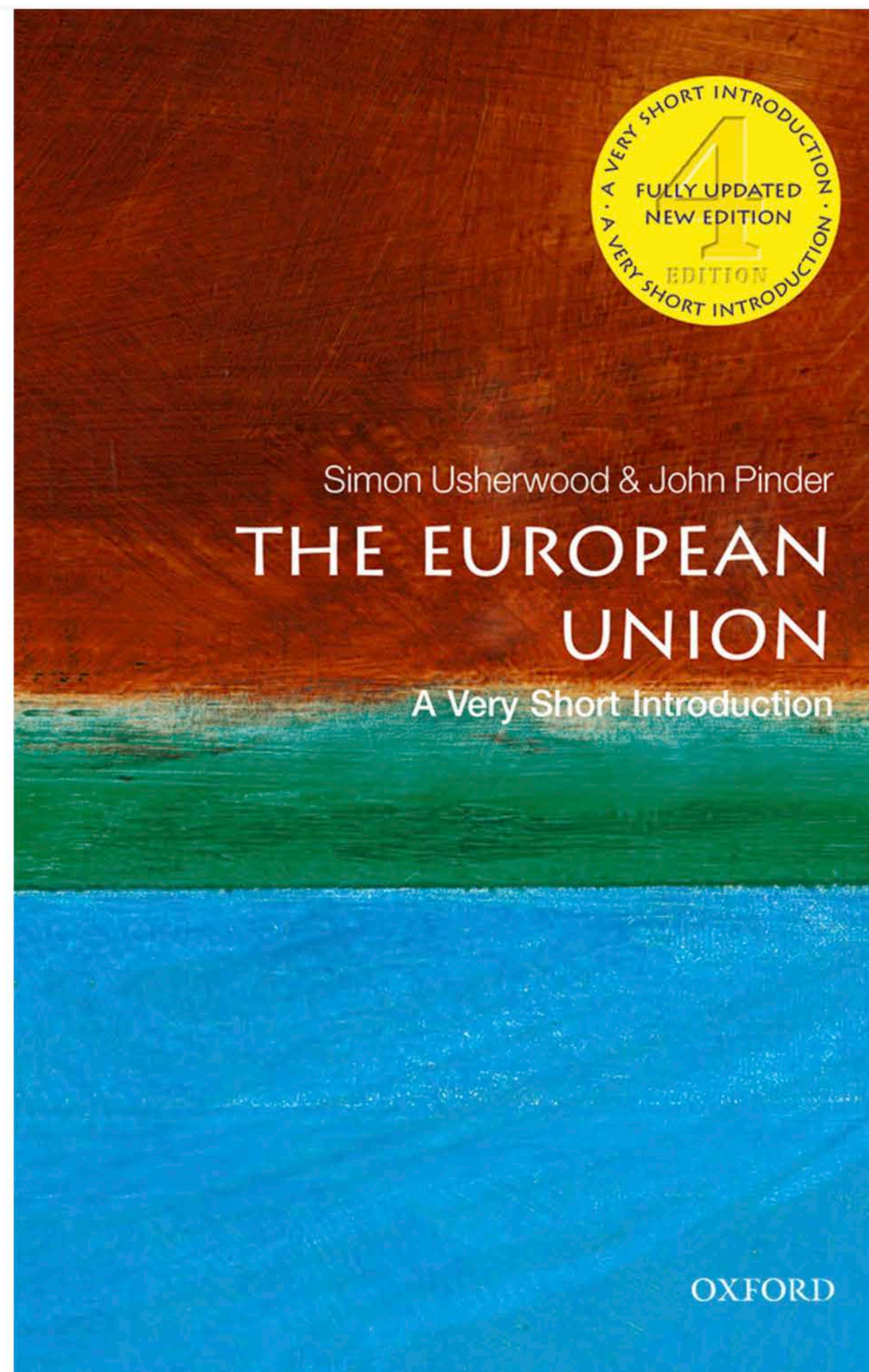




Simon Usherwood and John Pinder

THE EUROPEAN UNION

A Very Short Introduction

FOURTH EDITION

OXFORD
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Foreword

This fourth edition is a more sombre affair than its predecessors, for several reasons. Most obviously, the political and social developments since the previous edition have given much cause to question the rather optimistic take on affairs, most clearly seen in the UK's 2016 referendum decision to leave the EU. Coupled to this we see a continued rise in populism across the continent; the challenges posed by immigration flows; an unsteady Russia (and, more recently, US); and a Eurozone soon to mark a decade of sclerosis. As ever, this requires this slim volume to cover even more than before, something that has required some trimming back of previous content.

More personally, I have to mourn the passing of John Pinder in 2015, just one month before the British general election that was to lead to the UK's decision. John's career

and experience is almost too vast to contemplate, from the Second World War to moving among the federalist community for many decades, as both scholar and advocate. He is sorely missed not only by myself, but by his many colleagues and friends, and I consider it a privilege to co-author possibly the last book to bear his name. And this remains very much John's book, reflecting still his view of a pragmatic movement in Europe towards a more federal model of governance. Bathetic though the events since John's death might appear, I hope that I can offer a balanced and fair view.

As always, my concern has been to present the ideas in a way that will help to provide a context for reasonable people, whatever their views, to evaluate the performance of the EU and judge in which direction it should go. And I have endeavoured to be scrupulous about the facts.

With all of this in mind, I owe thanks to even more people than before, including Angus Armstrong, Catherine Barnard, Iain Begg, Laura Chappell, Brendan Connelly, Helen Drake, Andrew Duff, Theofanis Exadaktylos, Roberta Guerrina, Nigel Haigh, Christopher Johnson, Anand Menon, Jörg Monar, Simon Nuttall, Richard Whitman, and Jon Worth. OUP have continued to combine their efficiency with a thoughtful support of the changing situation. If what follows does not please the reader, it is no fault of theirs.

June 2017
Simon Usherwood

Abbreviations

ACP	African, Caribbean, Pacific countries
AFSJ	Area of Freedom, Security and Justice
Benelux	Belgium, Netherlands, and Luxembourg
CAP	common agricultural policy
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CJHA	Cooperation in Justice and Home Affairs
Coreper	Committee of Permanent Representatives
CSDP	Common Security and Defence Policy
EAGGF	European Agricultural Guidance and Guarantee Fund
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice (formal title, Court of Justice)
Ecofin	Council of Economic and Finance Ministers
Ecosoc	Economic and Social Committee
ECSC	European Coal and Steel Community
ecu	European Currency Unit (forerunner of euro)
EDC	European Defence Community
EDF	European Development Fund
EEA	European Economic Area

EEC	European Economic Community
EFSF	European Financial Stability Fund
Efta	European Free Trade Association
EMS	European Monetary System
Emu	Economic and Monetary Union
ENP	European Neighbourhood Policy
EPC	European Political Cooperation
ERDF	European Regional Development Fund
ERM	Exchange Rate Mechanism
ESCB	European System of Central Banks
ESDP	European Security and Defence Policy
ESF	European Social Fund
ESM	European Stability Mechanism
EU	European Union
Euratom	European Atomic Energy Community
Gatt	General Agreement on Tariffs and Trade (forerunner of WTO)
GDP	Gross Domestic Product
GNI	Gross National Income
GNP	Gross National Product
GSP	Generalized System of Preferences
IGC	Intergovernmental Conference
MEP	member of the European Parliament
Nato	North Atlantic Treaty Organization
NTBs	non-tariff barriers
OECD	Organisation for Economic Co-operation and Development
OMC	open method of coordination
OSCE	Organization for Security and Co-operation in Europe
PHARE	Poland and Hungary: aid for economic reconstruction (extended to other Central and Eastern European countries)
QMV	qualified majority voting (in the Council of Ministers)
SEA	Single European Act

SFP	Single Farm Payment
TACIS	Technical Assistance to the CIS
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
UN	United Nations
VAT	value-added tax
WEU	Western European Union
WTO	World Trade Organization

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Chapter 1

What the EU is for

In the simplest of terms, the European Union (EU) is an international organization, founded on treaties between European states. But such a description does not do justice to a body that has grown and developed since the 1950s to cover many areas of public policy and to reach deep into the political, economic, and social lives of its peoples. That change has led some to see it as a proto-state or a new form of political organization altogether, mixing direct representation of citizens with close coordination of national governments. The EU has been driven by and reflected the wider context in which it operates.

One of the paradoxes of the EU is that it appears to be a political upstart, a novel form of governance even as it now enters its seventh decade of existence. As this introductory chapter will discuss, the specific circumstances of its birth have given way to a very different world to which it has sometimes struggled to adapt. If we are to understand why the EU is where it is now then we have to begin with that birth, for its effects have been profound and lasting.

The EU of today is the result of a process that began in the wake of the Second World

War with the creation of the European Coal and Steel Community (ECSC). The coal and steel industries then still provided the industrial muscle for military power, with Robert Schuman, the French Foreign Minister, affirming, on 9 May 1950 in his declaration which launched the project, that ‘any war between France and Germany’ would become ‘not merely unthinkable, but materially impossible’.

A durable peace

It may not be easy, at today’s distance, to appreciate how much this meant, only five years after the end of the war of 1939–45 that had brought such terrible suffering to almost all European countries. For France and Germany, which had been at war with each other three times in the preceding eight decades, finding a way to live together in a durable peace was a fundamental political priority that the new European Community (EC) was designed to serve.

For France the prospect of a completely independent Germany, with its formidable industrial potential, was alarming. The attempt to keep Germany down, as the French had tried to do after the 1914–18 war, had failed disastrously. The idea of binding Germany within strong institutions, which would equally bind France and other European countries and thus be acceptable to Germans over the longer term, seemed more promising. That promise has been amply fulfilled. The French could regard the EU as the outcome of their original initiative, and they sought, with considerable success, to play the part of leader among European nations, at least during the Cold War era.

But participation in these European institutions on an equal basis has also given Germany a framework within which to develop peaceful and constructive relations with the growing number of other member states, as well as to complete their unification smoothly in 1990. Following the twelve years of Nazi rule that ended with devastation in 1945, the EEC offered Germans a way to become a respected people again. The idea of a community of equals with strong institutions was attractive. Schuman also declared that the new EEC would be ‘the first concrete

foundation of a European federation which is indispensable to the preservation of peace'. While French commitment to developing the Community in a federal direction has been variable, the German political class has consistently supported it, having thoroughly absorbed the concept of federal democracy. Indeed, in 1992, an amendment to the Basic Law of the reunited Germany provided for its participation in the EU, committed to federal principles.

The other four founder states, Belgium, Italy, Luxembourg, and the Netherlands, also saw the new EEC as a means to ensure peace by binding Germany within strong European institutions. For the most part they too, like the Germans, saw and have largely continued to see the Community as a stage in the development of a federal polity.

