

Klaus Weber | Henning Ottmann

# Reshaping the European Union



Nomos

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## Preface

In winter semester 2013/ 2014, Peter M. Huber, Professor of Law at the Ludwig-Maximilians-Universität München and Judge at the Bundesverfassungsgericht (Federal Constitutional Court), delivered a lecture on European Law.<sup>1</sup> The lecture of Professor Huber provided a thorough introduction into the European Law. On the basis of this lecture, one of us (K.W.) began to realize that something was wrong with the European Union. The result of these considerations was the publication of a paper with the title “Europa in der Sackgasse – Überlegungen zur Verfasstheit der Europäischen Union” which was published in the *Politisches Denken Jahrbuch 2014* 13: 229-259.<sup>2</sup>

The positive response to this article in the *Jahrbuch* induced K.W. to go ahead with the preparation of a book on European questions. Two aims were envisaged concerning the book. The first aim was to look deeper into the structure and functioning of the European Union in order to uncover the misconstructions and defects of this political entity. The second aim was to find recipes for reshaping the European Union.

One of us (H.O.), Professor emeritus of Political Science and Philosophy at the Ludwig-Maximilians-Universität München, has been interested in European questions for many years. On request of K.W., H.O. agreed to contribute one chapter to this book. We got to know each other when H.O. delivered lectures on political science and philosophy at the Ludwig-Maximilians-Universität München between 1995 and 2009. For years, we have been discussing political matters after the lectures of H.O. These discussions were a great inspiration to K.W. On request of H.O., K.W. commented on three chapters of the *Geschichte des politischen Denkens* 2008, 2010, and 2012.<sup>3</sup>

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1 The title of the lecture was “Staatsrecht III (Europaverfassungsrecht, internationale Bezüge des Grundgesetzes)”.

2 The translation of the title is as follows: Europe in the dead end – Considerations about the *Verfasstheit* of the European Union.

3 Henning Ottmann is author of the *Geschichte des politischen Denkens* (*History of Political Thought*) in nine volumes published between 2001 and 2012.

## *Preface*

We would like to express our deep gratitude to Eva Weber-Wüst for correcting the English text and to Dr. Hans Weber for making comments on the content of the book. Nathaniel Bach thankfully went through the text of chapter IV.

For years, K.W. has been appreciating the political, economic, and philosophical discussions with Gerald Adams, Professor (Univ. Gyumri) Dr. Dipl. Sc. pol. Felix Dirsch, Dr. Ulrich Horstmann, Professor Dr. Michael Kutschker, Professor Dr. Ram Adhar Mall, FOM Professor Dr. Gerald Mann, Professor Dr. Frank Pilz, Dr. Günter Rittmann, Ulrich Thoma, and last but not least Dr. Eckhard Tiemann.

K.W. would also like to thank Steffen H. Elsner, Dr. Moritz Fink, and Dr. Thomas Schölderle of the Akademie für Politische Bildung Tutzing for their kind advice. The Akademie für Politische Bildung Tutzing (headed by Prof. Dr. Ursula Münch) holds conferences on various political, legal, economical, and philosophical issues. K.W. attended a variety of these conferences organized by Dr. Andreas Kalina, Dr. Gero Kellermann, Dr. Wolfgang Quaisser, and Dr. Michael Spieker. Several of the conferences were related to European questions.

August 2017

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## Abbreviations

BIS	Bank for International Settlements
CAP	common agricultural policy
CDS	Credit Default Swap
CEE	Central and Eastern Europe
CFSP	common foreign and security policy
CMEA	Council for Mutual Economic Assistance
CoCo	Contingent Convertible Bond
Coreper	Committee of Permanent Representatives
CSCE	Conference on Security and Cooperation in Europe
CT	Constitutional Treaty
DM	Deutsche Mark
EAC	European Affairs Committee
EBA	European Banking Authority
EC	European Community
ECA	Economic Cooperation Administration
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOFIN	Council of Economic and Finance Ministers
ECU	European Currency Unit
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEA	European Economic Area
EEAG	European Economic Advisory Group
EEC	European Economic Community
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilization Mechanism
EFTA	European Free Trade Association
EIB	European Investment Bank
EMS	European Monetary System



## *Abbreviations*

EMU	Economic and Monetary Union
EP	European Parliament
EPU	European Payments Union
ERM	Exchange Rate Mechanism
ESM	European Stability Mechanism
EU	European Union
EUI	European University Institute
Euratom	European Atomic Energy Community
FTA	Free Trade Area
GAC	General Affairs Council
GDP	Gross Domestic Product
GIIPS	Greece, Ireland, Italy, Portugal, and Spain
GIPSIC	Greece, Ireland, Portugal, Spain, Italy, and Cyprus
GNP	Gross National Product
IGC	Intergovernmental Conference
IMF	International Monetary Fund
NATO	North Atlantic Treaty Organization
NCB	National Central Bank
NGO	non-governmental organization
OECD	Organization for Economic Cooperation and Development
OMT	Outright Monetary Transactions
OEEC	Organization for European Economic Cooperation
QMV	qualified majority voting
SEA	Single European Act
SGP	Stability and Growth Pact
SMP	Securities Market Programme
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
Target	Trans-European Automated Real-time Gross settlement Express Transfer system
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
WEU	Western European Union
WTO	World Trade Organization



## Introduction

*Klaus Weber and Henning Ottmann*

Since its foundation in 1951, the European Community, later called the European Union (EU), has experienced a period of integration over decades. The integration stood under the motto of the “ever closer union”. The ever-closer-union clause has been included in various EU Treaties since 1957. Recently, however, the picture has changed. There is now a debate about disintegration of the EU, especially since the Eurozone crisis and the Brexit vote of June 2016. The fears extend from the dissolution of the Eurozone to the dissolution of the entire EU. Europe would then find itself to be again in the status of independent Westphalian states.

The considerations about integration and disintegration of the EU lead to the question whether the EU has a future and, if this is the case, how the future of the EU would look like.<sup>5</sup> The authors believe that the EU only has a future as a profoundly reshaped political entity. The reason for our concerns is that the existing EU has pronounced defects which urgently need correction and that the EU is exposed to potentially fatal challenges. Thus, reshaping the EU appears to be essential for the survival of the EU. Under these circumstances, the aim should not be an ever closer union but simply a better EU.<sup>6</sup>

In this context, an intriguing question refers to the role of the nation state in relation to the EU. A widely held belief assumes that the time of the nation state is over and that the EU should replace the nation state. However, a closer look into this issue reveals a somewhat complex situation. The European nation state is accused of having a propensity to nationalism and waging war. This propensity cannot be denied. Yet, the tendency to wage war is also seen in the Polis and in empires such as the Roman, Ottoman, and Russian Empires. Moreover, nationalism is not restricted to the European nation state if one takes into account quasi-nation-

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5 On 1 March 2017, the European Commission presented a White Paper on the Future of Europe which addresses five scenarios; according to our opinion, the conception of this paper is not sufficient.

6 This conception has already been proposed by one of us (see Weber 2014: 256-257).

alistic enthusiasm in other polities. An additional point of view appears to be even more important. The well-designed European nation state has developed valuable principles such as democracy, rule of law, separation of powers, popular sovereignty, and parliamentarianism. The EU has more or less been deficient concerning these principles as it is outlined in this book. Even worse, the EU lacks the promise to be able to develop better principles than the nation state. Thus, the authors argue that the EU cannot replace the well-designed European nation state under these circumstances.

