



**CONSOLIDATED AND ANNOTATED
VERSION OF THE TREATIES**

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Editor's foreword

The Treaty of Lisbon, signed on 13 December 2007 in Belém, the historic quarter of the Portuguese capital, concludes almost twenty years of debate on the institutional structure of the European Union. The Preamble of the Treaty expresses an overall desire “*to complete the process started by the Treaty of Amsterdam and the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action.*”

The European Union has undergone many changes since its creation, notably in terms of its size and competences. Each change to the Union has been added much as a jigsaw piece is inserted into an overall picture, but over time, the picture has become overly complex and perhaps less recognisable to the peoples of Europe it represents.

The Treaty of Lisbon is intended to simplify this picture, by reforming the institutional architecture of the Union and the way in which decisions are taken, including a general ‘tidying-up’ exercise by providing for clearer legal bases where the Union already acts with the Member States.

As a traditional amending treaty, the Treaty of Lisbon reads as a lengthy list of amendments to the current founding Treaties of the EU, namely the Treaty on European Union and the Treaty establishing the European Community (which will be renamed the Treaty on the Functioning of the European Union). In other words, the Treaty of Lisbon amends the EU’s current rulebook – it does not replace it.

The list of amendments, however, are unintelligible if read in isolation, much as pieces of a jigsaw do not reveal the overall picture until they are assembled. The amendments must be introduced into the current founding treaties before the Treaty of Lisbon can be analysed and fully understood.

This consolidated and annotated publication aims to show clearly what the Treaty of Lisbon will do to the current founding treaties of the European Union. It is not intended as an impact analysis or study of the substantive content; it is simply offered as a neutral resource to encourage debate and informed analysis on the amendments introduced by the Treaty of Lisbon.

*Peadar ó Broin
Dublin, March 2008*

Style guide

In order to distinguish between the various amendments introduced by the Treaty of Lisbon, the following colours have been used:

Text highlighted in yellow – represents text introduced by the Treaty of Lisbon that was agreed during the Intergovernmental Conference of 2004 and included in the text of the Treaty establishing a Constitution for Europe.

Text highlighted in blue – represents text introduced by the Treaty of Lisbon that was agreed during the Intergovernmental Conference of 2007.

~~Strikeout text in red~~ – represents text contained in the Treaty on European Union or the Treaty establishing the European Community that is deleted by the Treaty of Lisbon (but the content may be replaced in substance by a provision introduced by the Treaty of Lisbon)

Text that appears in pale grey – represents text that is moved from one part of the founding Treaties to another by the Treaty of Lisbon.

[Comments between square brackets] – represents commentary by the present author that does not feature in the Treaty of Lisbon nor in the founding Treaties.

TREATY ON EUROPEAN UNION

Consolidated version

[Treaty on European Union, signed in Maastricht on 7 February 1992 and entering into force on 1 November 1993; as amended by the Act of Accession of Austria, Finland and Sweden, signed in Corfu on 24 June 1994 and entering into force on 1 January 1995; by the Treaty of Amsterdam, signed on 2 October 1997 and entering into force on 1 May 1999; by the Treaty of Nice, signed on 26 February 2001 and entering into force on 1 February 2003; by the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, signed in Athens on 16 April 2003 and entering into force on 1 May 2004; by the Treaty of Accession of Bulgaria and Romania, signed in Luxembourg on 25 April 2005 and entering into force on 1 January 2007; and by the Treaty of Lisbon, signed on 13 December 2007 and entering into force on _____]

HIS MAJESTY THE KING OF THE BELGIANS, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, **THE PRESIDENT OF IRELAND**, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, ~~THE PRESIDENT OF IRELAND~~, THE PRESIDENT OF THE ITALIAN REPUBLIC, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, [1]

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law, [2]

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty **and of the Treaty on the Functioning of the European Union**, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article ~~17~~ **28 A [42]**, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

¹ The Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, Romania, the Republic of Slovenia, the Republic of Slovakia, the Republic of Finland and the Kingdom of Sweden have since become members of the European Union.

² First recital from the Preamble to the Treaty establishing a Constitution for Europe (hereinafter ‘the Constitution’). The remaining five recitals from the Constitution are not reproduced.

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries:

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I

COMMON PROVISIONS

Article 1
[ex Art. 1 TEU, amended] [³]

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called ‘the Union’ on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

~~The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.~~

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as “the Treaties”). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

Article 1a [2]
[new article] [⁴]

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

³ Article I-1 of the Constitution, entitled ‘Establishment of the Union’ and Article IV-438(1) of the Constitution, entitled ‘Succession and legal continuity’.