Although the Second World War is receding into a more distant past, the motive of peace and security within a democratic polity, fundamental to the foundation of the EEC, remains a powerful influence on governments and politicians in many of the member states. The system that has provided a framework for over half a century of peace is regarded as a means of future stability, something reflected in the thinking of the Nobel committee in their awarding the EU the Nobel Peace Prize in 2012. One means of consolidating peace was the decision to consolidate the EU by introducing a single currency, seen as a way to reinforce the safe anchorage of a potentially more powerful Germany after its unification. Another means was the accession of Central and Eastern European states seeking a safe haven after the Second World War followed by half a century of Soviet domination. This has led to continuing pressure to strengthen the EU's institutions in order to maintain stability as eastern enlargement increases the number of member states well beyond the original six.

The British, having avoided the experience of defeat and occupation, did not share that fundamental motivation for the sharing of sovereignty with other European peoples, feeling a reliance on the United States (US) and Nato (North Atlantic Treaty Organization) to be sufficient. This has resulted in a much more utilitarian approach by successive generations of British politicians: integration

was a means of improving trade and securing some common policy objectives rather than a bigger project of modernization or community building. Ironically, despite the ever greater shaping of the EU in line with British priorities—market liberalization, enlargement, Nato-led security—this did not engender any basic change in the British attitude. The 2016 referendum decision for the UK to leave the EU highlights the tensions in this situation very clearly: membership has had both costs and benefits, but it is only at the point of departure that both British politicians and its public discover the full dimensions of their European integration and the entanglements it has created.

Economic strength and prosperity

While a durable peace was a profound political motive for establishing the new EEC, it would not have succeeded without adequate performance in the economic field in which it was given its powers; and the EEC did in fact serve an economic as well as political logic. The frontiers between France, Germany, Belgium, and Luxembourg, standing between steel plants and the mines whose coal they required, impeded rational production; and the removal of those barriers, accompanied by common governance of the resulting common market, was successful in economic terms. This, together with the evidence that peaceful reconciliation among the member states was being achieved, encouraged them to see the ECSC as a first step, as Schuman had indicated, in a process of political as well as economic unification. After an unsuccessful attempt at a second step, when the French National Assembly failed to ratify a treaty for the European Defence Community (EDC) in 1954, the six founder states proceeded again on the path of economic integration. The concept of a common market was extended to the whole of the members' mutual trade in goods when the European Economic Community (EEC) was founded in 1958, opening up the way to an integrated economy that responded to the logic of economic interdependence among the member states.

The EEC was also, thanks to French insistence on surrounding the common market with a common external tariff, able to enter trade negotiations on level terms with

the US—thus demonstrating the potential for the EEC to become a major actor on the international stage, when armed with a common means with which to conduct external policy. It was a first step towards satisfying another motive for creating the EEC: to restore European influence in the wider world—an influence that had been dissipated by the two great fratricidal wars, but which could now be reinforced by the EU's potential for contributing to much needed global safety and prosperity.

One exception to those in Britain failing to understand the strength of the case for such radical reform was Winston Churchill ([Figure 1](#)) who, less than a year and a half after the end of the war, said in a speech in Zurich: 'We must now build a kind of United States of Europe ... the first step must be a partnership between France and Germany ... France and Germany must take the lead together.' But few among the British understood so well the case for a new community—and even Churchill did not feel that Britain, being then head of its own empire and with a recently forged special relationship with the US, should be a member. Many were, however, reluctant to be disadvantaged in Continental markets and excluded from taking important policy decisions in Continent Europe. So after failing to secure a free trade area that would incorporate the EEC as well as other Western European countries, successive British governments sought entry into the EEC—finally succeeding in 1973. But while the British played a leading part in developing the common market into a more complete single market, they continued to lack the political motivation that had driven the founder states, as well as some others, to press towards other forms of deeper integration.



1. Churchill at The Hague: founds the European Movement, following his call for 'a kind of United States of Europe'.

It is important to understand the motivations of the founders and of the British, which, while they continue to evolve, still influence attitudes towards the EU. Such motivations are shared, in various proportions, by other states that have joined the EU over the years; and they underlie much of the drama that has unfolded since 1950 to produce the EU that is the subject of this book.

Theories and explanations

There are two main ways of explaining the phenomenon of the EEC and the EU. Adherents to the first emphasize the role of the member states and their intergovernmental dealings; adherents to the second give greater weight to the European institutions.

Most of the former, belonging to the 'realist' or 'neo-realist' schools of thought, hold that the EEC and the EU have not wrought any fundamental change in the relationships between member states, whose governments continue to pursue their national interests and seek as much to maximize their power within the EU as they do elsewhere. A more recent variant, called *liberal intergovernmentalism*, looks to the forces at play in domestic politics to explain the various governments' behaviour in the EU. For want of a better word, 'intergovernmentalist' is used here for this family of explanations as to how the EEC and EU work.

One should not underestimate the role that member state governments retain in EU affairs, with their status as signatories of EU treaties, their power of decision in the Council of Ministers representing member states, and their monopoly of the *ultima ratio* of armed force. But other approaches, including those known as 'neo-functionalist' and 'federalist', give more weight than the intergovernmentalists to European institutions.

Neo-functionalists saw the EEC developing by a process of 'spillover' from the original ECSC, whose scope was confined to only two industrial sectors. Interest groups and political parties, attracted by the success of the Community in dealing with the problems of these two sectors, would become frustrated by its inability to deal with related problems in other fields and would, with leadership from the European Commission, press successfully for the Community's competence to be extended, until it would eventually provide a form of European governance for a wide range of member state affairs. This offers at least a partial explanation of some steps in the Community's development, including the move from a single market to a single currency.

A federalist perspective, while also stressing the importance of the common

institutions, goes beyond neo-functionalism in two main ways. First, it relates the transfer of powers to the EU less to a spillover from existing powers to new ones than to a growing inability of governments to deal effectively with problems that have become transnational thus extending beyond the reach of existing states. Most of these transnational problems concern the economy, the environment, and security—states should still retain control over internal matters with which they can still cope adequately. Second, whereas neo-functionalists have not been clear about which principles might shape European institutions, federalists have based their perspectives on principles of liberal democracy: in particular, a rule of law based on fundamental rights; and representative governments with laws enacted and an executive controlled by elected representatives of individual state citizens. In this latter view, powers exercised jointly need to be dealt with by government institutions, because the intergovernmental method is neither effective nor democratic enough to satisfy the needs of citizens of democratic states. So either the federal elements in the institutions will be strengthened until the EU becomes an effective democratic polity, based on the principles of rule of law and representative government; or it will fail to attract enough support from member state citizens to enable it to flourish—or perhaps even to survive. The EU is not designed to replace member states but rather to transform them into integral parts of a cooperative venture: citizens' identities gain a new layer that interacts with their existing member state identity.

Subsequent chapters will try to show how far the development of the EEC and the EU has reflected these different views. In practice, European-level governance has developed so extensively that whatever one's view of which approach should be taken, there is an overriding priority to ensure that the system is in equal measure effective and democratic if it is to have a meaningful future.

Chapter 2

How the EU was made

‘Europe will not be made all at once, or according to a single, general plan. It will be built through concrete achievements, which first create a de facto solidarity.’ With these words, the Schuman declaration accurately predicted the way in which the Community has become the Union of today. The institutions and powers have been developed step by step, following the confidence gained through the success of preceding steps, to deal with matters that appeared to be best handled by common action.

Other chapters consider particular institutions and fields of competence in more detail. Here we see how interests and events combined to bring about the development as a whole. Some primary interests and motives were considered in [Chapter 1](#): security, not just through military means but by establishing economic and political relationships; prosperity, with business and trade unions particularly interested; protection of the environment, with pressure from green parties and voluntary organizations; and influence in external relations to promote common interests in the wider world.

With the creation of the EEC to serve such purposes other interests came into play. Those who feared damage from certain aspects sought compensation through redistributive measures: for France, the common agricultural policy (CAP) to counterbalance German industrial advantage; the structural funds for countries with weaker economies that feared they would lose from the single market; budgetary adjustments for the British and others with high net contributions. Some governments, parliaments, parties, and voluntary organizations have pressed for reforms aiming to make the institutions more effective and democratic. Against them have stood those who resist moves beyond intergovernmental decision-making, acting from a variety of motives: ideological commitment to the nation-state; a belief that democracy is feasible only within and not beyond it; mistrust of foreigners; and simple attachment to the status quo. Among them have been such historic figures as President de Gaulle and Prime Minister Thatcher, as well as a wide range of institutions and individuals, the most prevalent being British, Danish, Hungarian, and Polish. Among the European institutions, it is the Council of Ministers that has come closest to this view.

Two of the most influential federalists, committed to the development of a European polity that would deal effectively with the common interests of the member states and their citizens, have been Jean Monnet and Jacques Delors. Both initiated major steps towards a federal aim. Altiero Spinelli represented a different kind of federalism, envisaging more radical moves towards a European constitution. The German, Italian, Belgian, and Dutch parliaments and governments have in varying degrees been institutionally federalist, as have the European Commission and Parliament, and, in so far as the treaties could be interpreted in that way, the Court of Justice. They have generally preferred Monnet’s stepwise approach.

The 1950s: the founding treaties

Monnet was responsible for drafting the Schuman declaration, chairing the negotiations for the ECSC Treaty, and was the first President of its High Authority

([Figure 2](#)). This choice of words for the body reflected his insistence on a strong executive at the centre of the Community, stemming originally from his experience as Deputy Secretary General of the interwar League of Nations which had convinced him of the weakness of an intergovernmental system. He was, however, persuaded that, for democratic member states, such a community should be provided with a parliamentary assembly and a court—embryonic elements of a federal legislature and judiciary—and that there should be a council of ministers representing the member states.



2. Monnet and Schuman.

This structure has remained remarkably stable to this day, though the relationship between the institutions has changed: the Council of Ministers, and in particular, since 1974, the European Council of government heads, has become the most

powerful; the European Commission, while still very important, has lost ground to it; the European Parliament has gained in power; and the Court of Justice has established itself as the supreme judicial authority in matters of EU competence. Although they were later to accept these institutions, British governments of the 1950s felt them to be too federal for British participation.

The six member states, however, were minded to proceed further in that direction. The French government reacted to American insistence on German rearmament, following the impact of communist expansionism in both Europe and Korea, by proposing the EDC with a European army. An EDC Treaty was signed by the six governments and ratified by four; but opposition grew in France and the Assemblée Nationale voted in 1954 to shelve it. The result was that the idea of a competence in the field of defence remained a no-go area until the 1990s.

While the collapse of the EDC was a severe setback, confidence in the EEC as a framework for peaceful relations among the member states had grown; and there was a powerful political impulse to ‘relaunch’ its development. The Dutch were ready with a proposal for a general common market, for which the support of Belgium and Germany was soon forthcoming. The French, still markedly protectionist, were doubtful. But they held to the project of European unification built around Franco-German partnership and so accepted the common market which the Germans wanted, on condition that other French interests were satisfied: an atomic energy community in which France was equipped to play the leading part; the CAP; the association of colonial territories on favourable terms; and equal pay for women throughout the Community, without which French industry, already required by French law to pay it, would in some sectors have been at a competitive disadvantage. The Italians for their part, who had the weakest economy among the six, secured the European Investment Bank, the Social Fund, and free movement of labour. So all these elements were included in the two Rome Treaties, which established the EEC and European Atomic Energy Community (Euratom): an early example of a package deal, incorporating advantages for each member state, which has characterized many of the steps taken since then (see [Box 1](#)).