This book has developed the conception of a balanced view of the nation state in order to cope with the role of the nation state in the EU. The balanced view in this respect means that the disadvantages of the nation state, namely its propensity to nationalism and waging war, need to be curbed. On the other hand, the valuable principles of the well-designed European nation state mentioned should be preserved within the EU. The conception of the balanced view of the nation state contributes to the question of the role of the nation state in the EU. If the well-constituted European nation state ensures the principles of the Western civilization and the EU cannot promise better principles, the EU shall do everything possible to cultivate an agreeable relationship with its member states.

Additional considerations emphasize the essential role of the European nation state. Alan Milward claimed that the European nation states founded the EU in order to rescue themselves (see Milward 2000: 1-20). Although this view might be somewhat exaggerated, the observation that the EU was created in the interest of the European nation states is the prevailing view among historians (see Dinan 2014 c: 347). The role of the European nation state is further strengthened by two other aspects. First, the EU Treaties are derived from the EU member states. Secondly, the well-designed EU member states are democratically legitimized contrary to networks, NGOs, and multinational companies. Certainly, regional governments and cities are usually also democratically legitimized, but they have less power than the nation state. In other words, the European nation state has not resigned. On the contrary, it appears that the EU cannot appropriately be reshaped without its member states. These considerations do not rule out that the EU has some advantages compared with the EU member states as outlined below.

The EU is widely regarded as a unique political entity because it combines supranational and intergovernmental elements (see Fabbrini 2015: 248-250 and 265-268). Throughout the history of the EU, there has been a

conflict between these two elements. The EU member states have experienced a decreasing influence. On the other hand, the competences of the EU have constantly been enlarged over time. Now, it seems to be time to delineate the relationship between the EU and its member states anew. Accordingly, this book presents the conception of limited supranationality in order to cope with this conflict. Limited supranationality implies that the EU should be in charge of only a limited number of competences and tasks. The other competences and tasks should remain in the realm of the EU member states.

Along these lines, the EU should mainly fulfil four purposes, namely securing peace, promoting economic prosperity, compensating the relatively small size and limited power of its member states, and ensuring the compliance with the valuable principles of Western civilization mentioned. These purposes can better be fulfilled by the EU than by any individual EU member state. This book forwards the opinion that the EU should focus on these purposes instead of concentrating on the ever closer union. It cannot be the task of a sound polity to follow a teleological ideology. Rather, a non-ideological and sober approach should be pursued in the future EU.

This book contains some ideas which might appear unusual in the eyes of EU enthusiasts. This means that seemingly well-established principles of the EU ought to be called into question. Striking examples refer to the principles of the superiority of the EU legal order and the supremacy of Union law over national law. Chapter IV argues that there is no justification for these principles. The abandonment of these principles necessitates a change of the entire law-making process in the EU. Another consequence of the altered law-making process could be the reduced number of enactments leading to a more careful law-making. At the same time, the future European Commission (Commission) should lose its monopoly for the initiation of laws.

Three particularities could be of interest concerning the future treaty-making. First, the Lisbon Treaty cannot be regarded to be a constitution. As outlined in chapter II, an important reason for this assertion is the fact that the EU member states simply did not and do not want to regard the Lisbon Treaty to be a constitution. Accordingly, we prefer to speak of treaty-making instead of constitution-making if a future treaty of the Lisbon-Treaty-type shall be constituted among certain European nation states. In this context, the term treaty-making does not refer to any other type of EU treaty. Secondly, Dieter Grimm has concluded that only the core part

corresponding to the TEU should be framed in the future EU Treaties and the remnant part should be simple law (see Grimm 1995: 48 and 2016: 27 and 119-120). Along these lines, von Weizsäcker, Dehaene, and Simon (1999: 12) suggested to the Commission that there ought to be a basic and a separate part of the EU Treaty. Thirdly, the future EU Treaties corresponding to the present TEU should take into consideration the limited supranationality principle which is recommended in this book. This means that the future EU Treaties of the Lisbon-Treaty-type should mainly be concerned with the four purposes of the EU mentioned above.

The large number of EU member states represents a great challenge to the creation of the future EU Treaties. Accordingly, the future treaty-making and law-making processes in the EU will necessarily have to be complex. This is quite unfortunate, but is unavoidable. Concerning the treaty-making process, the participation of the people appears to be mandatory. This can be achieved by an indirect participation of the people via special treaty-making conventions similar to the special US constitution-making conventions of the 1770s and 1780s. But we would like to emphasize that the similarities only refer to the procedure of involving the conventions since the political situation in the USA of the late 18<sup>th</sup> century and in the present Europe is different. In the USA of that time, constitutions were created, for instance the US Constitution constituting the federal state of the USA. In present Europe, the aim is to create a future treaty among European nation states constituting a unique European polity, but not a federal state. This kind of future treaty-making would ensure a more intense involvement of the people. In addition, the national parliaments should actively be involved in the future treaty-making process and should not be restricted to an act of ratification. Ratification only allows to agree or to disagree (see Grimm 2016: 184).

The national parliaments are conceived to become the centre of the future law-making process. The national parliaments are fully legitimized and its parliamentarians are fully accountable to the peoples of the EU member states. By comparison, the European Parliament is not fully legitimized because there is not a European *demos* and because of the lack of a European public. The involvement of the national parliaments best ensures the overcoming of the democratic deficit of the EU. This is not the case with the European Parliament. Thus, this book revitalizes the previous idea of a Chamber of National Parliamentarians. The proposal is that the national parliaments delegate a certain number of parliamentarians to this

chamber. Chapters IV and X outline how the future law-making process could function.

The structure of the future EU should be changed to a certain degree. The European Council and the Council shall be the dominant executive institutions. The future Commission should be a purely administrative institution subordinated to the European Council and the Council. The composition of the Commission, the European Court of Justice (ECJ), and the Governing Council of the European Central Bank (ECB) should be modified. The European Parliament should cooperate with the Chamber of National Parliamentarians. The voting rights within the EU institutions should orientate themselves towards the number of inhabitants of the EU member states.

The ECJ, the ECB, and the Commission are not accountable to the citizens of the EU. It is therefore not surprising that these “independents” have over-extended their mandate and their competences as Vauchez (2016), the authors, and others have demonstrated (see chapters IV –VI). A check of these institutions is necessary. Thus, one of us has proposed a Court of Appeal to control the ECJ (see Weber 2014: 255-256 and chapter IV). The Commission ought to be only a subordinated institution as outlined above. The ECB is difficult to control, but this might be carried out by supervision of a group of renowned financial experts.

The future policies of the EU need an arrangement which should avoid animosities among the EU member states. This is particularly important in the field of the finances. Animosity can only be avoided if every EU member state is fully responsible for its own finances. This precludes any transfer union or eurobonds. The same holds true for the defence policy. A European army should not be the aim of the EU. Instead, cooperation in finance and defence matters is desirable, but not a complete Europeanization in these areas. The foreign policy of the EU should mainly remain in the domain of the EU member states, but not the control of the outer border of the EU which ought to be supervised by the European Council via a Foreign and Security Representative. All European institutions should have the right to initiate law proposals.