⁴ Article I-2 of the Constitution, entitled ‘The Union’s values’.

Article 2 [3]
[ex Art. 2 TEU, replaced] [5]

The Union shall set itself the following objectives:

- ~~— to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty,~~
- ~~— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17,~~
- ~~— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union,~~
- ~~— to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime,~~
- ~~— to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.~~

~~The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.~~

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

⁵ Article I-3 of the Constitution, entitled 'The Union's objectives'.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 3

[ex Art. 3 TEU, repealed] [⁶]

~~The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.~~

~~The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.~~

Article 3a [4]

[new article, replacing ex Art. 10 EC] [⁷]

1. In accordance with Article 3b [5], competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 3b [5]

[new article, replacing ex Art. 5 EC] [⁸]

⁶ Replaced in substance by Article 2 F (renumbered 7) TFEU; by Article 9(1) (renumbered 13(1)) TEU and by Article 10 A(3) (renumbered 21(3)), second subparagraph, TEU.

⁷ Article I-5 of the Constitution, entitled 'Relations between the Union and the Member States'. Article 3a (renumbered 4) TEU replaces, in substance, ex Article 10 EC.

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act **only** within the limits of the competences conferred upon it by the Member States in the **Treaties** to attain the objectives set out **therein**. Competences not conferred upon the Union in the **Treaties** remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the **Treaties**.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 4

[ex Art. 4 TEU, repealed] [⁹]

~~The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.~~

~~The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.~~

~~The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.~~

Article 5

[ex Art. 5 TEU, repealed] [¹⁰]

~~The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.~~

Article 6

⁸ Article I-11 of the Constitution, entitled 'Fundamental principles'. Article 3b (renumbered 5) TEU replaces, in substance, ex Article 5 EC.

⁹ Replaced in substance by Article 9 B (renumbered 15) TEU.

¹⁰ Replaced in substance by Article 9 (renumbered 13), second paragraph, TEU.

[ex Art. 6 TEU, replaced] [¹¹]

~~1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.~~

~~2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.~~

~~3. The Union shall respect the national identities of its Member States.~~

~~4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.~~

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 7

[ex Art. 7 TEU, amended] [¹²]

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned the values referred to in Article 6(1) 1a [2], and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the European Commission and after obtaining the assent consent of the European Parliament, may determine

¹¹ Article I-9 of the Constitution, entitled 'Fundamental rights'.

¹² Article I-59 of the Constitution, entitled 'Suspension of certain rights resulting from Union membership'.

the existence of a serious and persistent breach by a Member State of ~~principles mentioned~~ **the values referred to** in Article ~~6(1) 1a~~ **[2]**, after inviting ~~the government of~~ the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of ~~this Treaty~~ **the Treaties** to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under ~~this Treaty~~ **the Treaties** shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

~~5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.~~

~~This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.~~

~~6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.~~

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 309 [354] of the Treaty on the Functioning of the European Union.

Article 7a [8]
[new article] [¹³]

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

TITLE II [¹⁴]

¹³ Article I-57 of the Constitution, entitled ‘The Union and its neighbours’.

¹⁴ A new Title II is inserted, replacing ex Title II TEU. The provisions of ex Title II TEU are incorporated into the Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon.

~~**PROVISIONS AMENDING THE TREATY ESTABLISHING THE
EUROPEAN ECONOMIC COMMUNITY WITH A VIEW TO
ESTABLISHING THE EUROPEAN COMMUNITY**~~

PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 8

[ex Art. 8 TEU, repealed] [¹⁵]

~~(not reproduced)~~

Article 8 [9]

[new article] [¹⁶]

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

Article 8 A [10]

[new article] [¹⁷]

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 8 B [11]

[new article] [¹⁸]

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

¹⁵ Ex Article 8 TEU, which was in force until the entry into force of the Treaty of Lisbon, amended the EC Treaty. Those amendments are incorporated into the FEU Treaty and ex Article 8 TEU is repealed.

¹⁶ Article I-45 of the Constitution, entitled 'The principle of democratic equality'; and Article I-10 of the Constitution, entitled 'Citizenship of the Union'.

¹⁷ Article I-46 of the Constitution. Paragraph 4 replaces in substance Article 191 §1 EC.

¹⁸ Article I-47 of the Constitution.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 [36] of the Treaty on the Functioning of the European Union.