Box 1 The treaties

Rome wasn't built in a day—and the Treaties of Rome (in force in 1958) were a big building block in a long and complicated process that has constructed the present EU. Other major treaties included the ECSC Treaty (in force 1952), Single European Act (1987), Maastricht Treaty (1993), Amsterdam Treaty (1999), Nice Treaty (2002), and Lisbon Treaty (2009).

A minor complication is that there were two Treaties of Rome, but the EEC Treaty was so much more important than the Euratom Treaty that it is generally known as *the* Treaty of Rome.

A major complication is that the EU was set up by the Maastricht Treaty, with two new 'pillars' for foreign policy and internal security alongside the EC, which already had its own treaties. These were organized alongside the TEC, within the TEU. The Lisbon Treaty finally produced some simplification of this, by collapsing all the pillars into one: the EU now operates on the basis of the TEU and the TFEU.

Note: to avoid undue complexity, this book follows two principles in referring to the EC and EU:

- Community, EEC, or EC is used regarding matters relating entirely to the time before the EU was established, or in the period between Maastricht and Lisbon when the EC's separate characteristics are relevant;
- Union or EU in all other cases.

The two new treaties entered into force on 1 January 1958. While Euratom was sidelined, the EEC became the basis for the future development of the Community.

Its institutions were similar to those of the ECSC, though with a somewhat less powerful executive, called the 'Commission' instead of the 'High Authority'; and the EEC was given a wide range of economic competences, including the power to establish a customs union with internal free trade and a common external tariff; policies for particular sectors, notably agriculture; and more general cooperation.

The first President of the Commission, Walter Hallstein, led the Commission to a flying start, with acceleration of the timetable for establishing the customs union; and within this framework the EEC enjoyed notable economic success in the 1960s. But conflict between the emergent federal Community, as conceived by Monnet or Hallstein, and de Gaulle's fundamental commitment to the nation-state made that decade politically hazardous for the Community.

The 1960s: de Gaulle against the federalists

In June 1958, less than six months after the Rome Treaties came into force, de Gaulle became the French President. He did not like the federal elements and aspirations of the EEC. But nor was he prepared to challenge directly treaties recently ratified by France. He sought, rather, to use the EEC as a means to advance French power and leadership. One example was his sidelining of Euratom in order to keep the French atomic sector national. Another was his veto which terminated in 1963 the first negotiations to enlarge the EEC to include Britain, Denmark, Ireland, and Norway. Although the British government's conception of the EEC was closer to that of de Gaulle than of the other more federalist-minded member state governments, and Britain's defence of its agricultural and Commonwealth interests had irked the latter by making the negotiations hard and long, they resented the unilateral and nationalist manner of the French veto so deeply that it provoked the first political crisis within the EEC. This was followed, in 1965, by a greater crisis over the arrangements for the CAP.

The CAP had from the outset been a key French interest and de Gaulle was determined to have it established without undue delay. It was to be based on

price supports requiring substantial public expenditure. Both France and the Commission agreed that this should come from the budget of the EEC, not that of member states. But the Commission, with its federalist orientation, and the Dutch parliament, with its deep commitment to democratic principles, insisted that the budget spending must be subject to parliamentary control; and since a European budget could not be controlled by six separate parliaments, it would have to be done by the European Parliament. This suited the other governments well enough, but was anathema to de Gaulle. He precipitated the crisis of 'the empty chair', forbidding his ministers to attend meetings of the Council of Ministers throughout the second half of 1965 and evoking fears among the other states that he might be preparing to destroy the EEC.

With neither side being willing to give way, the episode concluded in January 1966 with the so-called 'Luxembourg compromise'. The French government asserted a right of veto when interests 'very important to one or more member states' are at stake; and the other five affirmed their commitment to the treaty provision for qualified majority voting on certain questions, which was that very month due to come into effect for votes on a wide range of subjects. In practice de Gaulle's view prevailed for the next two decades, so that 'Luxembourg veto' seems a more accurate description than 'Luxembourg compromise'. In the mid-1980s, however, majority voting began to be practised in the context of the single market programme, and has now become the standard procedure applicable to most legislative decisions.

Despite these conflicts between intergovernmental and federal conceptions, the customs union was completed by July 1968, earlier than the treaty had required. Its impact had already been felt not only internally but also in the EEC's external relations. Wielding the common instrument of the external tariff, the EEC was becoming, in the field of trade, a power comparable to the US. President Kennedy had reacted by proposing multilateral negotiations for major tariff cuts. Skilfully led by the Commission, the EEC responded positively; and the outcome was cuts averaging one-third, initiating an era in which the EEC was to become the leading force for international trade liberalization.

Alongside the ups and downs of EEC politics, the Court of Justice made steady progress in establishing the rule of law. Based on its treaty obligation to ensure that 'the law is observed', in judgments in 1963 and 1964 the Court established the principles of the primacy and the direct effect of Community law, so that it would be consistently applied in all the member states. Though without the means of enforcement proper to a state, respect for the law, based on the treaties and on legislation enacted by its institutions, provided the cement that has since bound the EC together.

Widening and some deepening: Britain, Denmark, and Ireland join

With de Gaulle's resignation in 1969, French policy became more pragmatic. Britain, Denmark, Ireland, and Norway still sought entry; and the new President, Georges Pompidou, consented, on condition that CAP financing would be agreed as well as elements of 'deepening' such as monetary union and coordination of foreign policy. In addition to serving the French agricultural interest, these were intended to integrate Germany yet more firmly into the EEC, as well as to guard against the danger that widening the EEC would also weaken it. This fitted well with the strategic outlook of the German Chancellor, Willy Brandt, who was simultaneously opening to the Soviet bloc with the *détente* of *Ostpolitik* and binding Germany into the West with his plans for enlargement and monetary union.

However, economic and monetary union would have to wait, as German desire for strong coordination of economic policy was a step too far for the French. The result was a system for cooperation on exchange rates that was too weak to survive the international currency turbulence of that period. Similarly, the system devised for foreign policy cooperation was strictly intergovernmental: this limited its impact. While France was able to secure a very favourable financial regulation for CAP, this was balanced by giving the European Parliament the power to share control of the budget with the Council of Ministers, a decision consolidated in treaties in

1970 and 1975. While this was just a foot in the door to budgetary powers for the Parliament, it was to grow into a major element in the EU's institutional structure.

Britain, together with Denmark and Ireland, joined the EEC in January 1973 ([Figure 3](#)), while the Norwegians rejected accession in a referendum. The British too were to vote in a referendum in 1975. Harold Wilson had replaced Edward Heath as Prime Minister in 1974 following an election victory by the Labour Party, which was turning more and more against the EEC (a position that lasted into the 1980s). After a somewhat cosmetic 'renegotiation', the Wilson government did recommend continued membership; and in 1975 the voters approved it by a two-to-one majority. With Margaret Thatcher's Conservatives coming to power in 1979, a new line of tension was opened, as she fought to 'get our money back', as she put it, by blocking much EEC business until she secured agreement in 1984 to reduce Britain's high net contribution to the EEC's budget.



3. British entry: Heath signs the Treaty of Accession.

As so often in the EU's history, the 1970s saw the simultaneous development of both intergovernmental and supranational activities. French President Valéry Giscard d'Estaing, a Gaullist by tradition, launched both regular meetings of the European Council between national leaders and direct elections to the European Parliament. The European Council was soon to play a central part in taking Community decisions, settling conflicts that members of the Council of Ministers were unable to resolve, and agreeing on major package deals. Provision had already been made for direct elections in the treaties of the 1950s, but it was only now that governments agreed and the first elections were held in June 1979. This step towards representative democracy was to have a big impact on the Community's future development. Of similar importance, 1979 also saw the creation of a system of exchange rate stabilization—the European Monetary System (EMS)—which was to shape later discussions on monetary union.

Single market, Draft Treaty on European Union, and southern enlargement

Jacques Delors became President of the Commission in January 1985 ([Figure 4](#)). He had visited each member state to find out what major project was likely to be accepted by all of them. As a federalist in Monnet's tradition, his short-list contained projects—single market, single currency, common defence policy, and institutional reform—that could be seen as steps in a federal direction. But Thatcher, whose view of federalism was akin to de Gaulle's, and so was hostile to the currency, defence, and institutional projects, was at the same time a militant economic liberal who saw the single market as an important measure of trade liberalization. European economies had lost momentum during the hard times of the 1970s and all the governments accepted the single market project as a way to break out of what was then called 'eurosclerosis'. The project was strongly backed by the more dynamic firms and the main business associations, especially since the Luxembourg 'compromise' had served to let non-tariff barriers to trade build up during the period.



4. Delors: single market, single currency, single-minded European.

The successful abolition of tariffs on internal trade had demonstrated the value of a programme with a timetable. So the Commission produced a list of some 300 measures to be enacted by the end of 1992 in order to complete the single market by removing the non-tariff barriers. The Commissioner in charge of the project was Lord Cockfield, a former minister in the Thatcher government; and the programme was rapidly drafted in time to be presented to the European Council in Milan in June 1985.

Meanwhile the European Parliament had prepared a political project: a Draft Treaty on the European Union, inspired by Altiero Spinelli, the leading figure since the 1950s among those federalists who saw the drafting of a constitution as the royal road to federation. The Draft Treaty was designed to reform the Community's institutions so as to give them a federal character; to extend its powers to include

most of those that would be normal in a federation, with the key exception of defence; and to come into effect when ratified by a majority of the member states, with suitable arrangements to be negotiated with any states that did not ratify. While there was widespread support for the draft in most of the founder states, the German government was among those that were not prepared to countenance the probable exclusion of Britain. President Mitterrand did, however, express support for the draft, albeit in somewhat equivocal terms; and its main proposals were presented to the European Council in Milan along with the Commission's single market project.

The European Council decided to convene an Intergovernmental Conference (IGC) on treaty amendment, overriding British, Danish, and Greek opposition with its first ever use of a majority vote. The IGC considered amendments relating not only to the single market programme but also to a number of the proposals in the Parliament's Draft Treaty. The outcome was the Single European Act, which provided for completion of the single market by 1992; gave the EC competences in the fields of the environment, technological research and development, social policies relating to employment, and 'cohesion'; and brought the foreign policy cooperation into the EC's treaty architecture (albeit with the retention of distinct intergovernmental procedures)—hence the title 'Single European Act', to distinguish it from a proposal to keep foreign policy separate. The Single Act also provided for qualified majority voting in a number of areas of single market legislation, and the strengthening of the European Parliament through a 'cooperation procedure' which gave it influence over such legislation, together with a procedure requiring its assent to treaties of association and accession.

The EEC was enlarged in 1981 to include Greece and, in 1986, Portugal and Spain. All three had been ruled by authoritarian regimes and saw the Community as a support for their democracies as well as for economic modernization. The EEC for its part wanted them to be viable member states and to be supportive of its projects, such as the single market. It was to this end that the cohesion policy, based on a doubling of the structural funds for assisting the development of economically weaker regions, was included in the Single Act.