One of the functions of the European Council should be to decide by a 75% vote on the loss of the EU membership in case a given EU member state does not comply with the essential principles of the EU mentioned. The decision of the European Council needs to be backed by the opinion of a committee of renowned experts such as the Venice Council. Prior to losing the EU membership, the EU member state in question should re-



peatedly be warned to lose its voting rights and its financial support by the EU. Readmission should be possible provided there is proof for complying with the essential principles of the EU.

Crises may or may not have favoured the development of the EU (see Schmitter 2015: 181-182). The EU has overcome several crises before so that the idea has been forwarded that it could also overcome the present crises. However, presently the EU faces several crises at once. Besides the defects of the existing EU, there are at least three other crises: the Eurozone crisis, the immigration problem, and the Brexit. Each of these crises could endanger the existence of the EU. Taken together, these crises mean a great challenge to the EU. This book is predominantly considered with the deficiencies of the EU in general, but will also cover the other three crises.

Another important point has been raised by Antoine Vauchez, namely the role of the scientific communities in the EU. Vauchez pointed out that there has been a “cozy symbiotic relationship” of the scientific communities with the ECJ, the Commission, and the ECB. The scientific communities received financial supports from the Commission and functioned as “private army in the service of the European Community” (Vauchez 2016: 75).<sup>7</sup>

In this book, we have proceeded in two steps. First, we have tried to provide information on the complex nature of the EU and to analyse the defects of the EU. Secondly, on the basis of this analysis, we have presented proposals for a reshaped EU. Analysis and proposals are rather difficult to accomplish because of the complex nature of the EU and the vast literature on various aspects of the EU.

Chapter I is concerned with the history of the EU. On one hand, the chapter is descriptive. On the other hand, history can reveal hidden mistakes and misconceptions which might play a role until today. Three examples shall be provided. First, the High Authority, later called the European Commission, was created as a supranational institution against much resistance within the United Kingdom, France, Germany, and the Benelux countries. Jean Monnet and associates were successful with their policy of dirigisme. Today, the Commission has developed into a highly professional administrative institution with great power. But some reasons for the re-

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7 Similar observations have been reported by Karen Alter, Max Haller, and Michael Hartmann (see chapters IV and VI).

sistance against the supranational conception of the European Commission still appear to be justified. Secondly, in the early 1960s, the ECJ decided on its own initiative on the legal order of the EU and on the supremacy of Union law over national law. There are plausible reasons that these rulings were not justified as mentioned above. Thirdly, the euro was created on doubtful assumptions.

There are a variety of issues which play an important role in the EU. Chapter II is concerned with these issues. Thus, remarks are made on constitutive treaties, so-called *Verfasstheit* of the EU,<sup>8</sup> (limited) supranationality, sovereignty, legitimacy, accountability, purposes and goals of the EU, and several theories on the nature of the EU. These remarks help to understand what makes the EU unique as polity and as home of its citizens.

Reshaping the EU cannot successfully be carried out unless the complex structure and functioning of the EU are understood. Therefore, chapter III addresses this point. The chapter is mainly descriptive with a few critical remarks. The description alone means a challenge for the reader because of the complexity of its matters. The main critique on the structure and functioning of the EU is reserved to later chapters.

Chapter IV deals with the controversial role of the ECJ. The ECJ has had a considerable influence on the development of the EU. The chapter mainly addresses four issues: parts of the jurisprudence of the ECJ, a debate on the jurisprudence of the ECJ, a discussion of the political question doctrine, and recommendations. The issues of the legal order and the supremacy of Union law over national law are of particular importance. The supportive and critical opinions about the jurisprudence are discussed in some detail. The chapter concludes that the ECJ has unduly extended its mandate. This conclusion is similar to the one of Vauchez although he used different arguments (see Vauchez 2016: 59-64). The consequence of these conclusions is that the ECJ must be controlled as outlined above. Another consequence from the debate in chapter IV is the necessity to modify the law-making process of the EU.

The introduction of the euro has had a profound influence on the EU, especially on the countries whose currency is the euro. Chapter V tries to explain the complex reasons for the problems of the Eurozone and presents the possibilities for handling these problems. Reshaping and future fate of the Eurozone are discussed. Suggestions are made for the solu-

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8 Since the EU does not really have a constitution, the term *Verfasstheit* is preferred.

tion of the problems of the Eurozone. The fate of the Eurozone will at least partly determine the fate of the entire EU.

Chapter VI specifies the defects of the EU. The historical, political, economic, cultural, linguistic, and geographical diversity of the EU member states represents a great challenge to the EU. In addition, small and large member states have somewhat different interests. Moreover, there are defects in regard to democracy, popular sovereignty, separation of powers, and parliamentary representation within the EU. There are also defects of the ECJ (see chapter IV) and of the ECB System. This book tries to correct at least some of these defects (see chapter X).

Some of the most frequently forwarded theses concerning the necessity for a united Europe has been the assertion that the European nation state is old-fashioned in the age of globalization and that the European nation state has waged too many wars and tended to nationalism as mentioned above. Chapter VII deals with a comparison between the nation state and the EU to clarify these assertions. On one hand, these assertions are to a certain degree true. On the other hand, compared to the EU, the well-designed nation state has advantages in regard to all important principles of the Western civilization. These considerations underscore the importance of the European nation state for the EU.

The EU is envisaged as a mixture of confederation and federal state. Chapter VIII presents a short history of federations. The history of the federations and the shortcomings of the present status of the EU reveal that the future of the EU will depend on the question whether the EU will be open for reform. The United States of Europe will not and should not be the aim of the future EU. Rather, sovereign rights should be granted according to the principle of conferral. Moreover, the ECJ ought to respect the EU Treaties and should not be the motor of integration. The European nation state remains the source of identity, solidarity, and democracy. Various models of the future EU are discussed.

So far the European people have only had, via their national parliaments and governments, an indirect chance to participate in the creation of the EU Treaties. The treaty-making process has mainly been a project of elites. This lack of participation of the people may be one reason for the present disappointment to the EU. To be sure, the EU Treaties of the Lisbon-Treaty-type are derived from the EU member states. The governments of the EU member states will negotiate the future EU Treaties. Chapter IX pleads for the participation of the national parliaments and special conventions in the negotiations on the making of the future EU Treaties. The na-

tional parliaments thereby obtain the possibility to be more actively involved in the treaty-making instead of just ratifying the future EU Treaties. Special conventions elected by the people could also participate in the negotiations of the future EU Treaties.

The first section of chapter X discusses the previous suggestions for a future EU. Based on these suggestions and several own ideas, proposals are presented for a future EU. The proposals take into consideration the principles of limited supranationality and of a balanced view of the nation state. It is pointed out that the future EU mainly needs to observe four purposes because the EU is capable to fulfil these purposes better than its individual member states. Then the structure and functioning of the future EU are outlined. The future treaty-making and law-making processes are presented in some detail. Various policies of the future EU, the Brexit and its implications, and the future immigration policy are also discussed.

In this book, we try to show that a substantial improvement of the condition of the EU is possible. A consequent reshaping of the EU is the prerequisite for that.

## I. History of the European Union

*Klaus Weber*

History might contribute to uncover what went wrong with the development of the European Union (EU). This point is particularly important since one of the main aims of this book is to elucidate eventual defects concerning the construction of the EU and to present remedies to overcome the defects. If the EU is really poorly constituted, then a profound diagnosis ought to be made of all the misconstructions. A presentation of the history of the EU seems therefore necessary because misconceptions have not arisen over night.