Article 8 C [12]
[new article]

National Parliaments contribute actively to the good functioning of the Union:

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;

(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 61 C [70] of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 69 G [88] and 69 D [85] of that Treaty;

(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;

(e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;

(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

TITLE III

~~PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY~~

PROVISIONS ON THE INSTITUTIONS [19]

¹⁹ Similar to the heading to Chapter 1, Title VI of Part III of the Constitution. Paragraphs 1 and 2 are similar to Article I-19 of the Constitution, with certain alterations: the official name of the Council of the European Union becomes simply the 'Council', whereas the Constitution proposed the 'Council of Ministers'. For the first time, the European Central Bank and the Court of Auditors are listed along with the principal institutions of the Union. ECB President Jean-Claude Trichet wrote a letter to Portuguese Secretary of State for European Affairs Manuel

Article 9
[ex Art. 9 TEU, repealed] [²⁰]

(not reproduced)

Article 9 [13]
[new article]

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as “the Commission”),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

3. The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the Treaty on the Functioning of the European Union.

4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 9 A [14]
[new article] [²¹]

1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.

Lobo Antunes. However, in the Constitution, the ECB and the Court of Auditors were listed under Chapter II of Title IV of Part I, entitled ‘The other Union institutions and advisory bodies’.

²⁰ Ex Article 9 TEU amended the Treaty establishing the European Coal and Steel Community. The ECSC Treaty expired on 23 July 2002.

²¹ Article 1-20 of the Constitution. Paragraphs 1 and 2 replace in substance Article 189 EC; paragraphs 1 to 3 replace in substance ex Article 190(1) to (3) EC; paragraph 1 replaces in substance ex Article 192 §1 EC; paragraph 4 replaces in substance ex Article 197 §1 EC.

2. The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

3. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.

4. The European Parliament shall elect its President and its officers from among its members.

Article 9 B [15]
[new article] [²²]

1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

3. The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.

4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

5. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.

6. The President of the European Council:

(a) shall chair it and drive forward its work;

(b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;

(c) shall endeavour to facilitate cohesion and consensus within the European Council;

(d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.

²² Article I-21 and Article I-22 of the Constitution. Replaces in substance ex Article 4 EU.

The President of the European Council shall not hold a national office.

Article 9 C [16]
[new article] [²³]

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties.

2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are laid down in Article 205(2) [238(2)] of the Treaty on the Functioning of the European Union.

5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.

6. The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 201b [236] of the Treaty on the Functioning of the European Union. [²⁴]

The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

8. The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

9. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 201b [236] of the Treaty on the Functioning of the European Union.

²³ Paragraphs 1 to 3 are identical to Article I-23 of the Constitution. In paragraph 4, the first and second subparagraphs are similar to Article I-25(1) §§1 and 2 of the Constitution. Paragraph 1 replaces, in substance, the first and second indents of ex Article 202 EC; paragraphs 2 and 9 replace, in substance, ex Article 203 EC; paragraphs 4 and 5 replace, in substance, paragraphs 2 and 4 of ex Article 205 EC.

²⁴ Merges Articles I-24(1) and (4) of the Constitution.

Article 9 D [17]
[new article] [²⁵]

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 9 E(2) [18(2)], the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014 shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 211a [244] of the Treaty on the Functioning of the European Union.

6. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

(c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

²⁵ Merges Articles I-26 and I-27 of the Constitution. Paragraph 1 replaces, in substance, ex Article 211 EC; paragraphs 3 and 7 replace, in substance, ex Article 214 EC; paragraph 6 replaces, in substance, paragraphs 1, 3 and 4 of ex Article 217 EC.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 9 E(1) [18(1)], if the President so requests.

7. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

8. The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 201 [234] of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.

Article 9 E [18]

[new article]

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.

2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The High Representative shall preside over the Foreign Affairs Council.

4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article 9 F [19]

[new article] [²⁶]

1. The Court of Justice of the European Union shall include the Court of Justice, the General

²⁶ Replaces, in substance, ex Article 220 EC; the second subparagraph of paragraph 2 replaces, in substance, the first subparagraph of ex Article 221 EC.

Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The judges and the Advocates-General of the Court of Justice and the judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 223 [253] and 224 [254] of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) rule in other cases provided for in the Treaties.