Thus the Single Act strengthened both the Community's powers and its institutions, with influence from a combination of governments, economic interests, social concerns, the Commission, the Parliament, and a variety of federalist forces. It was succeeded by the Maastricht, Amsterdam, and Nice Treaties, likewise strengthening both powers and institutions, and responding to similar combinations of pressures. This would not have happened had the Single Act not been successful. But the prospect of the single market helped to revive the economy, and the EC institutions gained in strength as they dealt with the vast programme of legislation.

Spinelli died a few weeks after the signing of the Single Act under the impression that it was a failure: 'a dead mouse', as he put it ([Figure 5](#)). In fact, it initiated a relaunching of the Community which may have been as far-reaching in its effects as that which led to the Treaties of Rome.

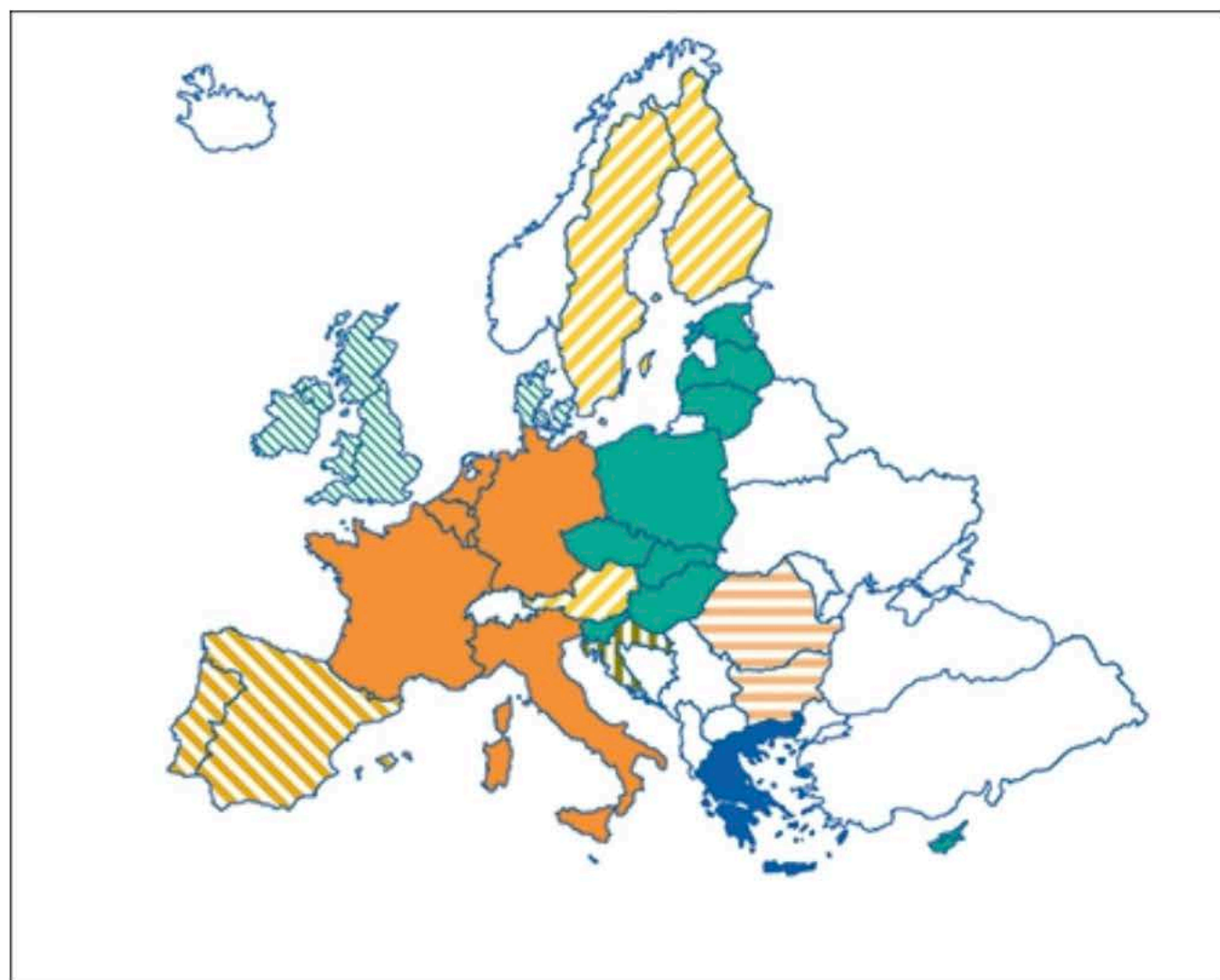


5. Today's European leaders remember Altiero Spinelli at Ventotene, August 2016.

Maastricht and Amsterdam Treaties, and enlargement from twelve to fifteen

Following his success with the single market, Delors was determined to pursue the project of a single currency. Thatcher had not been alone in opposing it. Most Germans, proud of the Deutschmark as representing the EC's strongest currency, were decidedly unenthusiastic. But it remained a major French objective, for economic as well as political reasons; and Helmut Kohl, a long-standing federalist, held that it would be a crucial step towards a federal Europe. While he facilitated the preparation of plans for the single currency, however, he faced difficulty in securing the necessary support in Germany.

The events of 1989 were a seismic upheaval. With the disintegration of the Soviet bloc, which opened up the prospect of enlarging the EC to the East, German unification also became possible. But Kohl needed Mitterrand's support: both for formal reasons because France, as an occupying power, had the right to veto German unification; and, pursuing the policy initiated by Brandt, to ensure that new eastern relationships did not undermine the EC and the Franco-German partnership. Mitterrand saw the single currency as the way to anchor Germany irrevocably in the EC system, and hence as a condition for German unification; and this ensured for Kohl the necessary support in Germany to proceed with the project ([Map 1](#)).



- 1957** (Belgium, France, Germany (West), Italy, Luxembourg, The Netherlands)
- 1973** (Denmark, Ireland, the United Kingdom)
- 1981** (Greece)
- 1986** (Portugal, Spain)
- 1995** (Austria, Finland, Sweden)
- 2004** (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia)
- 2007** (Bulgaria, Romania)
- 2013** (Croatia)

Map 1. The changing membership of the EU since 1957.

The result was the Maastricht Treaty, which provided not only for the euro and the European Central Bank but also for other competences and institutional reforms. The organization was given some powers in the fields of education, youth, culture, and public health. Its institutions were strengthened in a number of ways, including more scope for qualified majority voting in the Council of Ministers. The role of the European Parliament was enhanced through a ‘co-decision’ procedure that required its approval as well as that of the Council of Ministers for laws in a number of fields; and it secured the right to approve—or not—the appointment of each new Commission. Two new ‘pillars’ were set up alongside the EC: one for a ‘common foreign and security policy’; the other relating to freedom of movement and internal security, for what was called ‘cooperation in justice and home affairs’—renamed in the Amsterdam Treaty as ‘police and judicial cooperation in criminal matters’. The basis for both was intergovernmental, though they were related to the EC institutions. The whole unwieldy structure was named the EU, with the first, central, EC pillar as well as the other two.

Although John Major had succeeded Mrs Thatcher as Prime Minister with the avowed intention of moving to ‘the heart of Europe’, he insisted that Britain would participate neither in the single currency nor in a ‘social chapter’ on matters relating to employment. In order to secure agreement on the treaty as a whole, it was accepted that Britain could opt out of both, together with Denmark as far as the single currency was concerned.

The Maastricht Treaty was signed in February 1992 and entered into force in November 1993 after a number of vicissitudes: two Danish referendums, in the first of which it was rejected and in the second approved after some small adjustments had been made; a French referendum in which the voters accepted it by a tiny majority; in London, a fraught ratification process in the House of Commons; and in Germany, a lengthy deliberation by the Constitutional Court before it rejected a claim that the treaty was unconstitutional. These episodes,

together with evidence that citizens' approval of the EU was declining in most member states, seemed alarming, particularly to people of federalist orientation.

The more federalist among the governments, however, felt that the Maastricht Treaty did not go far enough. With the decisive new monetary powers and the prospect of further enlargement, they wanted to make the EU more effective and democratic. By the time the Treaty entered into force, accession negotiations with Austria, Finland, and Sweden had already begun, and Cyprus, Malta, Norway, and Switzerland had lodged their applications. Norway negotiated an accession treaty but it was again rejected in a referendum; and the Swiss government withdrew its application after defeat in a referendum on the much looser European Economic Area (EEA). Negotiations with Cyprus and Malta were to begin in 1998 and 2001 at the same times as those with ten Central and Eastern European states, following the European Council's decision that the latter could join when they fulfilled the economic and political conditions. But Austria, Finland, and Sweden acceded in 1995. So the Maastricht Treaty was followed in 1996 by another IGC, from which emerged the Amsterdam Treaty, signed in 1997 and in force in 1999.

The Amsterdam Treaty revisited a number of EU competences, including those relating to the two intergovernmental pillars. A new chapter on employment was added to the Treaty on European Union (TEU) reflecting concern about the unemployment that had persisted through the 1990s at around the 10 per cent level, together with fears that it might be aggravated if the European Central Bank were to pursue a tight money policy.

Among the institutions, the European Parliament gained most, with co-decision extended to include the majority of legislative decisions, and the right of approval over the appointment not only of the Commission as a whole but before that, of its president. Since the president, once approved, was given the right to accept or reject the nominations for the other members of the Commission, the Parliament's power over the Commission was considerably enhanced. Its part in the process that led to the Commission's resignation in March 1999 and in the appointment of the new Commission demonstrated the significance of parliamentary control over the

executive. The treaty also gave the Commission's president more power over the other commissioners.

At the same time as adding these federal elements to the institutions, the Amsterdam Treaty reflected fears that the EU would not be able to meet the challenges ahead if new developments were to be inhibited by the unanimity procedure. This led to a procedure of 'enhanced cooperation', allowing a group of member states to proceed with a project in which a minority did not wish to participate, a procedure that only rarely has been used since. Six weeks before the meeting of the European Council in Amsterdam that reached agreement on the treaty, Tony Blair became Prime Minister following Labour's election victory. The new British government adopted the social chapter and, expressing a more favourable attitude towards the EU, accepted without demur such reforms as the increase in EU Parliament powers. But Britain, along with Denmark and Ireland, did opt out of the provision to abolish frontier controls along with only partial transfer of the related cooperation in justice and home affairs to the EC pillar—even if the British government did later cooperate quite energetically in that field. As regards external security, Europe's weak performance in former Yugoslavia had spurred demands for a stronger defence capacity; and Britain both accepted provision for this in the Amsterdam Treaty and then joined with France to initiate action along these lines.

Enlargement to twenty-eight, constitutionalization, and Lisbon

Following their emergence from Soviet domination, ten Central and Eastern European states obtained association with the EU, and then sought accession. They faced an enormous task of transforming their economies and politics from that of centralized communist control to the market economies and pluralist democracies that membership required. But by 1997 the EU judged that five of them had made enough progress to justify starting accession negotiations in the following year; and negotiations with another five opened in January 2000. By 2004, accession was completed for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland,

Slovakia, and Slovenia, together with Cyprus and Malta; and Bulgaria and Romania joined in 2007. Turkey's candidature was also recognized; but while negotiations were opened 2005 they have been shelved for the foreseeable future.

