Introduction

May and June 2005: the peoples of two of the six founding members of the European Union, France and the Netherlands, consulted by referendum, refuse to ratify the Constitutional Treaty for Europe.[1]

June 2008: the people of Ireland, one of the countries which has benefited most from the European Union, rejects the ratification of the Lisbon Treaty .

What is happening?

Does this mean that the dreams of a reconciled and more united Europe are dying? What exactly are those dreams? And, to begin with, which countries and peoples are concerned?

It is not easy to give a definition of Europe, whether geographically, historically or culturally.

Geographically, Europe is not a precise concept. It is not a continent, but rather a peninsula at the western edge of the Eurasian continent. Its eastern borders are far from being precise. It presents a vast variety of landscapes and climates, from the driest places of its Mediterranean coasts to the polar regions of Lapland.

It has always been populated by many diverse peoples, mainly but not only Christians, using dozens of languages and even different alphabets.

Historically, these peoples have organised themselves into national entities, according to their religions, languages or geographical situation. Over the centuries, Europeans have developed and strengthened the concept of the nation state. The European nation states have nurtured their differences, thus favouring nationalism, something which often led to wars with their neighbours. Nationalism explains why European nations have been fighting each other over the centuries.

1 See J.-C. Piris, *The Constitution for Europe: A Legal Analysis* (Cambridge University Press, 2006).

Despite that, for centuries they have, competing and fighting, dominated the world, economically, culturally and militarily. At the beginning of the twentieth century, Europeans could clearly have a feeling of superiority: they were indeed the masters of the world.

However, barely half a century later, in 1945, the situation had completely changed. After two world wars Europe was left destroyed, poor, weak and divided, and de facto, or even de jure, under the control of the two new superpowers – the United States and the Soviet Union. Nationalism, which had been the strength and fortune of all the great European nations, had been exalted to a point which had led them to self-destruction.

One may hope, however, that this time the lesson was learned.

Immediately after the end of the Second World War, with the financial and military help of the United States, western Europe quickly began to reorganise itself in order to restore its destroyed economy and protect its security, perceived as endangered by the USSR. The Organisation for European Economic Co-operation (OEEC, which in 1961 became the Organisation for Economic Co-operation and Development, OECD) was established in 1948. It was designed to make better use of the financial help of the United States and to restore and organise liberal economies in Europe. On the defence side, the Western European Union (WEU) was also created in 1948, followed by NATO, under the leadership of the United States, in 1949. The Council of Europe was established in 1949.

At the same time, following the famous speech of Robert Schuman, the French Foreign Minister, on 9 May 1950, efforts began to build a smaller and more integrated Europe around France and Germany. Right from the beginning the purpose was obviously political – that is, to avoid the resurgence of another war between them. The issue was to find the ways and means to achieve this goal. The choice was made to begin with economic links, to build powerful supranational institutions, and to use the so-called 'Jean Monnet method', which consisted in progressively building up 'through practical achievements which will first of all create real solidarity, and through the establishment of common bases for economic development'.[2]

The European Coal and Steel Community (ECSC), established by six founding States, entered into force in 1952. Then followed, with the same Member States, the European Economic Community (EEC) in 1958,

2 Quoted from the third paragraph of the Preamble to the Coal and Steel Treaty, 1950.

together with the European Atomic Energy Community (EAEC, better known as Euratom). That was the start of the historic adventure which led to the establishment of the European Union.

Over the first half-century of its existence, the EU developed and changed very fast. Its membership increased from six in 1952 to twenty-seven in 2007 (Box 1), and will probably increase in the future. Even its name has been changed twice: first from 'European Economic Community' (EEC) to 'European Community' (EC), and then to 'European Union' (EU).

BOX 1. THE SUCCESSIVE ENLARGEMENTS OF THE EU

1952	Belgium, France, Germany, Italy, Luxembourg, Netherlands
1973	Denmark, Ireland, 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

Its scope of action has been considerably enlarged over the years, from the establishment of a customs union to an internal market flanked by common policies for agriculture, competition and external trade, and economic cohesion between its various regions. Later, these policies were extended to cover the protection of the environment, foreign policy, justice and home affairs, and a monetary policy.

Since 2007 the EU has consisted of twenty-seven Member States. It is a single market of half a billion people. The internal market is an area without internal frontiers in which the free movement of persons, goods, services and capital is ensured. The EU manages a single currency (the euro) and a monetary union for sixteen of its Member States. It speaks more and more with a single voice and acts as a single protagonist on the international scene, whatever the subject matter.