TITLE IV

~~PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY~~ ^[27]

PROVISIONS ON ENHANCED COOPERATION

~~Article 10~~

[ex Art. 10 EU, repealed]

~~(not reproduced)~~

Article 10 [20]

[new article] ^[28]

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 280 A [326] to 280 I [334] of the Treaty on the Functioning of the European Union.

²⁷ Title IV takes over the heading of ex Title VII, 'Provisions on enhanced cooperation'. Ex Title IV is incorporated into the provisions of the FEU Treaty.

²⁸ Article I-44 of the Constitution. Ex Article 10 EU amended the EAEC Treaty. Those amendments are incorporated into the Treaty of Lisbon, and ex Article 10 EU is repealed. Ex Articles 27 A to 27 E, Articles 40 to 40b and Articles 43 to 45 are replaced by Article 20 EU, which also replaces ex Articles 11 EC and 11a EC. These same Articles are also replaced by Articles 326 to 334 FEU.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 280 C [328] of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 280 D [329] of the Treaty on the Functioning of the European Union.

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 280 E [330] of the Treaty on the Functioning of the European Union.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

TITLE V

~~PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY~~

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

CHAPTER 1

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION ^[29]

Article 10 A [21] [new article] ^[30]

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

²⁹ Merges the titles of Title V of Part III and of Chapter 1 of Title V of Part III of the Constitution.

³⁰ Article III-292 of the Constitution.

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters; and

(h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Article 10 B [22]
[new article] ^[31]

1. On the basis of the principles and objectives set out in Article 10 A [21], the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

³¹ Article III-293 of the Constitution.

CHAPTER 2

SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

SECTION 1

COMMON PROVISIONS

Article 10 C [23]

[new article]

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.

Article 11 [24]

[ex Art. 11 TEU, amended]

~~1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:~~

- ~~— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,~~
- ~~— to strengthen the security of the Union in all ways,~~
- ~~— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,~~
- ~~— to promote international cooperation,~~
- ~~— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.~~

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence. ^[32]

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 25b [40] of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 240a [275] of the Treaty on the Functioning of the European

³² Article I-16(1) of the Constitution.

Union. [33]

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions. [34]

2- 3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area. [35]

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the High Representative shall ensure ~~that these principles are complied with~~ compliance with these principles. [36]

Article 12 [25]
[ex Art. 12 TEU, replaced] [37]

The Union shall conduct the common foreign and security policy by:

- (a) defining the general guidelines;
- (b) adopting decisions defining:
 - (i) actions to be undertaken by the Union;
 - (ii) positions to be taken by the Union;
 - (iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);

and by

- (c) strengthening systematic cooperation between Member States in the conduct of policy.

Article 13 [26]
[ex Art. 13 TEU, amended]

1. The European Council shall ~~define the principles of and~~ identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions. [38]

³³ Merges certain provisions from Articles III-294, I-40(3), III-300, I-40(4) and III-376(1) of the Constitution.

³⁴ Merges certain provisions from Articles III-294(1) and I-40(1) of the Constitution.

³⁵ New text added from Article I-16(2) of the Constitution.

³⁶ Article III-294(2) §3 of the Constitution.

³⁷ Article III-294(3) of the Constitution.

³⁸ The new text in the first sentence merges Article I-40(2), first sentence, and Article III-295(1) of the Constitution. The new second sentence proposes that “[i]t”, i.e. the European Council, adopt the decisions, whereas Article I-40(3) proposed that “The European Council and the Council shall adopt the necessary European decisions.”

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments. [³⁹]

~~2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.~~

~~Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.~~

~~3. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.~~

2. The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. [⁴⁰]

~~The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.~~

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources. [⁴¹]

Article 13a [27]
[new article] [⁴²]

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

Article 14 [28]
[ex Art. 14 TEU, amended] [⁴³]

³⁹ Article III-295(1), §2 of the Constitution.

⁴⁰ Merges Articles I-40(2), second sentence and Article III-295(2) of the Constitution.

⁴¹ Article I-40(4) of the Constitution.

⁴² Article III-296 of the Constitution.

⁴³ Article III-297 of the Constitution.

~~1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required.~~ Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

~~2. If there is a change in circumstances having a substantial effect on a question subject to joint action such a decision, the Council shall review the principles and objectives of that action decision and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.~~

~~3. 2. Joint actions~~ Decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

~~4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.~~

~~5. 3.~~ Whenever there is any plan to adopt a national position or take national action pursuant to a ~~joint action~~ decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

~~6. 4.~~ In cases of imperative need arising from changes in the situation and failing a review of the Council decision as referred to in paragraph 1, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of ~~the joint action~~ that decision. The Member State concerned shall inform the Council immediately of any such measures.