With such a formidable enlargement ahead, the question of deepening arose again. Reform of some policies was necessary, in particular for agriculture and the structural funds. The Commission's proposals for this, entitled 'Agenda 2000', were partially adopted, though further measures were required. As regards reform of the institutions, another IGC was convened in 2000, leading to the Nice Treaty which was signed in 2001 and in force in 2002.

The result was an inadequate response to the prospect of nearly doubling the number of member states. It introduced modest increases in the scope of qualified majority voting in the Council of Ministers and of legislative co-decision with the Parliament, as well as some procedural improvements for the Court of Justice. It addressed the growth in the number of Commissioners accompanying enlargement by further enhancing the power of the president over commissioners and by taking some steps to limit their number. It also saw the 'solemn proclamation' of the Charter of Fundamental Rights, as a means of strengthening the EU's provisions in this field. But the weighting of votes in the Council of Ministers and the number of members of the European Parliament (MEPs) for each state became the subject of unprincipled horse-trading. The German and Italian governments found the treaty so unsatisfactory that they proposed a 'deeper and wider debate about the future of the Union'; and the European Council in December 2001, under Belgian presidency, decided to establish a convention to make further proposals to an IGC in 2004.

The Laeken Declaration, named after the Brussels suburb where the European Council met, was cleverly crafted to secure unanimous agreement by including, in what amounted to terms of reference for the Convention, items aimed at the more intergovernmentalist as well as the more federalist members. So the Convention met in February 2002 with a very broad remit, and its 105 members covered a wide spectrum of political orientations, with two MEPs representing each of the then twenty-seven member and candidate states plus Turkey as a forthcoming

candidate, sixteen MEPs, one representative of each government, two members of the European Commission, a president, and two vice-presidents.

The President of the Convention, former French President Valéry Giscard d'Estaing, steered a course between federalism and intergovernmentalism. The majority of its members, including MEPs, preferred a more federal than intergovernmental orientation; and Giscard satisfied them by favouring elements of federal reform within the EC pillar. But the amended EU Treaty drafted by the Convention would not be unanimously accepted by the ensuing IGC if the federal elements intruded too far into the fields of common foreign and security policy, and macroeconomic policy. Nor would some of the representatives of heads of government in the Convention have accepted the consensus that Giscard sought as the outcome of its work; indeed, Giscard himself may well have sympathized with this view. So he steered the Convention towards more intergovernmental proposals in those fields. In July 2003, it acclaimed a consensus on a draft Constitution. Its main thrust was towards more effective and democratic institutions, while also tidying up much of the existing TEC provisions for common policies and providing a basis for further development of a common defence. The IGC was convened in October 2003; agreed some amendments in an intergovernmental direction; and concluded a year later when all the member and acceding states signed the treaty establishing a Constitution for Europe. Eighteen of them ratified the treaty, but it was rejected by substantial majorities in French and Dutch referendums in 2005.

It can be read as a mark of the condition of the integration process that despite the populations of two founding member states being unwilling to approve a more explicitly constitutional grounding for the EU, there was still a desire to persist on the part of their governments, albeit after a 'period of reflection'. The continuing mismatch between elite and popular engagement with the EU since Maastricht was doubtless exacerbated by the former's unwillingness to generate debate about what is too often dismissed as remote or complex. Certainly, the revival of the large majority of the Constitutional Treaty's contents with a brief IGC in 2007 and a ratification that almost completely sidestepped ratification referendums did little to endear the EU to the public. This was borne out by a 'no' vote in Ireland (the one

country to hold such a referendum), and legal challenges in Germany and the Czech Republic, all of which meant that the final document, the Treaty of Lisbon, only came into force in December 2009.

Despite being the end result of such a fundamental review of the EU's legal basis and of almost a decade's worth of debate, the Lisbon Treaty looks a lot like its predecessors. It retains the basic mix of intergovernmental and federal elements, keeps member states in a privileged position of decision-making, and keeps many competences where they previously were to be found. However, it does mark a new stage in the EU's development.

Most importantly, Lisbon ended the pillar system, pulling all of the remnants of the second and third pillars into the first, which was governed by the renamed Treaty on the Functioning of the EU (TFEU). The TEU remained to provide a wider framework and legal personality for the EU, as well as space for the Charter of Fundamental Rights to gain legal status in underpinning the EU's activities. Voting in the Council of Ministers was simplified, while the Parliament further extended its legislative power, with the Ordinary Legislative Procedure (OLP) applying to most activities, and with a final say on all areas of spending. The European Council acquired a permanent president, to chair and represent it, replacing the rotating presidency, which was now confined to the Council of Ministers. The treaty further consolidated external representation, by creating a high representative for foreign affairs, who would be simultaneously a vice-president of the Commission and chair of the Foreign Affairs Council. Importantly, formal roles were given to national parliaments to challenge legislative proposals, and to European citizens to submit petitions for action by the Commission.

For many, the Lisbon Treaty represented the end of an era of constitutionalization in EU affairs. However, the rapid deterioration of the global economy from 2007, which was to take up much more of European politicians' attention in the years that followed, has highlighted the need for a continued debate. The initial financial crisis, triggered by a collapse in banks' solvency, hit European economies hard, breaking a long period of growth. To this was added (from 2009) a sovereign-debt

crisis specific to the Eurozone.

We discuss this further in [Chapter 4](#), but here we would note that despite the varied causes of the sovereign-debt crisis, these were all compounded by the incomplete nature of the Eurozone's integration. Without the capacity to generate Eurozone-wide fiscal transfers or debt creation, global financial markets were able to force governments into repeated rounds of crisis management and intervention, most obviously with the case of Greece. Even the reforms of 2010–12 did not provide a comprehensive resolution, but rather a stop-gap as the Eurozone began a slow and hesitant recovery.

More than anything, the Eurozone crisis called into question the benefits of integration for many and laid the groundwork for increasing disillusionment from publics. This was further shaped by the emergence of a migrant crisis from 2015, as significant numbers of asylum seekers and refugees sought to make their way from conflicts in Syria and elsewhere in the Middle East, crossing the Mediterranean in perilous circumstances and overwhelming the capacity of member states to handle them.

This crisis was compounded by disagreements between members about the appropriate response, at a time when fears of Islamic fundamentalist terrorism were further encouraging support for populist politicians across the EU. As some countries reinstated their border controls, despite their obligations on free movement of people, others—notably Germany and Sweden—welcomed those who arrived. Even the partial resolution of the situation with an agreement with Turkey to provide local facilities highlighted the difficulty of deciding EU policy in a way that balanced the differing priorities of security, humanity, and effectiveness.

All of this played into the long-standing debate in the UK about its relationship with the EU. David Cameron's 2013 promise to hold a referendum on membership had seemed—at the time—to be an empty letter, but his unexpected formation of a single-party government two years later forced him onto a path for which he had

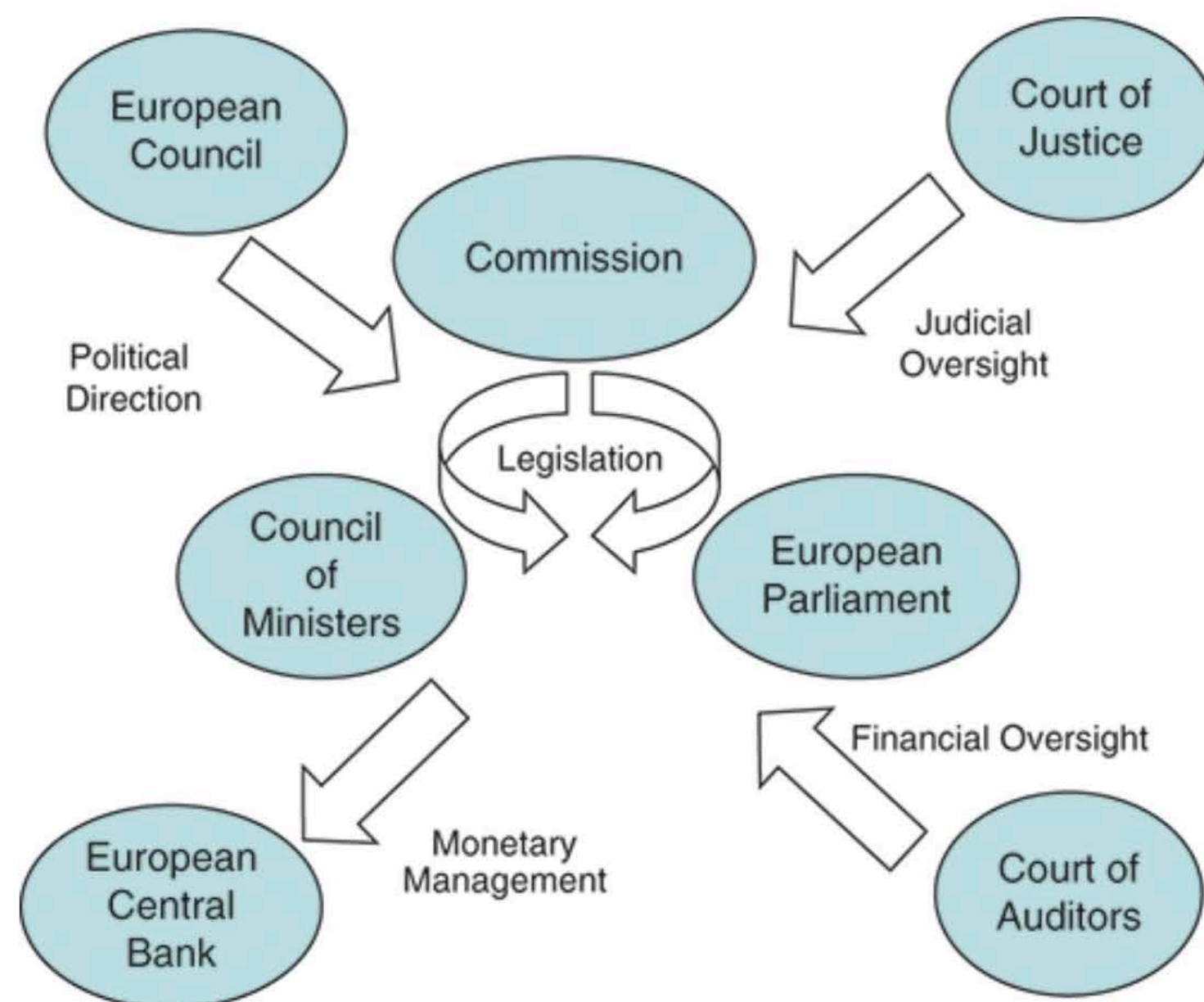
little prepared. There was an attempt to renegotiate terms with the EU, resulting in as much flexibility as was possible within the framework of the treaties to restrict free movement of people, but this was far from what Cameron had claimed to have sought from the process. Faced with a diverse set of opponents who used the tempting, if vague, notion of ‘taking back control’, Cameron was unable to articulate a convincing narrative about the value of membership, and lost the ensuing referendum in June 2016. That it was to take another nine months before the UK could submit its formal notification to leave was a mark not only of the lack of preparation for such an eventuality by the British government, but also of the complexity of the task it now faces.