For the first few decades of its existence, the decision-making process in the EU was, at least de facto, similar to that of a classic international organisation, through negotiations and unanimous decisions of the representatives of the governments of its Member States meeting as a Council of Ministers. Nowadays, the EU can no longer be considered an 'ordinary' international organisation.

Very early, the legal Acts adopted by the EC institutions within the fields of EC competences were recognised as having primacy over the law of the Member States and as being able to have direct effects on their citizens. However, in its early years the scope of action of the EC was not very large. Over the years, the Member States decided to delegate to the EC institutions some of their powers to adopt legislation and to negotiate international agreements in a number of new fields. They decided that, in a number of those fields, the EC legislature (the European Parliament and the Council deciding in codecision or the Council alone) may adopt legal Acts even when there is no unanimity among the Member States (abolition of the right of veto); these Acts are legally binding upon them and they are obliged to implement them fully and correctly. The Commission ensures that this is the case, and may take a Member State to the EC Court of Justice if it fails to fulfil its obligations correctly. Such a Member State may then be faced with having to pay a lump sum and/or penalty payment, as well as paying compensation to those who have been adversely affected.

The institutions of the EU are no longer fully in the hands of the governments of the Member States. The members of the European Parliament (MEPs), which, with each treaty modifying the founding treaties, has gained more legislative and budgetary powers, have been, since 1979, directly elected by the EU citizens. The members of the Commission, which has the power to initiate EU legislation and to control its implementation, are not freely appointed by the governments, the European Parliament having the power to approve or to disapprove their choice. The independent European Court of Justice plays the role of a supreme court, ruling on disputes between the institutions and the Member States about the extent of their respective powers as well as on complaints by individuals on the legality of EU Acts.

It was against this background that the transformation of the EU into a federal entity was seen by some as a possibility in the short or medium term. At the same time, others underlined important factors indicating that this would be difficult to conceive. If a union composed of between six and fifteen Member States that were relatively homogeneous in their economic development had not been able to become a federal State, then a greater number of Member States, with a lesser degree of homogeneity, would make it impossible. These observers also stressed that, while some of the larger Member States (notably the United Kingdom, France and Poland) have never been keen on a federal EU, many of the smaller Member States, which may in the past have been more inclined towards it, have today changed their mind. Many of them are now strongly in

favour of establishing an equality between States in all areas, be it their 'representation' in the Commission, the Court of Justice or the Court of Auditors, their 'right of veto' in the European Council, an 'equal right for all' to preside over the different configurations of the Council and their preparatory bodies, and so on. These States, which constitute by far the majority of the EU members, have the feeling that they need to protect themselves better against what they perceive to be the excessive weight and powers that, they believe, larger Member States would tend to have within a federal entity. They have thus become the strongest force of resistance against moves aimed at rebalancing the distribution of powers within the EU in accordance with the democratic principle, under which every citizen should have the same weight in the political decision-making process. This is one of the reasons why the basic treaties establishing the EU are complex. The other major reason is that the Member States want to remain 'the masters of the treaties' and wish to limit in a detailed and precise way the powers they decide to confer on the EU institutions, according to the subject matter concerned.

However, as soon as 1972, the idea emerged of transforming the EEC into a 'European Union'. The establishment of such a single entity, while not being a move towards a federal State, would have merged all aspects of European integration and co-operation. During the 1972 summit of the heads of state or government (HSG) in Paris, the HSG 'declared their intention of converting their entire relationship into a European Union before the end of this decade'.[3] The idea was then lost for the rest of the decade, due to the turmoil of the economic crisis of the 1970s and to the lack of political will among the governments of the Member States, which were divided on the issue.

In June 1983, in Stuttgart, the HSG relaunched the idea in their 'Solemn Declaration on European Union', by reaffirming their 'will to transform the whole complex of relations between their States into a European Union'.[4] Meanwhile, in 1981, the European Parliament had mandated one of its members, Altiero Spinelli, to propose amendments to the existing treaties. This work resulted in a 'draft Treaty instituting the European Union', accepted by the European Parliament by a vote of 237 to 31 in February 1984, but this document, which purported to be a 'constitution', was ignored by the Member States.