~~7. 5.~~ Should there be any major difficulties in implementing a joint action decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the ~~joint action~~ decision referred to in paragraph 1 or impair its effectiveness.

Article 15 [29]

[ex Art. 15 TEU, amended]

The Council shall adopt ~~common positions. Common positions~~ decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the ~~common~~ Union positions.

Article ~~22~~ 15a [30]

[ex Art. 22 TEU, amended] [44]

1. Any Member State ~~or the Commission,~~ the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer ~~to the Council~~ any question relating to the common foreign and security policy to the Council and may submit ~~proposals to the Council~~ to it initiatives or proposals as appropriate.

2. In cases requiring a rapid decision, the ~~Presidency~~ High Representative, of ~~its~~ his own motion, or at the request of ~~the Commission or~~ a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

⁴⁴ Article III-300 of the Constitution.

Article 23 15b [31]
[ex Art. 23 TEU, amended]

1. Decisions under this **title Chapter** shall be taken by **the European Council and the Council acting unanimously**, **except where this Chapter provides otherwise**. The adoption of legislative acts shall be excluded. ~~Abstentions by members present in person or represented shall not prevent the adoption of such decisions.~~

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent ~~more than~~ **at least** one third of the ~~votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community~~, **Member States comprising at least one third of the population of the Union**, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- ~~— when adopting joint actions, common positions or taking any other decision on the basis of a common strategy,~~
- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 10 B(1) [22(1)].**
- when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,**
- when adopting any decision implementing **a decision defining a Union joint** action or ~~a common~~ position,
- when appointing a special representative in accordance with Article 18(5) **[33]**.

If a member of the Council declares that, for ~~important~~ **vital** and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. **The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed,** the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.

~~The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption decisions shall require at least 255 votes in favour, cast by at least two thirds of the members. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.~~

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

4. ~~This paragraph~~ Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

3-5. For procedural questions, the Council shall act by a majority of its members.

Article 16 [32]
[ex Art. 16 TEU, amended] [⁴⁵]

Member States shall ~~inform and~~ consult one another within the **European Council and the Council** on any matter of foreign and security policy of general interest in order to ~~ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action~~ determine a common approach. Before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

When the European Council or the Council has defined a common approach of the Union within the meaning of **the first paragraph**, the **High Representative of the Union for Foreign Affairs and Security Policy** and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach.

~~*Article 17*~~
[the text of ex Article 17 EU is moved to become Article 28 A/42 EU]

Article 18 [33]
[ex Art. 18 EU, amended] [⁴⁶]

~~1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.~~

~~2. The Presidency shall be responsible for the implementation of decisions taken under this title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.~~

~~3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.~~

~~4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.~~

~~5. The Council may, whenever it deems it necessary~~ on a proposal from the **High Representative of the Union for Foreign Affairs and Security Policy**, appoint a special representative with a mandate in relation to particular policy issues. **The special representative shall carry out his mandate under the authority of the High Representative.**

Article 19 [34]
[ex Art. 19 TEU, amended] [⁴⁷]

⁴⁵ Merges Article I-40(5) and Article III-301 of the Constitution.

⁴⁶ Article III-302 of the Constitution.

⁴⁷ Article III-305 of the Constitution.

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the ~~common~~ Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the ~~common~~ Union's positions.

2. ~~Without prejudice to paragraph 1 and Article 14(3)~~ In accordance with Article 11(3) [24(3)], Member States represented in international organisations or international conferences where not all the Member States participate shall keep the ~~latter~~ other Member States and the High Representative informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States and the High Representative fully informed. Member States which are ~~permanent~~ members of the Security Council will, in the execution of their functions, ~~ensure the defence of~~ defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.

Article 20 [35]
[ex Art. 20 EU, amended] [48]

The diplomatic and consular missions of the Member States and the ~~Commission~~ Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that ~~the common~~ decisions defining Union positions and ~~joint~~ actions adopted ~~by the Council~~ pursuant to this Chapter are complied with and implemented.

They shall step up cooperation by exchanging information, and carrying out joint assessments ~~and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.~~

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 17(2)(c) [20(2)(c)] of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 20 [23] of that Treaty.

Article 21 [36]
[ex Art. 21 EU, amended] [49]

The ~~Presidency~~ High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. ~~The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.~~ Special representatives may be involved in briefing the European Parliament.