We conclude here by noting that the problems facing the EU in recent years have been uneven and varied, occurring at the same time that more countries joined the EU—for example, Croatia in 2013—and the euro itself. But this is not to say those problems have been insignificant: from the British referendum to the seeming wave of populist parties across the EU, the question of what future there might be for the organization is now more open than ever before.

Chapter 3

How the EU is governed

The EU has major economic and environmental powers, and is increasingly active in foreign policy, defence, and internal security. It uses these powers through a number of institutions that allow it to formulate and decide upon policy as well as to arbitrate disputes between the different parts of the organization (see [Figure 6](#)). But how is its power used and controlled? How is the EU governed?



6. The EU's institutions.

The answer, according to many intergovernmentalists, is through cooperation between the governments of member states: the other institutions are peripheral to the Council of Ministers in which the governments are represented, and this fact will not go away. But while the Council of Ministers is still the most powerful institution, federalists regard the Parliament, Commission, and Court of Justice not only as sufficiently independent of the states to have changed the nature of the relationships among them, but also as major actors in a process that may, and should, result in the EU becoming a federal polity.

The European Council and the Council of Ministers

The Council of Ministers consists of ministers representing the member states; and at the highest level there is the European Council of heads of state or government together with the president of the European Council and president of the European Commission. Heads of state are included in the title because several presidents participate as well as their prime ministers, since they have some of the functions performed by heads of government elsewhere.

The European Council meets three or four times a year ([Figure 7](#)) and takes decisions that require resolution or impulsion at that political level, sometimes because ministers have been unable to resolve an issue in the Council of Ministers, sometimes because a package deal involving many subjects, such as a major amending treaty or a seven-year financial perspective, has to be assembled. The European Council also has to 'define general political guidelines'. Its rotating presidency is an important function, both for the management of current business and for launching new projects.



7. European Council 1979: facing different ways.

The president of the European Council is the closest that the EU has come to a national equivalent, representing the EU externally and providing a focus to the European Council's work. Its incumbents have focused primarily on the managerial aspect of the post, helping to coordinate the response to the Eurozone crisis, and establishing a *modus vivendi* with the other institutions, most notably the Commission.

The meetings themselves are confined to two EU presidents (of the European Council and the Commission) and the twenty-eight heads of state and government, and usually the EU's high representative for foreign affairs. Outside the meeting room, they are surrounded by a vast media circus which presents the results to the

citizens of different countries in radically different ways, with each leader seeking to make the best possible impression on their respective constituencies.

The 'Presidency Conclusions' are issued after each meeting, usually in a lengthy document, sometimes with bulky annexes. The European Council itself initiates only a few of their decisions, and does not have time for thorough discussion of all that is put before it, especially when dealing with technical briefs, as in the Eurozone crisis. More typically, most of the detail and the 'political guidelines' emerge from the EU's institutions, working with the European Council's president.

The Council of Ministers is a more complicated body. Which minister attends a given meeting depends on its subject. It meets in approximately ten forms, including an Economic and Financial Council (Ecofin), an Agriculture Council, a Foreign Affairs Council (under the chair of the high representative), and a General Affairs Council comprising the foreign ministers, which is supposed to coordinate the work of the other councils, but is in practice hard put to control councils of ministers from powerful departments of state. Each council is chaired by the representative of the state that is serving (they take it in turn for a term of six months each) as president-in-office.

Unlike the European Council, large numbers attend the meetings of the Council of Ministers. Several officials as well as ministers (or their representatives) from each member state are present; and they are joined by the relevant commissioners. Officials from the Commission also attend, as well as those from the Council Secretariat, which provides continuity from one presidency to the next and has become quite a powerful institution. Also unlike the European Council, much of the Council of Ministers' work is legislative and some is executive.

After protracted pressure the Council of Ministers now holds its legislative sessions in public, but its proceedings remain more like negotiations in a diplomatic conference than a debate in a normal democratic legislature.

The resemblance to an international negotiation was yet more pronounced before the mid-1980s when, with the launching of the single market programme, qualified majority voting (QMV) began to replace unanimity as the procedure for legislative decisions. Though the treaty stipulated that only texts proposed by the Commission could be made into law, the unanimity procedure gave each minister a veto with which to pressurize the Commission into amending a proposal; and although the treaty provided for QMV on a range of subjects, the veto implicit in the Luxembourg 'compromise' extended its scope in practice to virtually the whole of legislation. The Committee of Permanent Representatives of the member states (called Coreper, after its French acronym) seeks common ground beforehand in the governments' reactions to the Commission's proposals; and given the difficulty of securing unanimity, it was thanks to the dedication of many of these officials that the EU was able to function at all. But measures identified by the Commission as being in the general interest and enjoying the support of a large majority were often reduced to a 'lowest common denominator', reached after long delay.

This contributed to the failure to make much progress towards the single market until the voting procedures were changed following the Single European Act. Up until then, single market measures had been passed at a rate of about one a month, barely enough to keep up with new developments in the economy, let alone to complete the whole programme inside a quarter of a century. But the Single Act's provision for QMV on most of the single market legislation helped speed the rate to about one a week, putting the bulk of the laws in place by 1992.

The system for QMV has undergone several iterations and the reader is probably as grateful as the authors that he or she is now spared the more complex versions! The version introduced by Lisbon requires 55 per cent of states and 65 per cent of population to reach the threshold: this decouples the system from the previous squabbles over voting weights, while protecting both large and small states from being structurally marginalized.

While QMV is designed to ensure that laws wanted by a substantial majority can be passed, the Council of Ministers still tries to avoid overriding a minority of one

government about something the latter regards as important. This is due partly to the need to treat minorities with care in a diverse polity, and that motive has an edge in the EU, where a disgruntled member government could retaliate by bringing business to a halt on other matters still subject to unanimity. Partly it reflects the diplomatic culture which prevails in the Council of Ministers. But unlike the Luxembourg 'compromise', votes are quite often taken, and proceedings take place in 'the shadow of the vote', so that ministers prefer to compromise than to run the risk that a vote will produce an outcome which is worse for them. Often the president, judging that a problem has been resolved, suggests that a consensus has been reached and, if there is no dissent, the Council of Ministers accepts the text without a formal vote.

With the use of QMV for single market legislation, the Luxembourg veto began to fade away, so that QMV became the context for a wider range of decisions; and it was extended by the successive treaties to cover almost all fields of legislation. The remaining handful to which unanimity applies come under a variety of headings. These typically relate to structural issues, such as membership of the EU, enhanced cooperation and citizenship, or to policy areas of particular sensitivity. Most notably for the daily operation of the EU, much of foreign policy has retained unanimity, as discussed in [Chapter 8](#). Obviously, the greater the number of member states, the harder it becomes to reach unanimous agreement. So pressure has always existed to reduce the scope for the unanimity procedure and this has been a source of conflict between those with a more, or less, federalist orientation. A similar argument arises about the Council of Ministers' executive role.

Unlike a legislative body in most democracies, the Council of Ministers exercises significant executive powers. Although the Commission is, as Monnet envisaged, the EU's principal executive body, the treaty allows the Council of Ministers to 'impose requirements' on the way in which the Commission implements the laws, or even to see to their implementation itself. This used to happen under a complex system known as 'comitology', where individual committees of member state officials supervised implementation of particular pieces of legislation. While some oversight was possible by the Commission and Parliament, the scope for

obstruction and delay led to its partial replacement at Lisbon by a new 'delegated acts' process, which removes these committees for certain legislation, and the renaming of comitology as 'implementing acts'. However, this new system remains deeply opaque, not least because it is at the discretion of the legislators to decide which system to use. Certainly, the long-standing concerns about the transparency of this part of the legislative process will continue for many years yet.

The European Parliament

MEPs are directly elected by citizens throughout the EU in June of every fifth year. There are 751 of them, distributed among the member states in proportions that favour the smaller states, though to a lesser degree than in the weighting of votes in the Council of Ministers: ranging from ninety-six from Germany; over seventy each from France, Italy, and the UK; over fifty each from Poland and Spain; down to six each from Cyprus, Estonia, Luxembourg, and Malta (see [Chart 1](#)).