On 18 April 1951, the EU was founded as European Community with the Treaty on the European Coal and Steel Community (ECSC).<sup>9</sup> Yet, the idea about a united Europe had been discussed for many years prior to the foundation of the EU. In this chapter, the focus lies not so much on ideas, but on facts. Brunn and Dinan pointed out that the idealistic historiography was replaced by a more realistic historiography in recent years (see Brunn 2002: 112-17; Dinan 2014 c: 345-375).

After the end of World War II, a new world constellation had been formed. The USA and the Soviet Union had now been the dominant powers. The influence of Europe had lessened. Great Britain experienced a decreasing hold on its commonwealth. France had suffered a lot during World War II and had been faced with the diminishing importance of its former colonies. Germany was devastated and morally at the bottom. Spain had still been under the influence of its fascistic leader, Franco. Some of the smaller European countries such as Switzerland and Sweden were lucky enough to have not participated in the war. Other smaller countries had suffered more or less under Nazi Germany and the war.

The dominance of the two great powers had consequences. The Soviet Union under its shrewd and brutal leader Stalin had expanded its influence to the West. The communist bloc now included the Middle-Eastern and Eastern European countries and East Germany. The Western European

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9 In this book, the designation European Union is usually used although the European Community was renamed to European Union with the Maastricht Treaty but in November 1993.

countries sought protection by the USA. West Germany was divided between the American, British, and French zones. Berlin was divided in four zones. Austria was neutral. The communists led by Stalin tried to undermine the economically desolate Western European countries hoping that they would become part of the Soviet realm (see Brunn 2002: 41-50). The tensions between East and West steadily increased. The so-called Cold War began. The air-bridge for West Berlin in 1948/ 1949 was an expression of these tensions. So was the Korean War of 1950.

### *1. Origins of the European Community*

There were four important origins of the EU: first, ideas on a united Europe, often in form of idealistic ideas; secondly, interests of the nation states; thirdly, the influence of the USA; and fourthly, the Cold War. Not infrequently, these origins were intermingled.

#### **1.1 Ideas on a United Europe**

The idea about a united Europe has been around in Europe for centuries. The empire of Charlemagne has covered big areas of continental Europe. However, it should be noted that the nation state did not yet exist at the times of Charlemagne. This was different when Richard Hooker, Duc de Sully, William Penn, Baron de Leibniz, Abbe'de Saint Pierre, and Henri de Saint-Simon came up with their ideas (see Dinan 2014c: 349). Between 1925 and 1934, almost 600 books or press articles addressed the question of a united Europe. Of particular importance was the so-called "Paneuropa-Union" which had been founded by the Austrian Graf Richard Coudenhove-Kalergi (see Brunn 2009: 19-32; Stirk 2014: 20).

There was a strong longing for peace and prosperity throughout the free non-communistic European countries after World War II. It was in this setting that different endeavours came to the fore for a united Europe. A starting point was the famous speech of Winston Churchill in Zurich in September 1946. Churchill pointed out that "we must build a kind of United States of Europe" and he pleaded for a partnership between France and Germany. He also propagated the re-creation of the "European family in a regional structure ... stating that France and Germany must take the lead together" (Dinan 2014b: 308). However, Churchill "was far from being a

Euro-federalist himself” and “had no interest in supranationalism” as could be seen some times later (Dinan 2014 b: 309).

The speech of Churchill was but one important spark about a united Europe. In the second part of the 1940 s, an intense debate arose about the future of Europe. In September 1946, a couple of enthusiasts met in Switzerland discharging the so-called Hertenstein programme which envisaged a federal European union. Months later, these European federalists founded the Union of European Federalists (UEF). They propagated a European federal state and hoped that the masses in the European free countries would support them. However, the support of the people was weak and the UEF had problems with its leadership. Moreover, the European federalists did not realise that the politicians did not want a European federal state (see Brunn 2002: 52-53).

Another interesting association was the Union of European Parliamentarians (EPU) founded by Graf Coudenhove-Kalergi in 1947. He asked parliamentarians of all free democratic Western European countries on their opinion concerning a European federation. Forty-three % of them agreed (see Brunn 2002: 51-57). More than 700 participants from sixteen European countries gathered in The Hague in May 1948 to discuss the future of Europe. The aim of many of these participants was the unity of Europe. Brunn pointed out that Duncan Sandys, the son-in-law of Winston Churchill, controlled the organisation of this congress. Among the participants were many influential personalities out of the realm of politics, economy, and culture. The congress installed an international organisation, the Council of Europe, and a European assembly of parliamentarians. This assembly was thought to evaluate questions of an economic and currency union, of decision competences, and of a federal Europe. But it could not be worked out at this conference how the united Europe should be constituted. The participants agreed to establish an intergovernmental organization, the Council of Europe. The latter assembled in Strasbourg. The Council of Europe was a forum to exchange ideas, but it was not able to develop a concept agreeable to all participants. The British Foreign Minister Ernest Bevin was alarmed by these endeavours. Great Britain insisted on a mere loose cooperation among the sovereign European states (see Brunn 2002: 58-62; Dinan 2014 c: 348).

An interesting proposal had been made by David Mitrany in 1943 (and repeated in 1966). Mitrany wanted to ensure peace by avoiding nationalism among the Europeans. His idea was to create “a spreading web of international activities and agencies” (Mitrany cited in Bache et al. 2011: 5).

This meant the creation of “separate international functional agencies, each having authority over specific one area of human life”. Mitrany declined a world federation and a regional federation. A regional federation was objected to because it “would simply reproduce national rivalries on a larger scale” (both citations in Bache et al. 2011: 5). In other words, Mitrany intended to avoid the detrimental effects of nationalism by allocating more and more specific competences from the nation state to special agencies. Bache et al. (2011: 6) stated that Mitrany “aimed explicitly to depoliticize the process of the transfer of power away from national governments ...”. This approach cannot be supported because the agencies envisaged by Mitrany are not democratically legitimized.

In 1948, the Italian Altiero Spinelli came up with the idea of a constitutional convention drafting a constitution for the United States of Europe (see Bache et al. 2011: 6; Dinan 2014 c: 348; Stirk 2014: 30). But it was not the right time for such a constitution in the late 1940 s.<sup>10</sup> Jean Monnet, Robert Schuman, and Konrad Adenauer also had idealistic intensions (see Milward 2000: 318-344). Another federalist hero was the Belgian Foreign Minister Paul-Henri Spaak. He successfully engaged in the Messina meeting in June 1955. This meeting led to the intergovernmental conference in Brussels in 1956/ 1957 and finally to the establishment of both the European Economic Community (EEC) and Euratom. Law professor Walter Hallstein was also an ardent federalist. In 1950, he was nominated by Adenauer as German delegate for European questions (see Adenauer 1965: 337). Hallstein was a proponent of the United States of Europe. In his mind, the ECSC Treaty was only the first step in the development towards a political union of Europe (see Hallstein 1973: 395-404). Hallstein discussed in some detail how the European Community had to be constituted in the future. He left no doubt that he favoured a European federal state (see Hallstein 1973: 364-392).

Alan Milward referred to the “European Saints” mainly meaning Jean Monnet (“the arch-saint”), Robert Schuman, Paul-Henri Spaak, and to a somewhat lesser extent Konrad Adenauer and Alcide de Gasperi (see Milward 2000: 318-344). Dominik Geppert spoke of the “several generations of European idealists” who fostered the myth of Europe. Other historians agreed to this opinion (Geppert 2013: 21; see Dinan 2014 c: 364). The

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10 Spinelli and Rossi had proposed a similar idea already in their *Manifesto Ventotene* in 1941.



statements of Milward might have represented an overstatement (see Dinan 2014 c: 363). Still, there were many Europeans who more or less worked for a united Europe after World War II.