⁴⁸ Article III-306 of the Constitution.

⁴⁹ Article III-304 of the Constitution.

The European Parliament may ask questions of the Council or make recommendations to it and to the High Representative. Twice a year it shall hold ~~an annual~~ a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

Article 22

[the text of ex Art. 22 TEU is moved to become Article 15a (renumbered 30) TEU]

1. Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.

2. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

Article 23

[the text of ex Art. 23 TEU is moved to become Article 15b (renumbered 31) TEU]

1. Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

— when adopting joint actions, common positions or taking any other decision on the basis of a common strategy,

— when adopting any decision implementing a joint action or a common position,

— when appointing a special representative in accordance with Article 18(5).

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption decisions shall require at least 255 votes in favour, cast by at least two thirds of the members. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.

This paragraph shall not apply to decisions having military or defence implications.

3. For procedural questions, the Council shall act by a majority of its members.

Article 24 [37]
[ex Art. 24 TEU, replaced] [⁵⁰]

- ~~1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency.~~
- ~~2. The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions.~~
- ~~3. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2).~~
- ~~4. The provisions of this Article shall also apply to matters falling under Title VI. When the agreement covers an issue for which a qualified majority is required for the adoption of internal decisions or measures, the Council shall act by a qualified majority in accordance with Article 34(3).~~
- ~~5. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally.~~
- ~~6. Agreements concluded under the conditions set out by this Article shall be binding on the institutions of the Union.~~

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

Article 25 [38]
[ex Art. 25 TEU, amended] [⁵¹]

Without prejudice to Article 207 [240] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the ~~responsibility of the Presidency and the Commission~~ powers of the High Representative.

Within the scope of this ~~title~~ Chapter, the Political and Security ~~this~~ Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 28 B [43].

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, ~~without prejudice to Article 47.~~

Article 25a [39]
[new article] [⁵²]

⁵⁰ Article III-303 of the Constitution.

⁵¹ Article III-307 of the Constitution.

⁵² Article I-51 of the Constitution, extended to cover the Member States.

In accordance with Article 16 B [16] of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 25b [40]

[ex Art. 47 TEU, replaced] [⁵³]

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 2 B [3] to 2 E [6] of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Article 26

[ex Art. 26 TEU, repealed]

~~The Secretary General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.~~

Article 27

[ex Art. 27 TEU, repealed]

~~The Commission shall be fully associated with the work carried out in the common foreign and security policy field.~~

Article 27a

[ex Art. 27a TEU, replaced]

~~1. Enhanced cooperation in any of the areas referred to in this title shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect:~~

- ~~— the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy,~~
- ~~— the powers of the European Community, and~~
- ~~— consistency between all the Union's policies and its external activities.~~

~~2. Articles 11 to 27 and Articles 27b to 28 shall apply to the enhanced cooperation provided for in this Article, save as otherwise provided in Article 27c and Articles 43 to 45.~~

⁵³ Article III-308 of the Constitution.

Article 27b

[ex Art. 27b TEU, replaced]

~~Enhanced cooperation pursuant to this title shall relate to implementation of a joint action or a common position. It shall not relate to matters having military or defence implications.~~

Article 27c

[ex Art. 27c TEU, replaced]

~~Member States which intend to establish enhanced cooperation between themselves under Article 27b shall address a request to the Council to that effect.~~

~~The request shall be forwarded to the Commission and, for information, to the European Parliament. The Commission shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies. Authorisation shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.~~

Article 27d

[ex Art. 27d TEU, replaced]

~~Without prejudice to the powers of the Presidency and of the Commission, the Secretary General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.~~

Article 27e

[ex Art. 27e EU, replaced]

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 27c shall notify its intention to the Council and inform the Commission. The Commission shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Council shall take a decision on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.~~

Article 28 [41]

[ex Art. 28 TEU, amended] [⁵⁴]

~~1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.~~

~~2. 1. Administrative expenditure to which the provisions relating to the areas referred to in this title entail implementation of this Chapter gives rise for the institutions shall be charged to the Union budget of the European Communities.~~

⁵⁴ Article III-313 of the Constitution.

~~3-~~ 2. Operating expenditure to which the implementation of ~~those provisions~~ this Chapter gives rise shall also be charged to the Union budget ~~of the European Communities~~, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union budget ~~of the European Communities~~, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article ~~23(1)~~ 15b(1) [31(1)], second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 28 A(1) [42(1)] and Article 28 B [43]. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 28 A(1) [42(1)] and Article 28 B [43] which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:

(a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;

(b) the procedures for administering the start-up fund;

(c) the financial control procedures.

