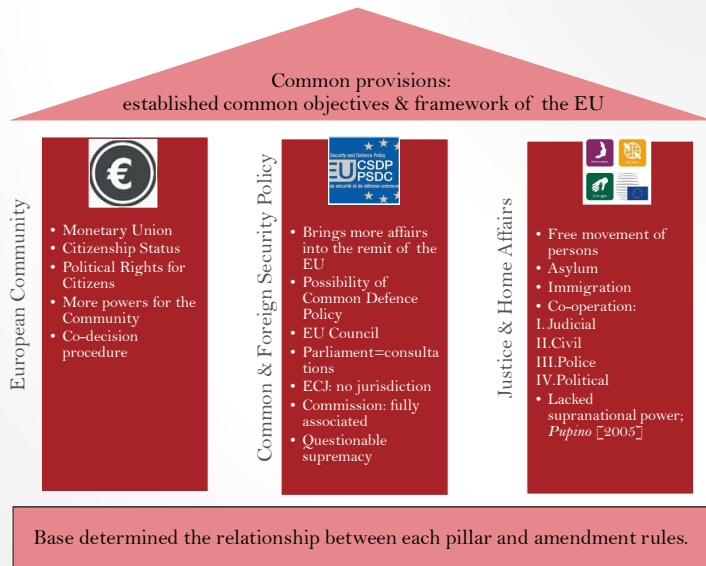
It created a **Court of First Instance** on the request of the Court of Justice designed to hear and determine at first instance certain classes of action or proceeding brought by natural or legal persons, subject to a right of appeal to the Court of Justice on points of law only.

**Art 11 (SEA) now Art 168(a) of the EEC Treaty**

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# THE TREATY OF MAASTRICHT 1992

- The **Delors** conference in 1989 discussed the integration of economy and monetary matters into the Community.
- The **Treaty on The European Union 1992 (TEU)** was the result of this.
- Ratification was challenged by the Constitutional Court of Germany (The Maastricht Decision [1994] CMLR 57.
- Established **three pillars** of the European Union. (Temple Structure)
- According to Curtin (1993) created a, "Europe of bits and pieces."



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# THE TREATY OF AMSTERDAM 1997

The key reform was splitting the Justice & Home Affairs pillar.



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- The subject areas removed from the Justice & Home Affairs pillar were transferred to the Community pillar.
- A more supranational approach for areas such as immigration/asylum etc. was preferred. (Free movement of persons)
- Article 1(15) inserted new title III (a) into Part III of the European Community Treaty.
- ^ UK and Ireland opted out to ensure border controls remained in place.

### What happened to the Schengen Agreement?

- Incorporation into the EU proved difficult because:
  - I. Non-participants of Schengen in EU
  - II. Non-EU members in Schengen
  - III. Schengen split due to third pillar split.
- Schengen Agreement; Title VI of TEU



## THE TREATY OF NICE 2001

- Limited institutional reform.
- A comprehensive review sought but not completed.
- Protocol for enlarging the EU established and new countries added to the Union.
- Provided minor changes to institutions of the EU (Council, Parliament, Commission, European Council, Court of Justice).
- Separate non-binding instrument established: **The Charter of Fundamental Rights**.
- Nice Declaration on the future of the EU; deadline set to address the need for a review.

*“We cannot go on working like this!\**”

\*Was apparently exclaimed by Tony Blair (former Prime Minister of Britain during Council debates regarding the Treaty of Nice.

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## CONSTITUTIONAL REFORM TREATY 2004

- Many states held referendums regarding the ratification of the Reform Treaty.
- Majority vote of no from both France & The Netherlands; Treaty failed to be ratified.



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### *What did it seek to achieve?*

- The purpose of the treaty was to repeal all former treaties
- Remove the Three Pillar Structure and have the EU operate under **one legal personality, one union, one treaty**.
- Consisted of four parts:
  - I. Values, objectives, competences, institutions, instruments.
  - II. Charter of Fundamental Rights
  - III. Internal/External Policies
  - IV. General/Final Provisions
- Complete simplification of the framework of the EU.