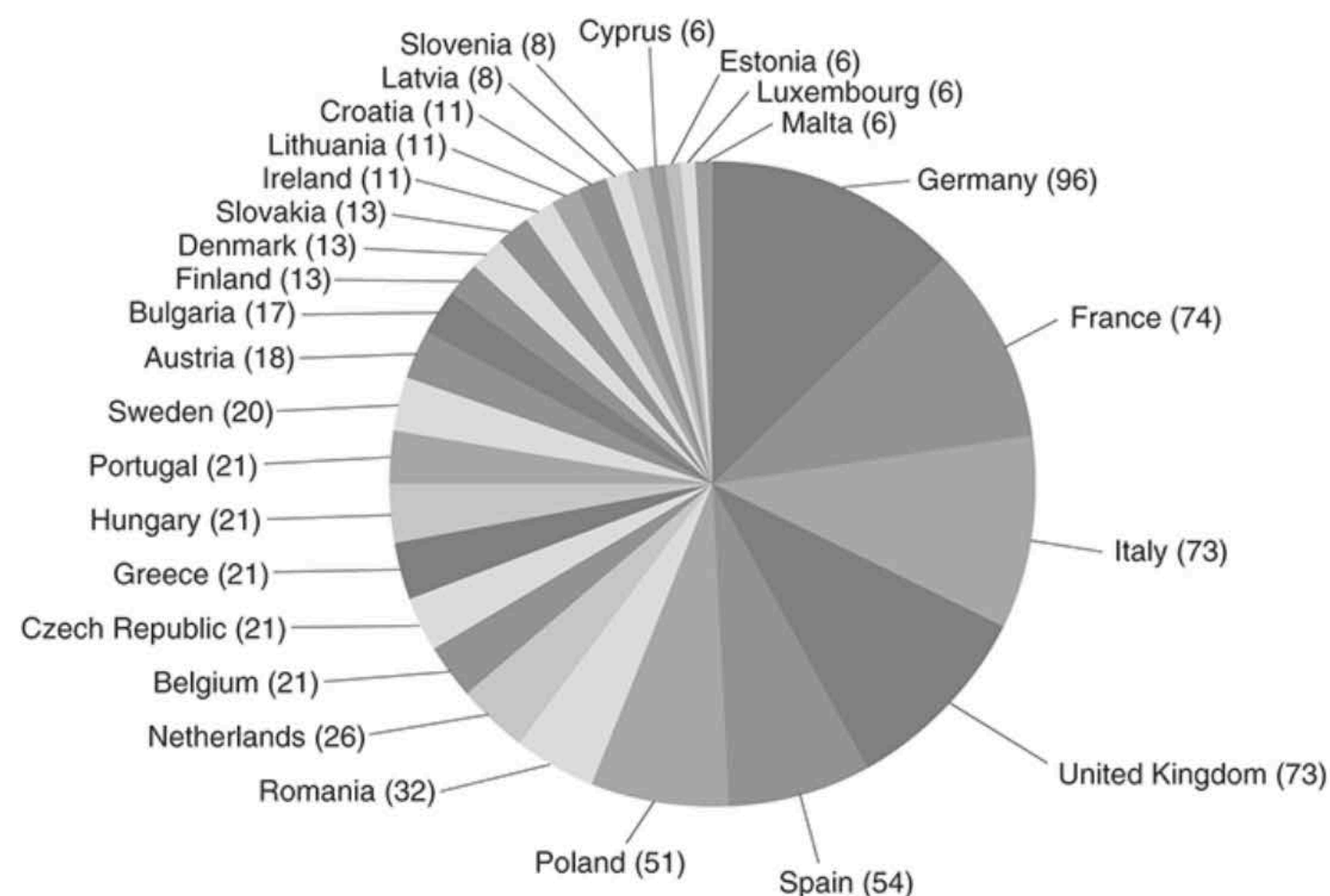
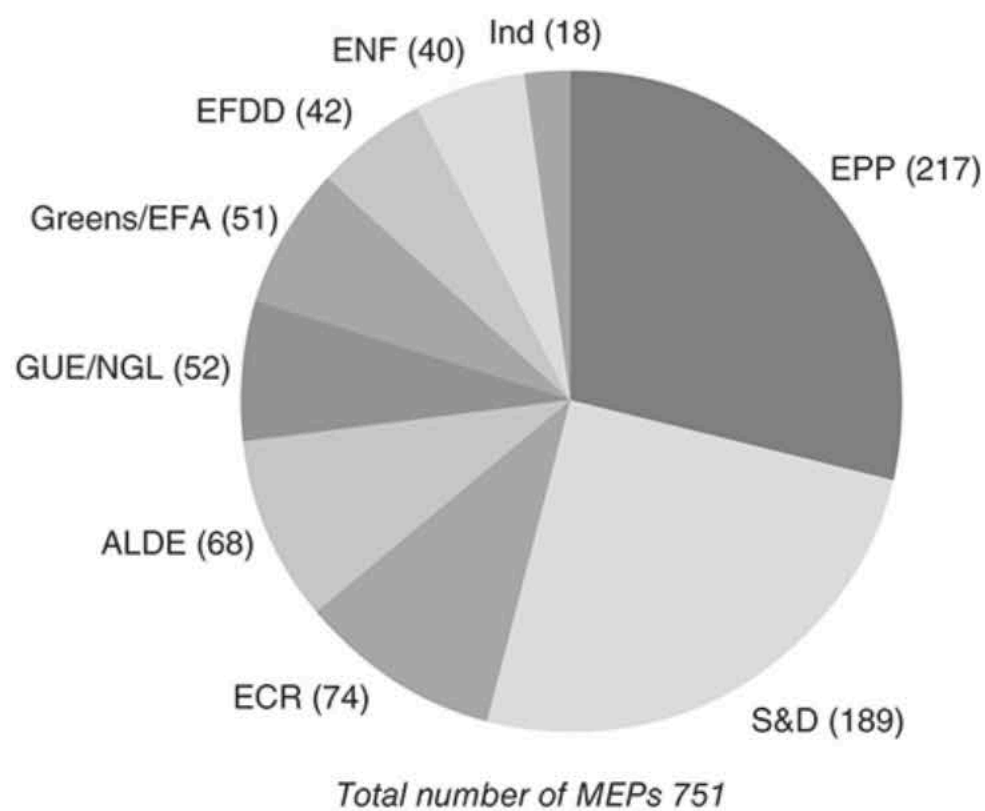


Chart 1. Number of MEPs from each state, 2017.

The political culture of the European Parliament differs radically from that of the Council of Ministers. The meetings are open to the public; voting by simple majority is the routine; and the MEPs usually vote by party group rather than by state. Roughly two-thirds of the MEPs elected in June 2014 belong to centrist party groups, with the centre-right Christian Democrat and Conservative EPP (European People's Party) and the centre-left S&D (Progressive Alliance of Socialists and Democrats) by far the largest groupings. However, 2014 also saw a marked increase in the number of MEPs with more critical positions on European integration, from both left and right of the political spectrum, as well as a Conservative group that has built up much substance (see Chart 2).



EPP European People's Party
S&D Progressive Alliance of Socialists and Democrats
ALDE Alliance of Liberals and Democrats for Europe
ECR European Conservatives and Reformists
GUE/NGL European United Left/Nordic Green Left
Greens/EFA The Greens/European Free Alliance
EFDD Europe of Freedom and Direct Democracy
ENF Europe of Nations and Freedom
Ind Independent

Chart 2. Party groups in the Parliament in 2017.

While agreement has not yet been reached on a uniform electoral procedure, or 'principles common to all member states' as the Amsterdam Treaty more tolerantly put it, all the states now operate systems of proportional representation. The balance between the mainstream parties has otherwise been fairly stable, with neither the centre-right nor the centre-left able to command a majority alone. Hence broad coalitions across the centre are needed to ensure a majority for voting on legislation or the budget; and this is all the more necessary for amending or rejecting measures under the increasingly important co-decision procedure, where an absolute majority of 376 votes is required. The well-developed system of committees, each preparing the Parliament's positions and grilling the Commissioners in a field of the EU's activities, also tends to encourage consensual behaviour. But there has none the less been a sharper left-right division since the elections of 1999, when the centre-right became structurally larger than the centre-left, a pattern reinforced by enlargement.

Although the Parliament has performed well enough in using its now considerable powers over legislation and the budget, the voters' turnout has declined with each election, from 63 per cent in 1979 to 43 per cent in 2014. One reason is a general trend of declining turnouts in elections within member states. Another is a widespread decline in support for the EU. Yet another may be that the Parliament in particular has been exposed to critical and, particularly in Britain, downright hostile media comment, fastening on matters such as the prolonged failure to establish an adequate system for controlling MEPs' expenses (largely the fault of MEPs themselves), and the two costly buildings in Brussels and Strasbourg between which it commutes (entirely the fault of governments). Citizens, moreover, remain largely ignorant of what the Parliament is and can do.

The legislative role has developed from mere consultation at first, through the cooperation procedure initiated by the Single Act, to the co-decision introduced by the Maastricht Treaty and extended through to Lisbon to the point where it now applies to the large majority of legislation, under its new name of the 'Ordinary

Legislative Procedure' (Figure 8). In addition, Lisbon also gives the Parliament equal rights to agree the entire budget with the Council of Ministers, allowing it to provide oversight into areas such as agriculture that had previously been shielded.



8. Elected representatives at work: European Parliament sitting.

While the Parliament's share of power to determine the budget is an essential element of democratic control, its role in supervising how the money is spent has had the greatest impact. As well as its power of scrutiny over the Commission's administrative and financial activities, the Parliament has the right to grant 'discharge': to approve—or not—the Commission's implementation of the previous year's budget, on the basis of a report from the Court of Auditors. If not satisfied, the Parliament withholds discharge until the Commission has undertaken to do what is required. Thus in 1998, after the Parliament had withheld discharge for the 1996 accounts and was not satisfied with the Commission's response, it appointed

a high-level expert committee to investigate in more detail. They produced a devastating report on mismanagement and some cases of corruption; and the Commission, anticipating the Parliament's use of its power of dismissal, resigned in March 1999.

Having demonstrated its powers over both appointment and dismissal of the Commission, the Parliament has since used its influence to secure the appointment of a candidate for Commission president who reflects the results of European elections. This was seen in 2014, when each group in the European Parliament put forward a *Spitzenkandidat* or 'lead candidate', on the understanding that the Parliament would only support as Commission president that candidate nominated by the grouping with the most support in the Parliament after the election.

The Parliament shares power equally with the Council of Ministers for most legislation and all of the budget; and it has proved much better able than the Council of Ministers to control the Commission. So it can be said that the Parliament is more than halfway towards fulfilling the functions of enacting legislation and controlling the executive, which a house of the citizens in a federal legislature would perform. The Council of Ministers for its part would be akin to a house of the states, save that the unanimity procedure still applies to some legislation, only its legislative sessions are held in public, and it has retained executive powers that ill accord with its legislative role.

The European Commission

While the Commission, as it stands today, is not the federal executive that Monnet envisaged, it is, with its right of 'legislative initiative', its functions in executing EU policies, and as 'watchdog of the Treaty', a great deal more than the secretariat of an international organization.

The Treaty of Rome gave the Commission the principal right of legislative initiative, that is, to propose the texts for laws to the Parliament and the Council of Ministers.

The aim was to ensure that the laws would be based more on a view of the general interest of the Community and its citizens than would result from initiatives of the member state governments, and that there would be more coherence in the legislative programme than they or the councils with their various functional responsibilities could provide. Armed with this power, the Commission was in its early days often called the ‘motor of the Community’, although this became much less the case following the Empty Chair Crisis of the 1960s. Even where leadership did emerge subsequently—as with the ‘Delors package’ of budgetary reform in 1992, and potentially with the 2017 White Paper on the future of Europe—this has also been buoyed up with help from member states.

The Commission has also been called the ‘watchdog’ because it has to ensure that the EU’s treaties and laws are applied, notably by member states. If it has evidence of an infringement, it has to issue a ‘reasoned opinion’ to the state in question. Should the latter then fail to comply, the Commission can take it to the Court of Justice. This is what happened in 2002 when the French government refused to accept restrictions on fishing designed to protect overstressed stocks. The Court of Justice found against France, which continued to allow this to happen, resulting in a second case in 2005, where the Court of Justice imposed fines in excess of €77 million. The Commission is also responsible for executing EU law and policy, though much of it is delegated to member state governments and other agencies.

In order to ensure that the Commission works in the general interest of the EU, the treaty requires that its independence of any outside interests be ‘beyond doubt’; and the commissioners, on taking up office, have to make a ‘solemn undertaking’ to that effect. Although the treaty provides for their nomination by ‘common accord’ among the governments, each government has in the past made its own nomination and this has been accepted by the others. But this can no longer be taken for granted, because the accord of the Commission’s newly appointed president is now also required before the Parliament’s approval of the Commission as a whole.

Until 2005 there were two commissioners from each of the larger and one from

each of the smaller states. But the impending enlargement caused concern that a larger Commission would be less effective, so the Nice Treaty limited the number of commissioners, as from 2005, to one from each member state. Proposals for an even smaller number were stoutly resisted by smaller states and the initial rejection of the Lisbon Treaty by Irish voters in 2008 resulted in agreement that the current system should remain.

Reducing the number of commissioners to fewer than one per state is by no means the only way to secure effectiveness. The top tier of governments, such as the British Cabinet, usually has over twenty members, in some cases over thirty; and this has worked because a prime minister has the power to control the other members. Treaties since Amsterdam have moved the Commission some way in that direction by giving the president the power not only to share in the decisions to nominate the other commissioners, but also to exercise ‘political guidance’ over the commissioners, to allocate and ‘reshuffle’ their responsibilities, to appoint vice-presidents, and to sack a commissioner ([Figure 9](#)). The presence of the EU’s high representative for foreign policy as a vice-president since Lisbon has also helped to provide management of policy coordination, both internally and externally.