The Council of Europe was founded on 5 May 1949. The Council of Europe consisted of a Committee of Ministers and an assembly of members elected by the national parliaments of the member states. The main task of the Council of Europe was the promotion of the ideals and tenets of the common European heritage. The federalists in the Council of Europe fostered the idea of a united Europe. However, the Britons and Scandinavians blocked the establishment of a supranational authority with government-like competences. Heated debates took place. Finally, the Council of Europe initiated the European Convention for the Protection of Human Rights on 4 November 1950. According to Brunn, the Council of Europe has been rather successful since its foundation to strengthen the rule of law in Europe (see Brunn 2002: 58-68; Dinan 2014 c: 348).

## 1.2 National Interests

Many politicians and experts wanted a union of independent European nation states and did not want a supranational organization. Some of them founded the United Europe Movement (UEM). The foundation congress was held in London in May 1947 with 5,000 participants. The UEM was an association of the high society. Seventy of the seventy-five members of its council were listed in *Who is who*. The UEM had no interest to mobilise the masses.

The contribution of Winston Churchill to the idea of a united Europe has already been mentioned. Although Churchill propagated the United States of Europe in his Zurich speech in 1946, he did by no means intend to build a united Europe with supranational features. His son-in-law Duncan Sandys acted in the sense of Churchill when he organised the Congress of Europe. Moreover, the British Foreign Minister Ernest Bevin also was strongly opposed to the idea of supranationality in Europe. Together with the Scandinavian countries, Great Britain successfully reduced the tendency within the Council of Europe to go on to the United States of Europe.

Great Britain was one of the three Western Allies to control a zone within the occupied West Germany after World War II. Contrary to its attitude after World War I, Great Britain this time was not so much deter-

mined to contain Germany as France was. Rather, Great Britain wanted a continuation of its commonwealth, a close and special relationship with the USA, and connections with continental Europe. Great Britain was not willing to lose its sovereignty when asked to participate in the creation of the European Community. Moreover, there was considerable scepticism within Great Britain about the success of the ECSC and the Rome Treaty.

Germany found itself severely devastated at the end of World War II. Germany was divided into four parts by the Allies. In early 1947, the American and the British zones amalgamated to the Bizonia. The three Western zones were united in 1949 to form the Federal Republic of Germany. The American politics changed from destructing Germany to building up a new industry in Germany as core of a recovering Europe (see Gillingham 2014: 67).

Three particularities regarding Germany had an influence on the shaping of Europe. First, Germany was situated on the border of the east bloc. This led to political consequences such as the need for rearmament of West Germany due to the threat from the Soviet Union and its Allies. Secondly, the three Western allies allowed the West Germans to create a constitution in June 1948. The proposal for the new Constitution was already submitted in August 1948. The Constitution (*Grundgesetz/ Basic Law*) establishing a republic based on democracy, the rule of law, and human rights was ratified in May 1949. The preamble of the Basic Law stated that Germany would like to be a member with equal rights in a united Europe. Thirdly, the so-called economic miracle started with a currency reform in June 1948 which brought about a market economy. Ludwig Erhard was the architect of this reform. Erhard was an ardent opponent of any planned economy (see Erhard [1964] 2009: 88-94). The rapid economic recovery of West Germany had political consequences for Europe. France became even more afraid of Germany than before. The USA was glad about the bulwark against the communistic attempts to profit from an eventual economic destruction of Europe. The Soviet Union realised that it was not so easy to spread its influence into Western Europe.

France had suffered a lot during World War II. Under the influence of Jean Monnet, the provisional French government in Algiers in 1943 envisaged a new order in Europe under the leadership of France. One of the main goals of this order was the containment of Germany. France intended to keep hold on the Ruhr with its resources, especially the coal and steel production (see Bache et al. 2011: 7; Gillingham 2014: 69-71). After the end of World War II, Jean Monnet and coworkers designed a plan for the

modernisation of France. Dinan characterised Monnet as a “backroom boy”, an “elitist and a pragmatist” (Dinan 2014 c: 350-351). His plan for the modernisation of France at the expense of Germany was expression of a nationalistic attitude (see Dinan 2014 c: 351). Monnet had many connections with important personalities in Europe and the USA. Due to his large network, he exerted a great influence on European politics after World War II. The goal of France was the containment of Germany and the Soviet Union. But the USA and Great Britain wanted to strengthen continental Europe against the Soviet Union. The latter two Western countries therefore opposed a policy to contain Germany.

Due to his good connections with American politicians, Monnet realised that France had to change its attitude towards Germany. Monnet convinced the French foreign minister Robert Schuman that France had to go into another direction than it had gone in the first years after World War II. Schuman was quite receptive for the idea of a better relationship with Germany. He had grown up in Alsace-Lorraine where he went to a German school and later he studied jurisprudence in Bonn, Germany. Schuman was a supporter of the French-German reconciliation. Thus, Schuman agreed to the suggestions which Monnet and his co-workers had worked out. The so-called Schuman Plan (devised by Monnet and co-workers) had been announced in May 1950 (see Monnet 1978: 375-386). The plan propagated the “first concrete basis for a European federation”. Goals of the Schuman Plan were peace between Germany and France, a foundation of economic unity, and a High Authority for the French and German coal and steel industry. The plan was immediately agreed on by the German Chancellor Konrad Adenauer who together with two associates had already propagated a French-German union in 1925 (see Adenauer 1965: 298 and 327-335; Dinan 2014 c: 362).

In Italy, the Christian Democratic Party adapted, similarly to the German Christian Democratic Party, to democratic politics. This party became a “... state-party, in almost permanent power providing ...” influencing “appointments and general favours down to the most local level” (Milward 2000: 28). The Italian government had proposed a customs union with France in the late 1940s, but France was uninterested in a customs union with Italy alone (see Milward 2000: 175). Instead, France sought more allies against a future Germany. In 1950, the Italians came out with the Pella Plan to form a European free trade area (see Brusse 2014: 103). Finally, Italy agreed to the ECSC and the EEC (see Brusse 2014: 97-110; Parsons 2014: 116-133).

The Benelux countries established the Benelux customs union in 1948. The Dutch declined a west European power bloc dominated by France. Instead, the Dutch preferred to rely on the USA and Britain to protect the Netherlands against a Soviet Union attack (see Milward 2000: 173-179). Moreover, the Netherlands did not want to exclude Germany, its main trading partner (see Brusse 2014: 98). Almost simultaneously with the issuance of the Schuman Plan, the Dutch proposed the so-called Stikker Plan which suggested “removing quotas, tariffs and state trade in Europe on a sector-by-sector basis” (Brusse 2014: 103). Belgium with its coal industry was deeply involved in the negotiations about the ECSC. Interestingly, the Belgian high official François Vinck spoke of “madness” meaning the ideological attitude of Jean Monnet in the negotiations on the ECSC. Monnet suggested that the Belgians should reduce their coal production by 5%, a typical plan economy proposal. In this context, the Dutch chief negotiator Dirk Spierenburg described the High Authority proposed by Monnet as “dictatorial” (see Milward 2000: 64-65). Nevertheless, the Dutch and Belgians agreed to the ECSC and later to the EEC Treaty (see Brusse 2014: 97-110, Parsons 2014: 116-133).