## THE LISBON TREATY 2009

Intergovernmental Conference in 2007 sought to amend existing treaties. The Lisbon Treaty is believed to abandon the form of the Failed 2004 treaty but keep its substance. Entered into force in 2009.

The Treaty completed the process that the Treaties of Amsterdam and Nice begun regarding the creation of supranationalism and removed the community/union base; Single European Union

Merged the Treaties of Maastricht and Rome together. A dual treaty base remained; New Treaty of the European Union (general provisions) and a Treaty on the Functioning of the European Union (specific provisions)

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## Dual Treaty Framework

- Dual Democratic legitimacy; corresponds to federal nature of the EU.
- Increased Parliaments decision making.
- Abolished pillar system. (however second pillar established in the Maastricht Treaty can be considered as the TEU.)
- The third pillar as modified by the Treaty of Amsterdam is reunited with the rest of the Maastricht Treaty; Title V of Part 3 of TFEU.
- Widening of geographical and jurisdictional scope as well as deepening supranational power.

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### TEU

Democratic principles established in Article 10

Majority of Reforms to this treaty involved changing of words etc.

Contains the Common Foreign and Security Policy.

Defence provisions

### TFEU

Specific provisions with regard to the institutions & policies of the EU.

Simplified union instruments & Law Making processes

Abolished Common Positions and Co-operation procedure

Made a dramatic step towards a political union of the EU. (ART 10)

Failed to categorise all the areas of union competences.



## *Title I of Part I of the consolidated Treaty on the Functioning of the European Union (Competences)*

Exclusive competence	Shared competence		Supporting competence
<i>"The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act."</i>	<i>"Member States cannot exercise competence in areas where the Union has done so."</i>	<i>"Union exercise of competence shall not result in Member States being prevented from exercising theirs in" ...</i>	<i>"The Union can carry out actions to support, coordinate or supplement Member States' actions in" ...</i>
<ul style="list-style-type: none"> <li>• the customs union</li> <li>• the establishing of the competition rules necessary for the functioning of the internal market</li> <li>• monetary policy for the Member States whose currency is the euro</li> <li>• the conservation of marine biological resources under the common fisheries policy</li> <li>• Common Commercial Policy</li> <li>• conclusion of certain international agreements</li> </ul>	<ul style="list-style-type: none"> <li>•the internal market</li> <li>•social policy, for the aspects defined in this Treaty</li> <li>•economic, social and territorial cohesion</li> <li>•agriculture and fisheries</li> <li>•consumer protection</li> <li>•transport</li> <li>•trans-European networks</li> <li>•energy</li> <li>•the area of freedom, security and justice (CFSP)</li> <li>•common safety concerns in public health matters, for the aspects defined in this Treaty</li> <li>•research, technological development and (outer) space</li> <li>•development cooperation, humanitarian aid</li> </ul>		<ul style="list-style-type: none"> <li>• the protection and improvement of human health</li> <li>• industry</li> <li>• culture</li> <li>• tourism</li> <li>• education, youth, sport and vocational training</li> <li>• civil protection (disaster prevention)</li> <li>• administrative cooperation</li> </ul>

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## THE FUTURE OF THE EUROPEAN UNION?

- On March 29th Prime Minister of the United Kingdom (UK) Theresa May triggered article 50 of the Treaty on the European Union. (TEU) In order to withdraw the United Kingdom from the European Union (EU).
- The Five possible Post-Brexit Scenarios for the EU was proposed by President of the EU Jean-Claude Juncker in a white paper in 2017.
  - I. **‘Carrying on’** The European Union focuses on delivering its positive reform agenda.
  - II. **‘Nothing but the Single Market’** The European Union is gradually re-centered on the Single Market..
  - III. **‘Those who want more do more’** The European Union allows willing member states to do more together in specific areas.
  - IV. **‘Doing less more efficiently’** The European Union focuses on delivering more and faster in selected policy areas, while doing less elsewhere.
  - V. **‘Doing much more together’** The European Union decides to do much more together across all policy areas.



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