When the task planned in accordance with Article 28 A(1) [42(1)] and Article 28 B [43] cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

~~4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.~~

SECTION 2

PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY

Article 28 A [42]

[ex Art. 17 TEU, amended] [⁵⁵]

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

⁵⁵ Article I-41 of the Constitution (except for Article I-41(8), which finds no equivalent in this part.

~~1- 2.~~ The common ~~foreign and~~ security ~~and defence~~ policy shall include ~~all questions relating to the security of the Union, including~~ the progressive framing of a common Union defence policy, ~~which might~~ This will lead to a common defence, ~~should when~~ the European Council, acting ~~unanimously~~, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this ~~Article~~ Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

~~The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.~~

~~2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.~~

~~3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.~~

~~4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this title.~~

~~5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.~~

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as “the European Defence Agency”) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union’s values and serve its interests. The execution of such a task shall be governed by Article 28 C [44].

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 28 E [46]. It shall not affect the provisions of Article 28 B [43].

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Article 28 B [43]
[new article] [⁵⁶]

1. The tasks referred to in Article 28 A(1) [42(1)], in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article 28 C [44]
[new article] [⁵⁷]

1. Within the framework of the decisions adopted in accordance with Article 28 B [43], the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary decisions.

Article 28 D [45]
[new article] [⁵⁸]

1. The European Defence Agency referred to in Article 28 A(3) [42(3)], subject to the authority of the Council, shall have as its task to:

(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;

(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

⁵⁶ Article III-309 of the Constitution.

⁵⁷ Article III-310 of the Constitution.

⁵⁸ Article III-311 of the Constitution.

(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;

(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;

(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article 28 E [46]
[new article] [⁵⁹]

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 28 A(6) [42(6)], which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205(3)(a) [238(3)(a)] of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205(3)(a) [238(3)(a)] of the

⁵⁹ Article III-312 of the Constitution.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

TITLE VI

PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS ^[60]

Article 29

[ex Art. 29 TEU, replaced by Article 61 (renumbered 67) FEU]

~~Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.~~

~~That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:~~

~~— closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32;~~

~~— closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ('Eurojust'), in accordance with the provisions of Articles 31 and 32;~~

~~— approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).~~

Article 30

[ex Art. 30 EU is replaced by Articles 69 F and 69 G (renumbered 87 and 88) FEU]

~~1. Common action in the field of police cooperation shall include:~~

~~(a) operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;~~

~~(b) the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in~~

⁶⁰ The provisions of ex Title VI EU are replaced by the provisions of Chapters 1, 4 and 5 of Title IV of Part Three [renumbered Title V of Part Three] of the Treaty on the Functioning of the European Union.

~~particular through Europol, subject to appropriate provisions on the protection of personal data;~~

~~(c) cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research;~~

~~(d) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.~~

~~2. The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:~~

~~(a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;~~

~~(b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;~~

~~(c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;~~

~~(d) establish a research, documentation and statistical network on cross-border crime.~~

Article 31

[ex Art. 31 EU is replaced by Articles 69 A, 69 B and 69 D (renumbered 82, 83 and 85) FEU]

~~1. Common action on judicial cooperation in criminal matters shall include:~~

~~(a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;~~

~~(b) facilitating extradition between Member States;~~

~~(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;~~

~~(d) preventing conflicts of jurisdiction between Member States;~~

~~(e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.~~

~~2. The Council shall encourage cooperation through Eurojust by:~~

~~(a) enabling Eurojust to facilitate proper coordination between Member States' national prosecuting authorities;~~

~~(b) promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol;~~

~~(e) facilitating close cooperation between Eurojust and the European Judicial Network, particularly, in order to facilitate the execution of letters rogatory and the implementation of extradition requests.~~

Article 32

[ex Art. 32 EU, replaced by Article 69 H (renumbered 89) FEU]

~~The Council shall lay down the conditions and limitations under which the competent authorities referred to in Articles 30 and 31 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.~~

Article 33

[ex Art. 33 EU, replaced by Article 61 E (renumbered 72) FEU]

~~This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.~~

Article 34

[ex Art. 34 EU, repealed]

~~1. In the areas referred to in this title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.~~

~~2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:~~

~~(a) adopt common positions defining the approach of the Union to a particular matter;~~