9. The Juncker Commission meets after its appointment in 2014.

In treaty terminology, the Commission is the whole body of commissioners. In common usage, it also refers to the Commission's staff. But it is usually clear whether reference is being made to the commissioners or the Commission's 30,000 employees; and despite loose talk of a bloated bureaucracy, this is roughly the same number employed by a European city.

Since QMV now applies to the bulk of legislation, the Commission's sole right of initiative has given it a strong position in the legislative process. The Council of Ministers can amend the Commission's text, but only by unanimity, which here works in the Commission's favour instead of against it, for while the Commission normally prefers to accommodate governments' wishes, it is better placed to resist their pressure on points it regards as important.

The Commission has grown into its legislative role, managing both the EU's internal processes and an extensive assortment of external interests. But its performance as an executive has been more problematic, not least because execution of policy is largely delegated to the member states. This is a good principle, which works well in Germany's federal system where the Länder administer most of the federal policies. But there the federal government has more power to ensure adequate performance from the Länder, whereas member states tend to resist the Commission's efforts to supervise them. The answer is surely not more direct administration by Brussels, but rather enough Commission staff to undertake the supervision and stronger powers to ensure proper implementation by the states.

The Commission has a good record in fields such as the administration of competition policy, where it was given the power to do the job itself and has done it well despite a shortage of officials. But there have been serious defects when it has been required to administer expenditure programmes without the staff to do this properly, resulting in defects either in its own work or in that of consultants hired to do it, with sometimes bad and in a few cases fraudulent consequences. This stimulated not only the 1999 resignation, but also the on-going reforms to the administration set out by Neil Kinnock in the early 2000s, aimed at improving recruitment, training, promotion, and audit practices.

Some have argued that the Commission is a European government. How far could this be an accurate description? Within the fields of EU competence, its right of legislative initiative resembles that of a government, and even exceeds it in so far as the Commission's is almost a sole right. But its use of the right is constrained by the Council of Ministers, particularly where the unanimity procedure applies, though also by the use of QMV rather than a simple majority. The difference is, however, greater in comparison with Britain than in those states practising a consensual style of coalition government. The Commission's executive role is constrained by the Council of Ministers and the difficulties of implementation, but it is otherwise not, in principle, far different from that of the German federal government—only the German government has a more effective means of enforcing proper

implementation by the Länder. A crucial distinction between the Commission and a government is, indeed, that the Commission does not possess any physical means of enforcement. It has, moreover, only a minor role in general foreign policy, and an even smaller one in defence. Along with the differences, however, there are significant similarities.

The Court of Justice

The rule of law has been key to the success of the EU. Increasingly, in its fields of competence, a framework of law rather than relative power governs the relations between member states, and it applies to their citizens. This establishes 'legal certainty', which is prized by business people because it reduces a major element of risk in their transactions. Politically, it has helped to create the altogether new climate in which war between the states is deemed to be unthinkable.

At the apex of the EU's legal system is the Court of Justice, which the treaties require to ensure that 'in the interpretation and application of the Treaties the law' (taken in a broad sense) 'is observed'.

There is one judge from each member state, appointed for six-year terms by common accord between member states whose independence is to be 'beyond doubt'. The Court of Justice itself judges cases such as those concerning the legality of EU acts, or actions by the Commission against a member state or by one member state against another, alleging failure to fulfil a treaty obligation. But the vast majority of cases involving EU law are those brought by individuals or companies against other such legal persons or governments; and these are tried in the member states' courts, coming before the Court of Justice only if one of those courts asks it to interpret a point of law.

The Court of Justice's most fundamental judgments, delivered in the 1960s, were based on its determination to ensure that the law was observed as the treaty required. The first, on direct effect, provided for individuals to claim their rights

under the treaty directly in the states' courts. The second, on the primacy of EU law, was designed to ensure its even application in all the member states; for the rule of law would progressively disintegrate should it be overridden by divergent national laws. Then in 1979 a judgment on the 'Cassis de Dijon' case laid a cornerstone of the single market programme, with the principle of 'mutual recognition' of member states' standards for the safety of products, provided they were judged acceptable; and this radically reduced the need for detailed regulation at the EU level.

The Court of Justice has delivered over 10,000 judgments since its creation, and cases continue to come before it at a rate that makes it hard to reduce the delays of up to eighteen months before judgments can be reached. A subsidiary court—the General Court (formerly the Court of First Instance)—was established to help deal with this problem. It deals with almost all cases brought by individuals or legal persons, relating first and foremost to intellectual property rights, competition policy, and staff disputes. But while this has slowed it has not turned the tide of cases awaiting judgment.

While litigants can appeal from the lower courts, there is no appeal beyond the Court of Justice, which is the final judicial authority on matters within EU competence. To enforce its judgments outside the EU's institutions, however, it depends on the enforcement agencies of the member states. The fact that the large majority of judgments under EU law are made by the states' own courts has instilled the habit of enforcing it; and there has been no refusal to enforce the judgments of the Court of Justice itself, even if there have sometimes been quite long delays before member states have complied with judgments that went against them.

The Court of Justice's jurisdiction is still limited by the treaties, especially in foreign policy. But within these limits, and apart from the almost total reliance on the member states' enforcement agencies, the EU's legal system has largely federal characteristics.

Subsidiarity and flexibility

In a speech delivered in Bruges in 1988, Mrs Thatcher famously evoked the spectre of a 'European super-state exercising a new dominance from Brussels'; and a 'slippery slope' leading towards a 'centralized super-state' has become a favourite metaphor for British eurosceptics. From a different starting point, German Länder have looked askance at proposals for EU competence in fields that belong to them in Germany's federal system. Indeed many federalists find the treaty objective of 'an ever closer union' too open-ended, and most support the principle of 'subsidiarity' as a guide to determine what the EU should do and what it should not do. That principle, which has both Calvinist and Catholic antecedents, requires bodies with responsibilities for larger areas to perform only the functions that those responsible for smaller areas within them cannot do for themselves. Following this principle, the treaty requires the EU to 'take action ... only if and insofar as the objective of the proposed action cannot be sufficiently achieved by the Member States', and can, 'by reason of its scale or effects, be better achieved by the Union'.

The Rome Treaty implicitly recognized this principle in distinguishing between two kinds of EU act: the Regulation, which is 'binding in its entirety' on all the member states; and the Directive, which is binding only 'as to the result to be achieved', leaving each state to choose the 'form and methods'. But this was a very partial application of the principle; and Directives were sometimes enacted in such detail as to leave little choice to the states. So the Maastricht Treaty defined subsidiarity and the Amsterdam Treaty laid down detailed procedures aiming to ensure that the principle would be practised by the EU institutions. The inclusion in the Lisbon Treaty of a list of which competences are exclusive to the EU, which are shared with member states, and which are supporting state action has further ensured that there are multiple safeguards against overcentralization.

There are of course disagreements about the fields in which integration is justified. These left their mark on the Maastricht Treaty, in the British opt-outs from the

social chapter and the single currency, and those of Denmark on the single currency and defence. Since the treaty can be amended only by unanimity, the other governments had to accept the opting-out if these items were to be included in it; and this led to growing interest in the idea of 'flexibility', enabling those states wanting further integration in a given field to proceed within the EU institutions or, to put it the other way round, allowing a minority to opt out. One purpose was to circumvent the veto of individual member states, whose resistance to reforms might block those most other governments regard as necessary, a concern heightened by inclusion of states that may prove unwilling or unable to proceed with further integration.

The concept of flexibility emerged in the Amsterdam Treaty under the heading of 'enhanced cooperation': a term preferred by federalists because it implied a deeper level of integration among a group of states, whereas eurosceptics tended to see flexibility as a way of loosening bonds in the EU as a whole. The treaties now provide for enhanced cooperation within the EU provided that a number of conditions are met, including that a minimum of nine states be involved at first, agreeing unanimously, and that it remains open to any and all additional states.

Citizens

The concept of citizenship of the EU was introduced in the Maastricht Treaty, which provided that all nationals of the member states are, in addition, also citizens of the EU; and the Amsterdam Treaty added that the two forms of citizenship are complementary. The Maastricht Treaty included a few new rights for the citizens, such as the right to free movement and residence throughout the EU, subject to specified conditions, and the right to vote or stand for election in other member states in local and European (but not national) elections. This short-list comes on top of specific rights already guaranteed by the treaties, such as protection for member states' citizens against discrimination based on nationality in fields of EU competence, and equal treatment for men and women in matters relating to employment. The EU's institutions are also required to respect fundamental rights,

as guaranteed by the European Convention on Human Rights and Fundamental Freedoms. The treaties affirm that the EU is ‘founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states’; moreover it provides that, in the event of a ‘serious and persistent breach’ of these principles, a member state can be deprived of some of its rights under the treaty, including voting rights.

In response to concerns that the EU needed to do more to attract the support of its citizens, a ‘Charter of Fundamental Rights’ was also drafted in 2000 by a convention that set the precedent for the Convention that eventually drafted the Constitutional Treaty. The Lisbon Treaty gave the Charter legal force with regard to the actions of the EU itself, including aspects of the member states’ dealings with it. In addition, the treaties provide for the Parliament to appoint an ombudsman to investigate citizens’ complaints about maladministration by EU institutions and report the results to Parliament and the institution concerned.

Apart from the question of rights, the system for governing the EU, with its complex mix of intergovernmental and federal elements, makes decision-making difficult, and a satisfactory relationship between the institutions and the citizens hard to achieve. Yet as long as citizens lack the desire to offer the same kind of support for the EU as they do for their own states, electorates could become a centrifugal force leading to disintegration—a risk most vividly demonstrated by the British case. There has been lively academic discussion on the need for EU demos to sustain EU democracy, which has encouraged scepticism regarding its

possibility. The EU has, however, been able to benefit from its growing democratic elements such as in the powers of the European Parliament, and that model is still likely to continue, along with the development of the EU as a whole.

Lisbon reaffirmed the need to balance the interests of the EU as a whole and those of member states. The removal of the pillar structure, the strengthening of the European Council with a permanent president, and the integration of foreign policy roles in the person of the high representative offer the potential for a more coherent personality to the EU, although national governments have still sought to hold back common action. Similarly, while national parliaments now have powers to hold up a ‘yellow card’ to legislative proposals, those parliaments often lack sufficient surveillance mechanisms to make this truly efficient, just as the citizens’ initiative whereby a petition with one million signatures can trigger legislative action by the Commission rests on a notion of a European public sphere that is more hope than substance at present. Perhaps just as significantly, Lisbon is the first treaty to provide for an explicit mechanism for a state to withdraw from membership, a mechanism now being used by the UK.

Both Brexit and the continuing debates about economic governance to manage the Eurozone should remind us that the EU reflects the needs of its citizens. These change over time, so it is only right that there should remain an air of contingency over the form of its organization.