### 1.3 Influence of the USA

It only took a few years after the end of World War II until the USA realised the threat by the Soviet Union. President Harry Truman declared in March 1947 that the USA would defend democracy where ever it was endangered by the communist bloc. The Truman doctrine did not only apply to Greece and Turkey, but also to Western Europe. In June 1947, US Secretary of State George Marshall announced at Harvard University that the USA would lend support to Europe. The Marshall Plan intended to provide economic help, avoid the resurgence of nationalism, especially in Germany, and stop the communistic expansion into Western Europe (see Messenger 2014: 42). The Marshall Plan initiative pleaded for coordination among the free European states and for a continental marketplace based on security and economic liberty. Due to this initiative, the Organization for European Economic Cooperation (OEEC) was founded in July 1947. However, the European countries continued to think individually. Moreover, they disagreed about the role of Germany. The Americans were disappointed of the Europeans. Yet, the USA continued to support Europe.

The Berlin blockage between July 1948 and March 1949 demonstrated the resoluteness of the USA in this regard.

The Marshall Plan had several, sometimes diverging effects as historians have worked out recently. First, the recovery of Europe since 1945 was already under way when the Marshall Plan was set in motion in spring 1948 (see Brunn 2002: 46; Dinan 2014 c: 361). Secondly, the Marshall Plan served the USA as well as Europe. The dollars which Europe received could be spent to buy American goods. The USA suffered from oversupply after World War II and was glad to find a market. Thirdly, for the Europeans, the Marshall Plan meant a help of great psychological importance. Optimism spread out among the European countries. Fourthly, the critique of Milward that the American help did not stimulate the European economy seemed to be an overstatement (see Milward 2000: 121-125; Brunn 2002: 44-48; Dinan 2014 c: 361; Messenger 2014: 42-45).

The USA had strongly been committed to the unification of Europe from the late 1940s on. The main reason for this policy was that the USA wanted to contain the Soviet Union in its endeavour to expand to Western Europe. This policy was vital to the USA because the annexation of Western Europe would have meant an overweight of the Soviet Union over the USA in terms of power.

#### 1.4 Cold War

Some basic considerations of the beginning of the Cold War have been outlined in the introduction of this chapter. The animosity between the West and the East remained until the middle of the 1980s (see Anderson 2014: 255-262).

### *2. Foundation of the European Community*

Several factors influenced the foundation of the EU. In recent years, it has increasingly become clear that the foundation of the EU was mainly due to the activity of the European nation states and due to the influence of the USA trying to protect Europe against the aggression of the Soviet Union. Idealistic ideas did only play a minor role. Especially the work of Alan Milward has emphasized the importance of the nation state (see Milward 2000).

Prior to the launching of the Schuman Plan in May 1950, the German Chancellor Konrad Adenauer proposed a European Union in March 1950. In an interview with the American journalist Kingsbury-Smith, Adenauer suggested a German-French association which should be open for other European countries like Great Britain, Italy, and the Benelux countries. Adenauer was much afraid of an invasion by the Soviet Union into Western Europe. He pointed out that Europe must be strong enough to leave no doubt to the Soviet leaders that an invasion into Western Europe was too risky for them. Adenauer proposed a customs union, a common “economic parliament” elected from the legislatures, and a common government organ. The latter two were thought to be responsible for the economy and the customs. Later, other competences could be added. He referred to the union which the Benelux countries had just established (see Adenauer 1965: 311-316). Thus, it was no small wonder that Adenauer accepted the Schuman Plan as soon as he got notice of it (see Adenauer 1965: 328). Adenauer did not specify whether or not he had a supranational union in mind.

Craig Parsons has recently come to a conclusion which is different from the prevalent main view on the foundation of the EU. Parsons has convincingly shown that it was only France among the six founding member states which originally was in favour of the supranational model of the EU. In addition, within France it was only the French community advocates who promoted this model whereas the French traditionalists and confederalists declined such a model (see Parsons 2014: 115-135). The prevalent view on the history of the foundation of the EU included “clear structural imperatives or institutional constraints” with a spill-over effect as outlined by Andrew Moravcsik, Alan Milward, and Ernst Haas. Rather, it was “aggressive, unrepresentative leadership” of French “ideological champions of supranationality” which created the community Europe (see Parsons 2014: 117 and 133).

The contribution of Parsons seems to be of some importance since it emphasizes that the community Europe was by no means agreed on by most Europeans during the 1950s. Within Europe, elites determined the debate. As Parsons indicated the elites did not act as representatives of the people as this was the case in the USA during the time of the creation of the American republic.<sup>11</sup> Rather, the scattered European elites mainly dis-

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11 See a more detailed debate on this issue in chapter IX.

cussed the traditionalist, the confederal, and the community model. The debate in France was decisive. The confederalists supported a loose coal and steel cooperation under the leadership of France and Great Britain, of the OEEC, or of the Council of Europe. They declined supranationality and the participation of Germany. The traditionalists were also sceptical of the participation of Germany, but favoured the Occupation coal and steel arrangement and the International Authority of the Ruhr. The British did not want to give up sovereignty rights to a supranational authority, but rather preferred the OEEC and the Council of Europe. The Benelux countries as well as many German industrialists and industrial minister Erhard were also sceptical of supranationality (see Erhard [1964] 2009: 322-332; Parsons 2014: 116-122).

After rather long negotiations, the six countries France, Germany, Italy, the Netherlands, Belgium, and Luxembourg agreed on the foundation of the ECSC. Great Britain had been invited but declined to participate. For the negotiations, the community advocates under the leadership of Monnet presented a *Document de Travail*. According to his understanding of dirigisme, Monnet envisaged a powerful High Authority which acted by majority vote and ought to be led by a strong president. Clearly, Monnet wanted to transfer sovereignty from the national states to the High Authority. Of course, he himself intended to be the first President of the High Authority what he was until his retreat in 1954. The Dutch supported by Germany proposed a Council of Ministers with veto capacity, a European court, and a supervisory committee. According to the French, the High Authority ought to have substantial power to control various economic regulations such as price setting, manufacturing programs, and long-term production planning. The other countries did not want such a plan economy. Erhard suggested to interrupt the negotiations. Finally, the American Commissioner McCloy almost dictated the coal and steel settlement (see Gillingham 2014: 60-88).

## 2.1 European Coal and Steel Community Treaty

The Treaty of Paris establishing the ECSC was signed by the six founding European countries in April 1951. The Treaty was much more than a regulation for coal and steel. Monnet had made it clear in the Schuman Plan that the goal was the European federation. Accordingly, the preamble of the ECSC stated that the economic community ought to be the “first cor-

nerstone for a further and deepened community among the peoples". The German delegate Walter Hallstein who became later President of the European Commission left no doubt in his memoirs that a political union and more specifically the United States of Europe was the final goal (see Hallstein 1973: 395-404). However, as Parsons (2014: 120) has elucidated, this was only the opinion of a minority of the framers of the ECSC Treaty. Yet, nothing in this direction is mentioned in the ECSC Treaty.

The ECSC was much more than a treaty about economic questions. The preamble of this treaty stated that peace and prosperity are goals of the founding states. Article 1 of the ECSC Treaty addressed a common market, common aims, and common organs as the ends of the newly founded European Community. The most important feature of this Treaty was the High Authority which was later called the European Commission. The High Authority was to secure the ends of the Treaty. In order to fulfil its tasks, the High Authority could release decisions, recommendations, and opinions. Decisions were binding to the member states. Recommendations were binding regarding certain aims. Opinions were not binding.