3 Communiqué of the Conference of the Heads of State or Government, Paris, 19–21 October 1972 (Bulletin EC 10–1972), 16.
4 Denmark did not agree on this point.

It was finally in 1993 that the Maastricht Treaty established the European Union, not, however, as a single entity, but alongside and in parallel with the existing European Communities. Four entities then existed side by side, three of them recognised as separate legal entities with their own legal personality: the EC, the ECSC and Euratom. The EU was the odd one out, containing the second and third pillars (i.e. the area of Common Foreign and Security Policy and the area of Justice and Home Affairs), which were to be managed quite differently from the three communities, and which was not formally given legal personality.

It was only ten years later, in 2003, that the proposal was again made to merge the EU and one of the two remaining communities – the EC – into a single entity.[5] This was approved in the Constitutional Treaty, solemnly signed in Rome in October 2004. However, that Treaty failed to be ratified by all Member States. The Lisbon Treaty, signed in December 2007 and which entered into force on 1 December 2009, was built with many elements taken from the Constitutional Treaty, but it has a different structure and is based on different political characteristics, making it a very different political turning point in the history of the European Union.

The purpose of this book is to present the main elements of the Lisbon Treaty and to explain their legal and political meaning and effects, putting them in their historical and political context.

5 The ECSC had lapsed in 2002 and Euratom would remain a separate Community.

I

The origins and birth of the Lisbon Treaty

Section 1 The process that led to the establishment of the European Union

The point of departure was the 1951 Paris Treaty, by which the six founding Member States established the European Coal and Steel Community (ECSC). They then adopted the Rome Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EAEC or Euratom), in 1957.

That was the beginning of the process which led to the establishment of the European Union (EU). Since then, and before the Lisbon Treaty, the original Rome Treaty has been modified by a number of successive amending treaties: the most important ones[1] came into effect in 1987 (the Single European Act), in 1993 (the Maastricht Treaty), in 1999 (the Amsterdam Treaty) and in 2003 (the Nice Treaty).

The **1957 Rome Treaty** (signed on 25 March 1957), which entered into force on 1 January 1958, established the EEC. The aim was to create a customs union, flanked by a common agricultural policy and by co-operation in other areas, in order to try and build a 'common market'. The Council, composed of ministers representing the government of each Member State, took all the important decisions on the basis of proposals from the Commission, mostly on the basis of unanimity, sometimes consulting a Parliamentary Assembly composed of members delegated by the national parliaments of the Member States. It was decided later on (in 1976) that the members of this assembly would be elected by direct universal suffrage.[2] This reform aimed at achieving a more democratic basis for the decisions of the EC institutions, but at the same time had the effect that national parliaments were no longer directly involved. The

1 It has also been amended by a few other treaties which aimed at limited reforms on institutional and budgetary matters.

2 See the Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom (OJ

first elections took place in 1979. The name of the Assembly was officially changed to the European Parliament by the Single European Act of 1986.

Taking into account past experience, the **1986 Single European Act** (signed on 17 and 28 February 1986), which entered into force on 1 July 1987, gave a decisive impulse for the completion of the internal market, with a deadline (1992) and the means to achieve it, through the use of 'qualified majority voting'[3] in the Council for the adoption of the many pieces of legislation required. It also introduced a new decision-making procedure, the 'co-operation procedure', which gave a stronger role to the European Parliament than the consultation procedure.

It was the fall of the Berlin Wall in 1989, the end of the Cold War and the reshaping of the geopolitical landscape in Europe which, in 1992, triggered the establishment of the European Union and the renaming of the EEC as the EC. This was done by the Treaty on European Union, known as the **1992 Maastricht Treaty** (signed on 7 February 1992), which entered into force on 1 November 1993. The Treaty enlarged the scope of action of the EC (the first pillar), in particular assigning it the task of creating a single currency. It also added two further pillars: the second pillar – the Common Foreign and Security Policy (CFSP) – and the third pillar – Justice and Home Affairs (JHA). The Treaty retained most characteristics of intergovernmentalism for the second and third pillars: decisions were to be taken unanimously by the Council, while the European Parliament, the Court of Justice and the Commission were given no role, or rather a very limited one. However, the European Parliament was given an increased say on the EU budget, as well as on legislation in the first pillar, through the introduction of the so-called 'codecision procedure' with the Council. The entry into force of the Maastricht Treaty was difficult: a first referendum in Denmark (26 June 1992) was negative (50.7 per cent voting 'no'); after the adoption in the Edinburgh European Council (December 1992) of different texts concerning Denmark but not modifying the Treaty, a second referendum (18 May 1993) was positive (56.7 per cent voting 'yes').

