

The Communities in the European Union

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The Communities in the European Union

With the entry into force on 1 November 1993 of the **Treaty on European Union**, signed in Maastricht on 7 February 1992, the Member States of the European Communities established a European Union.

Pursuant to Article A of the Treaty, ‘the Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty.’ The European Union has not, therefore, taken over from the Communities, which survive as distinct organisations of supranational integration. Moreover, the European Union does not have legal personality.

Since that date, the Communities have carried out their activities as part of a wider institutionalised structure, the legal nature of which is controversial, that encompasses them and supplements them with two areas of intergovernmental cooperation: the common foreign and security policy (CFSP) and cooperation in the fields of justice and home affairs (JHA). Article M of the Treaty guarantees the survival of the Communities. It specifies that, subject to the provisions amending the Treaties establishing the three European Communities, ‘nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.’

In establishing the European Union, the representatives of the Member States stated that they were resolved to *mark a new stage in the process of European integration undertaken with the establishment of the European Communities* and recalled the *historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe*. Thus, the European Union, as established by the Maastricht Treaty, was no more than a step along the road which would result in the European Communities becoming a politically integrated European area. The moment to take a further step came with the fall of the Berlin Wall, in November 1989, which brought a radical change in the geopolitical situation of the continent. With this Treaty, the Member States of the Communities created a uniform institutional framework that was more coherent and effective, covering all the areas of their common action and making easier the task of an organisation that aspired to open the door to the neighbouring countries of Central and Eastern Europe.

The model of a Greek temple made up of *three pillars*, with a common pediment and base, is generally used to explain the structure of the text of the Treaty, which is divided into seven titles, followed by a number of protocols and declarations. Title I, which sets out the common provisions, is the single pediment that heads the structure as a whole, while Title VII, which sets out the final provisions, represents the base on which it is founded and the basis on which it may be ‘revised’, in that it provides for the amendment of the Treaties. The main pillar of the temple represents the three Communities (Titles II, III and IV, which set out the provisions amending the founding treaties). The other two pillars represent the areas of intergovernmental cooperation (Title V on the CFSP and Title VI on JHA).

With regard to the first pillar, the main new development created by the Maastricht Treaty was the introduction into the Treaty establishing the European Economic Community (EEC) — which became the Treaty establishing the European Community (EC) — of provisions on the gradual establishment of economic and monetary union (EMU). With a view to economic integration, EMU was set as the new goal to be achieved following the completion of the single market in 1992, as provided by the 1986 Single European Act. The change in the name of the organisation to ‘European Community’ was final evidence that the Community’s powers now extended to non-economic areas. Of the three Communities, the EC confirmed its dominant and all-embracing role, namely the gradual extension of its activities towards other economic and social areas and to absorb sensitive political powers relating to the two intergovernmental pillars during future stages of development, in a process of ‘communitarisation’. By comparison, the EAEC and the ECSC tended more and more to appear as specific sectors belonging to the main Community. It is also worth noting that it was the Maastricht Treaty that introduced the new provisions on *Union citizenship* into the EC Treaty.

The later treaty reforms agreed in Amsterdam in 1997 and in Nice in 2001 in no way changed the organisational structure set out in Maastricht and merely implemented the 1992 reform by making a few

formal editorial changes (e.g. following the Amsterdam Treaty, the EU Treaty articles are given numbers instead of letters) and substantial changes (e.g. the Amsterdam Treaty provided for new social powers, especially in the field of employment policy, while the Treaty of Nice adjusted the composition and functioning of the institutions so as to enable the Union to undertake enlargement to include the countries of Central and Eastern Europe). Yet it is worth underlining two factors that affected the structure set up in Maastricht more directly: the communitarisation of visa, asylum and immigration policy following the Amsterdam reform — henceforth, the third pillar became police and judicial cooperation in criminal matters (PJCC) — and the dissolution of the ECSC on 23 July 2002 following the expiry, 50 years after it had entered into force, of the Treaty establishing it. After that date, the two surviving Communities, the EC and the EAEC, remained in their original form as part of the European Union.

That complex structure, based on the Maastricht Treaty and often described as incomprehensible, required in-depth reform. With the imminent enlargement of the European Union to encompass 25 Member States in May 2004, that major reform was regarded as urgent.

Signed in Rome on 29 October 2004, the **Treaty establishing a Constitution for Europe** defined a new architecture for the European Union that was simpler and more transparent. The Constitutional Treaty provided for the repeal of all earlier treaties except for the EAEC Treaty. On the date of its entry into force, it would repeal the EC Treaty as well as the EU Treaty. The ‘revised’ European Union, finally endowed with legal personality, would take over from the European Union — as established by the Maastricht Treaty — and the European Community.

As regards the surviving Community (EAEC or Euratom), the Treaty establishing a Constitution for Europe included a protocol on adapting the EAEC Treaty to the new rules laid down in the Constitutional Treaty, in particular in the institutional and financial fields. The provisions amending the EAEC are annexed to the Constitutional Treaty. In a declaration annexed to the Constitutional Treaty, Germany, Ireland, Hungary, Austria and Sweden noted that ‘the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date.’ These five countries therefore supported the idea of having an intergovernmental conference convened as soon as possible. The links between the EAEC and the ‘revised European Union’, as distinct organisations established by two different treaties, have not been fully defined yet. In the future, therefore, the European Union will, no doubt, assimilate the powers of the EAEC in the nuclear field.