Thus, the ECSC Treaty implied the impairment of sovereignty of the participating member states. This impairment was the reason why Great Britain did not become a member of the ECSC Treaty because it did not want to give up its sovereignty in 1951.<sup>12</sup> The power of the High Authority was checked to a certain degree by the Council of Ministers, the Community Assembly, later called the European Parliament, and the Court of Justice (see Gillingham 2014: 78-80). It became apparent that the framers of the ECSC Treaty had agreed to a political entity with quasi-constitutional elements as will be outlined in chapter II. To be sure, the ECSC Treaty did not create a federal state. But this treaty embraced a considerable amount of supranationality. The ECSC Treaty contained many economic, social, financial, and trade provisions. For instance, production quotas could be introduced, prices fixed, and discriminatory practices criticised.

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12 Later, Great Britain changed its mind entering the EU in 1973.



## 2.2 European Defence Community

The Berlin blockage between July 1948 and March 1949 meant an increased pressure of the Soviet Union on Europe and the USA. In June 1950, the Korean War broke out indicating a world-wide tendency of expansion of the communists. By 1949, the Americans were increasingly unwilling to bear the costs and efforts against the expansive policy of the Soviet bloc. Thus, the idea of the rearmament of West Germany was promoted in the US Congress and by American officials. France became extremely afraid of a German rearmament. Monnet and Schuman suggested to the French Premier René Pleven a common Western European army of which the Germans would be a part. In analogy to the Schuman Plan, the European defence policy was thought to be associated with the establishment of a European Parliament and a European defence ministry. The relationship to the NATO remained unsettled. However, the French suggestions met with criticism from the Americans and Europeans.

In West Germany, the idea of rearmament was quite unpopular. Yet, Adenauer realised that something had to be done. He intended to include the new German army entirely into the NATO to counteract fears of an uncontrolled German militarism. Now, the French submitted a revised Pleven Plan. An intense debate followed between the allies and Germany about the best way to solve the problems. The fears of France and the desire of Germany to obtain full sovereignty had to be reconciled. Finally, even the Americans agreed to the creation of a European Defence Community (EDC) in May 1952. French nationalists criticised the EDF. Schuman lost more and more support in France. In August 1954, the French Parliament voted against the EDF so that the EDF had to be given up. Despite this failure, France was still the leader in Europe, especially since Great Britain consistently refused to join the European Community. The West German army was integrated into the NATO (see Messenger 2014: 45-58; Parsons 2014: 122-125).

## 2.3 Evolution of the European Economic Community Treaty

By 1954, it had become apparent that two French ideas had failed. First, the EDF was rejected by the French Parliament although the idea of its creation stemmed from France itself. Secondly, the spill-over from the economic supranationality of the ECSC to the European Political Commu-

nity foreseen by Monnet and his admirers had not occurred (see Gillingham 2014: 80-83). The supranational idea seemed to have lost ground. However, the Netherlands forwarded the so-called Beyen Plan for a supranational customs union in 1953 (see Brusse 2014: 106-107). The other ECSC member states were sceptical. Italy wanted full labour mobility beyond the liberalisation of goods which was secured in the ECSC Treaty. Germany and Belgium desired full capital mobility (see Brusse 2014: 107). In other words, there was a tendency towards further liberalisation in the six ECSC member states. But there was also considerable resistance to more liberalisation.

Most surprisingly, much resistance came from France. The French Premier Pierre Mendès France, a confederalist, quickly established, together with Great Britain, the Western European Union (WEU) after the failure of the EDC. The WEU was an intergovernmental and not a supranational organisation. The traditionalists accepted the WEU only quite reluctantly. The traditionalist De Gaulle preferred a global role for France instead of a narrow arrangement among some European states. Monnet tried to overcome the French scepticism against the supranationality by the idea of an atomic energy programme, Euratom. This programme was conceived to save money through the participation of several states and by the inclusion of Germany to suppress French fears of a separate German atomic development (see Brusse 2014: 108; Messenger 2014: 54; Parsons 2014: 125-133).

In June 1955, the Foreign Ministers and other leaders of the six ECSC member states met in Messina, Italy. Different views collided. Great Britain and Germany wanted to use the WEU as a means for political and military cooperation. The British, German, and some Benelux leaders preferred the OEEC as forum for economic questions, particularly regarding liberalisation issues. Within the French delegates, the traditionalists and the confederalists seemed to have more influence than the community advocates. The idea of Euratom and other community projects met strong objections (see Gillingham 2014: 82-84; Parsons 2014: 126).

However, the community advocates obtained opportunities to proceed with their ideas. The French Foreign Minister Antoine Pinay suggested the Belgian Foreign Minister Paul Henri Spaak to chair the investigation of all suggestions made in the Messina Conference. Pinay knew that Spaak was an ardent community advocate. Moreover, another ardent community advocate, Felix Gillard, was chosen by Pinay to represent France for this investigation. Furthermore, the final report of the investigation was drafted

by the Spaak aides and not by more neutral bureaucrats. The ensuing Spaak Plan favoured the European Economic Community (EEC) and even Euratom in accordance with the conception of the ECSC (see Gillingham 2014: 80-87; Parsons 2014: 125-133).

The cornerstone of the EEC was the common market. All quotas and subsidies ought to be eliminated rather soon. The liberalisation was automated and brought under the supervision of the supranational Commission. The response of the French bureaucrats and business to the Spaak report was rather hostile. However, there were other tendencies within France which were in favour of the community project. In January 1956, President René Coty nominated Guy Mollet to become Premier Minister. Mollet appointed the community advocate Maurice Faure and other officials for European policies. The aim was to support the EEC on the basis of the Spaak Plan against the intensions of the French traditionalists and confederalists. The traditionalists did not want an extension of the existing regulations. The confederalists favoured an intergovernmental approach (see Brusse 2014: 106-112; Parsons 2014: 125-133).

Mollet approved the Spaak report in May 1956. The French farmers opposed the idea of an EEC because they were interested in the export of their products and were afraid of liberalisation. Nevertheless, the support of the farmers could be obtained by promising them favourable contracts within the EEC. The French side proceeded now with the idea of an EEC, but declined automatic trade liberalisation against the strict opposition of Germany. Erhard countered with the proposal of Great Britain supporting a free trade area within the OEEC. Mollet met with the German Chancellor Adenauer in November 1956. They reached a compromise by agreeing to a phased liberalisation and long-term agricultural contracts. The Euratom was reduced to a research agency. Finally, the EEC and the Euratom were adopted in Rome in March 1957. The EEC (Rome) Treaty was ratified in France against considerable resistance in July 1957 (see Parsons 2014: 126-131).

## 2.4 European Economic Community Treaty

In the preamble of the EEC Treaty<sup>13</sup>, the six founding member states<sup>14</sup> expressed their willingness to create an “ever closer union of the European peoples”, to promote “peace, freedom, prosperity, economic and social progress, perpetual economic expansion, balanced trade, and honest competition”. For these purposes and goals, they intended to unite their economies and to establish a European Community (EC).