No. L278, 8 October 1976, 5, last amended in 2002, which can be found in a consolidated form at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1976X1008:20020923:EN:PDF).

3 'Qualified' because each member of the Council has a different number of votes according to the size of the Member State which he or she represents.

The **1997 Amsterdam Treaty** (signed on 2 October 1997), entered into force on 1 May 1999. It 'communitarised' – that is, submitted to ordinary Community rules – some parts of the third pillar (visas, asylum, immigration and civil judicial co-operation). It incorporated into the EC Treaty the so-called 'Schengen *acquis*' on the removal of checks on persons at internal borders, which had been developed outside the Treaties by certain Member States. It also created the office of High Representative for the CFSP, in order to give an impetus to the development of this area of action of the EU (the second pillar). Again, the European Parliament gained more powers in the legislative field, the 'codecision' procedure being modified to put the European Parliament on an almost equal footing as the Council to adopt legislation in some areas.

The main purpose of the **2001 Nice Treaty** (signed on 26 February 2001), which entered into force on 1 February 2003, was to adapt the institutions to accommodate the future enlargement of the EU to twelve new Member States, in particular by adapting the weighting of votes of the representatives of the governments of the Member States in the Council and by limiting the size of the Commission. It also gave more powers to the European Parliament, notably through extending to new areas its right of codeciding legislative Acts with the Council, and by making this right a real codecision by conferring the same deciding power on the European Parliament as that of the Council. Again, the ratification of the Nice Treaty was difficult, as a first referendum in Ireland gave a negative result on 7 June 2001 (54 per cent voting 'no'); after the adoption of declarations recalling that the Irish policy of neutrality would remain untouched, a second referendum was positive on 19 October 2002 (62.85 per cent voting 'yes').

When the Nice Treaty came into force – that is, in 2003 – the EU was composed of fifteen Member States. In less than four years this number nearly doubled, increasing its membership first to twenty-five, on 1 May 2004, and then to twenty-seven, on 1 January 2007.

This massive enlargement of the membership of the EU, which would undoubtedly have a significant impact on its institutions and on its decision-making, was already in planning at the time when the Amsterdam Treaty and the Nice Treaty were being negotiated – that is, between 1996 and 2000.[4] As early as June 1993, the European Council,

4 On these consequences with regard to the functioning of the Council, see also the so-called 'Trumpf–Piris Report', 1999, available at www.ena.lu/rapport_trumpf-piris_fonctionnement_conseil_perspective_union_elargie_mars_1999–010007265.html.

meeting in Copenhagen, had 'agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union'.[5] In June 1995, it added Malta and Cyprus to the list.[6] In December 1997 it decided that accession negotiations with six of those States would start in spring 1998, and in December 1998 it decided that negotiations with the six other States would start in February 2000. That meant that twelve new States could be invited to join the fifteen existing ones.

In spite of the pressure resulting from this ambitious enlargement calendar, the Amsterdam Intergovernmental Conference (IGC), which took place from March 1996 to June 1997, was not able to resolve the most difficult institutional issues. That is the reason why, at the end of the IGC, a number of Member States were not satisfied with its results. They ensured that the IGC agreed on a protocol (nicknamed 'The Amsterdam Leftovers', Box 2).

BOX 2. PROTOCOL ON THE INSTITUTIONS WITH THE PROSPECT OF ENLARGEMENT OF THE EUROPEAN UNION (AMSTERDAM 1997)

Article 1

At the date of entry into force of the first enlargement of the Union . . . , the Commission shall comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council has been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States, taking into account all relevant elements, notably compensating those Member States which give up the possibility of nominating a second member of the Commission.

Article 2

At least one year before the membership of the European Union exceeds twenty, [an IGC] shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions.

5 Presidency Conclusions, Copenhagen, 21 and 22 June 1993, 13. These conclusions set out the 'Copenhagen criteria' which should be respected by the future enlargements of the EU. All Presidency Conclusions since 1993 may be found on the Internet site of the Council at consilium.europa.eu, under 'European Council', 'European Council meetings' and 'Presidency Conclusions'.

6 Presidency Conclusions, Cannes, 26 and 27 June 1995.