CHAPTER 6

European Union\textsuperscript{1} Asylum Law

6.1 Introduction

6.1.1 Brief History of the \textit{EU}

In 1950, Belgium, France, Germany, Italy, Luxembourg and the Netherlands founded the European Coal and Steel Community (ECSC)\textsuperscript{2} in an attempt to unite European countries economically and politically in order to secure lasting peace after the Second World War.

In an attempt to strengthen the economic ties, the Treaty establishing the European Economic Community (TEC, Treaty of Rome) and the Treaty establishing the European Atomic Energy Community (TEAEC) were signed in 1957.\textsuperscript{3} On 1 January 1973, Denmark, Ireland and the United Kingdom joined the EEC. In 1981, Greece became the 10th member and Spain and Portugal followed in 1986. In 1987 the Single European Act (SEA)\textsuperscript{4} was signed. This treaty provided the basis for a vast six-year programme aimed at creating a Single European Market of ‘four freedoms’ of movement of goods, services, people and money.

In 1992, the Member States concluded the Treaty on the European Union (TEU, Treaty of Maastricht).\textsuperscript{5} This treaty established the European Union (EU) that supplemented the Community and consisted of the same Member States. The EU was a new legal structure consisting of three ‘pillars’, the first pillar being the European Community as established by the TEC, the two other – intergovernmental – pillars concerning ‘security and foreign policy’ and ‘justice and home affairs’. The Treaty of Maastricht also added, as a new

\textsuperscript{1} For consistency and readability throughout, the terms European Union (EU) and EU law will be used, also when referring to provisions and judgments dating from the time when the EU was still the EEC or EC. There is much literature on the EU and EU law; very informative are Craig & De Búrca (2008); much information on the EU can also be found on the internet, for example http://europa.eu/abc/history/index_en.htm, where a detailed description of the history of the EU can be found. Also informative is http://www.minbuza.nl/ecep, the site of the EU Expertise Centre of the Dutch Ministry of Foreign Affairs. It contains frequent updates on important developments in the field of the EU and EU law.


feature, a provision on citizenship of the Union and created a monetary union. Austria, Finland and Sweden became Member States in 1995. On 1 May 1999, the Treaty of Amsterdam,\(^6\) signed on 2 October 1997, entered into force. This treaty radically changed the legal nature of EU asylum law (see Section 6.1.4 below on the genesis of EU asylum law.) It moved the area of asylum and immigration from the Union’s third pillar – the intergovernmental co-operation among the Member States in the area of justice and home affairs – to the first pillar, hence to the Treaty on European Community. As a result, EU asylum law was no longer intergovernmental, but instead became Union law. This made the issuing of binding EU legislation on asylum possible, together with judicial control asserted by the Court of Justice of the European Union (CJEU or Court, see Sections 6.1.2, 6.1.4.4). On 1 May 2004, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia joined the EU and Cyprus and Malta also became members. Bulgaria and Romania joined on 1 January 2007.

On 13 December 2007, the 27 EU Member States signed the Treaty of Lisbon.\(^7\) It entered into force on 1 December 2009 and amended the TEU (Treaty of Maastricht, 1992) and the TEC (Treaty of Rome, 1957). The TEC was renamed the Treaty on the Functioning of the European Union (TFEU). The Treaty of Lisbon abolished the pillar structure and, importantly, made the Charter of Fundamental Rights of the EU legally binding, with the same status as the two treaties. In Section 6.1.3 below more will be said on the EU’s Charter of Fundamental Rights.

At the time of completion of this book, Croatia, the Former Yugoslav Republic of Macedonia and Turkey were candidates for future membership of the EU.

6.1.2 **EU Law and Its Supervisory Mechanisms**

Although established by a treaty, an intergovernmental instrument of international law, the EU presents a new legal order which is different and independent from international law.\(^8\) To distinguish EU law from common international law, it has been named ‘supranational’. A basic tenet of this supranational nature is that EU law has precedence over all national law. This is called the

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\(^6\) Treaty of Amsterdam amending the treaty on European Union, the treaties establishing the European Communities and related acts, OJ of the EU C 340, 10 November 1997.


\(^8\) CJEU, *Van Gend en Loos*, 5 February 1963, C-26/62, paras. 1–12.