The tasks of the EC were “the creation of a common market and an economic and a currency union, abolition of customs, common trade, establishment of an EC wide market for goods, free movement of people, services, and capital, common agriculture and fishery, common traffic policies, competition, adaptation of law of inner-state enactments, solidarity among the member states” and so on (Articles 2 and 3 of the EEC Treaty). Besides the organs established in the ECSC Treaty, the EEC Treaty created a system of central banks including a European Central Bank (ECB) and a European Investment Bank (Article 4 a and 4 b of the EEC Treaty). Article 8 introduced a union citizenship and that the union citizens have rights and duties.<sup>15</sup> Article 8 b granted the communal suffrage to each union citizen.

Article 9 created a customs union. Other articles contained regulations about a common agricultural market, free movement of workers, free services, free capital transfers, common trade, and competition. Article 102 a established the tenet of a free market economy with free competition. Article 104 c stated that the member states should avoid budget deficits and that the European Commission should watch the budgets of the member states. Article 105 induced the European System of Central Banks to guarantee price stability. Article 107 declared the ECB to be independent. Articles 117 sought to foster the adaptation of the social conditions of the member states. Article 128 claimed to uphold the common European cultural heritage.

From July 1979 on, Article 138 regulated how many representatives the fifteen member states of the EC could send to the European Parliament. It

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13 First version of 25 March 1957, amended several times until 1 January 1995.

14 Belgium, France, Germany, Italy, Luxembourg, and The Netherlands; by 1993, Denmark, Great Britain, Greece, Ireland, Portugal, and Spain had also become member states.

15 Duties were not further specified in the EEC (Rome) Treaty.

could be seen that the small member states had the right to delegate relatively more representatives than the large member states. Article 145 provided the Council of Ministers the right for decisions, for the coordination of the economic policy of the member states, and for the delegation of its authority to the Commission. The Council of Ministers consisted of one member of each member state (Article 146).<sup>16</sup> Article 148 stated that the Council decided with the majority of its members. According to Article 155, the European Commission had to care about the application of the Treaty, to issue recommendations, to make decisions, and to exercise authority of provisions issued by the Council.

Article 164 granted the European Court of Justice (ECJ) the right for “interpretation and application of the Treaty”. Article 177 stated that the ECJ decided via preliminary ruling about the interpretation of the Treaty as well as about the validity and interpretation of the activities of the organs of the EC, and about the interpretation of the statutes of the facilities which the Council had created. According to Article 189, the various organs of the EC could release regulations, directives, and decisions. “Regulations were directly binding in the member states. Directives were binding for member states, but each member state could choose the means of the directive. Decisions were binding for all whom they addressed.” A variety of other provisions were regulated in the EEC Treaty.

### *3. Development after the European Economic Community Treaty*

The Treaty of Rome had a lasting effect on the EC member states. Sovereignty rights had been transferred to the EC. However, the EC was not yet a federal state. The influence of the member states was still considerable. A striking example of this power was the role which France played after De Gaulle became president in 1958.

After the adoption of the Rome Treaty in March 1957, Great Britain pursued with the foundation of the European Free Trade Association (EFTA). The Britons thought that the EFTA would be more successful than the EEC. However, the EEC developed better than the EFTA. This fact, the increasing pressure by the Soviet Union, and the decreasing importance of its Commonwealth induced the Britons to apply for membership

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16 This again was a provision in favour of the small member states.

in the EEC in 1962. In the meantime, Charles de Gaulle had become new leader of France. He blocked the membership of Great Britain for personal reasons and to assure the leadership of France in Europe.

### 3.1 European Economic Community and De Gaulle

De Gaulle was a traditionalist and nationalist. One of his main themes was to establish France as the leader at least of continental Europe. But De Gaulle had to deal with the supranational arrangement of the EEC. Although he criticised the EEC to be an “unacceptable surrender to French sovereignty”, he tried to use the EEC in his sense (see Vanke 2014: 143). He preferred an intergovernmental approach and intended to assign a global role to France.

In June 1958, the coalition partners of De Gaulle’s government demanded that he had to accept the EEC despite his reservations to this Treaty. De Gaulle realised that the acceptance would provide him with possibilities to obtain his aims. Maurice Couve de Murville whom he soon elected as Foreign Minister supported this policy. Three motives stimulated De Gaulle. First, the EEC forced France to modernize its industry. Secondly, a small EEC without Great Britain allowed De Gaulle to be the leader in continental Europe. Thirdly, De Gaulle could use the EEC to contain Germany (see Vanke 2014: 144-146).

The common agricultural policy (CAP) envisaged by the EEC induced France to live up its mercantilist ideas. These ideas emphasised exports over imports and, particularly regarding French agriculture, embraced the subsidizing of Community producers and exports to third countries. France required subsidisation for its agricultural products which were more expensive than on a free market. Being aware of the importance of the French farmers, De Gaulle insisted on permanent guarantees of the EEC partners, especially Germany, to take the French agricultural products. Moreover, he declared that there could be no common market for the industry if the EEC partners would not accept his agricultural proposals. The EEC partners had no choice but to accept the extortive French policy (see Vanke 2014: 146-147).

De Gaulle intended to establish the EEC without Great Britain as a third global superpower under the leadership of France. Moreover, De Gaulle tried to undermine both the EEC and the NATO. He wanted a reform of the EEC emphasising the independence and an intergovernmental instead

of a supranational organisation of the EC. The independence ought to extend to the defence area counteracting the NATO. France had developed own atomic weapons, but insisted that Germany did not get the opportunity to obtain any types of bombs. France needed the support of the other five EEC member states. But the latter, especially the Dutch, refused to implement most of the ideas of De Gaulle in 1961. The summit of The Hague finally agreed to an intergovernmental committee, named Fouchet Commission. In October 1961, this commission submitted a draft for a union of states. The Belgians and Dutch opposed the plan. The Netherlands insisted on a participation of Great Britain. The Fouchet Plan was finally rejected in April 1962. De Gaulle suggested now a Franco-German union. Adenauer hesitated with the approval of this plan. The Franco-German agreement was finally signed at the Elysée Palace in January 1963. However, Adenauer faced tremendous opposition in the German Parliament. A German preamble was therefore added to the Franco-German agreement endorsing the EEC and the NATO. This meant that De Gaulle had failed with his plans (see Vanke 2014: 143-151).

One of the main aims of De Gaulle was his attempts to exclude Great Britain from the EEC. He had two main objections against the participation of this country. First, Great Britain did not want to buy French agricultural products with their high prices. Instead, the Britons could buy these products cheaper in their own Commonwealth. Secondly, De Gaulle was suspicious of the tight Anglo-American relationship. Both countries exerted a power which was not in agreement with De Gaulle's own idea of a third power besides the two superpowers USA and Soviet Union. The Britons had realised that the EEC developed more successfully than the EFTA. Now, they pursued the membership in the EEC. In January 1963, De Gaulle, mentioning no less than five reasons, refused to accept the bid of Great Britain to become a member of the EEC. Probably the most plausible reasons for rejecting the British proposal were the desire of De Gaulle to remain the leader in continental Europe and to represent, together with Germany, an alternative to the Anglo-American bloc (see Vanke 2014: 151-153).

In 1965, De Gaulle demanded that Germany had to buy and subsidise French agricultural products. Moreover, France opposed the suggestion of the European Commission that a certain degree of the budgetary authority should be transferred to the European Parliament. This was too much for De Gaulle who declined the supranationality of the EEC and preferred intergovernmental negotiations instead. In addition, the EEC Treaty provid-