~~(b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;~~

~~(c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;~~

~~(d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.~~

~~Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties.~~

~~3. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts shall require at least 255 votes in favour, cast by at least two thirds of the members. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority~~

~~represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.~~

~~4. For procedural questions, the Council shall act by a majority of its members.~~

Article 35

[ex Art. 35 EU, repealed]

~~1. The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this Article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them.~~

~~2. By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.~~

~~3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:~~

~~(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment; or~~

~~(b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.~~

~~4. Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 1.~~

~~5. The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.~~

~~6. The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.~~

~~7. The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under Article 34(2) whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under Article 34(2)(d).~~

Article 36

[ex Art. 36 EU, replaced by Article 61 D (renumbered 71) FEU]

~~1. A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:~~

~~—give opinions for the attention of the Council, either at the Council's request or on its own initiative,~~

~~—contribute, without prejudice to Article 207 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in Article 29.~~

~~2. The Commission shall be fully associated with the work in the areas referred to in this title.~~

~~Article 37~~

[ex Art. 37 EU, repealed]

~~Within international organisations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of this title.~~

~~Articles 18 and 19 shall apply as appropriate to matters falling under this title.~~

~~Article 38~~

[ex Art. 38 EU, repealed]

~~Agreements referred to in Article 24 may cover matters falling under this title.~~

~~Article 39~~

[ex Art. 39 EU, repealed]

~~1. The Council shall consult the European Parliament before adopting any measure referred to in Article 34(2)(b), (c) and (d). The European Parliament shall deliver its opinion within a time limit which the Council may lay down, which shall not be less than three months. In the absence of an opinion within that time limit, the Council may act.~~

~~2. The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this title.~~

~~3. The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in the areas referred to in this title.~~

~~Article 40~~

[ex Art. 40 EU, replaced by Article 10 (renumbered 20) FEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]

~~1. Enhanced cooperation in any of the areas referred to in this title shall have the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice, while respecting the powers of the European Community and the objectives laid down in this title.~~

~~2. Articles 29 to 39 and Articles 40a to 41 shall apply to the enhanced cooperation provided for by this Article, save as otherwise provided in Article 40a and in Articles 43 to 45.~~

~~3. The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice and the exercise of those powers shall apply to this Article and to Articles 40a and 40b.~~

Article 40a

[ex Art. 40a EU, replaced by Article 10 (renumbered 20) FEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]

- ~~1. Member States which intend to establish enhanced cooperation between themselves under Article 40 shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so. Those Member States may then submit an initiative to the Council designed to obtain authorisation for the enhanced cooperation concerned.~~
- ~~2. The authorisation referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45, by the Council, acting by a qualified majority, on a proposal from the Commission or on the initiative of at least eight Member States, and after consulting the European Parliament. The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community.~~

~~A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.~~

Article 40b

[ex Art. 40b EU, replaced by Article 10 (renumbered 20) FEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 40a shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the cooperation in question. The Council shall take a decision on the request within four months of the date of receipt of that notification. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.~~

~~For the purposes of this Article, the Council shall act under the conditions set out in Article 44(1).~~

Article 41

[ex Art. 41 EU, repealed]

- ~~1. Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.~~
- ~~2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.~~
- ~~3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.~~

~~4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.~~

~~Article 42~~

~~[ex Art. 42 EU, repealed]~~

~~The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.~~

~~TITLE VII~~

~~PROVISIONS ON ENHANCED COOPERATION~~ ^[61]

~~Article 43~~

~~[ex Art. 43 TEU, replaced by Article 10 (renumbered 20) TEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]~~

~~Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community provided that the proposed cooperation:~~

~~(a) is aimed at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration;~~

~~(b) respects the said Treaties and the single institutional framework of the Union;~~

~~(c) respects the *acquis communautaire* and the measures adopted under the other provisions of the said Treaties;~~

~~(d) remains within the limits of the powers of the Union or of the Community and does not concern the areas which fall within the exclusive competence of the Community;~~

~~(e) does not undermine the internal market as defined in Article 14(2) of the Treaty establishing the European Community, or the economic and social cohesion established in accordance with Title XVII of that Treaty;~~

~~(f) does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them;~~

~~(g) involves a minimum of eight Member States;~~

~~(h) respects the competences, rights and obligations of those Member States which do not participate therein;~~

~~(i) does not affect the provisions of the Protocol integrating the Schengen *acquis* into the framework of the European Union;~~

⁶¹ The provisions of ex Title VII are replaced by Article 10 (renumbered 20) EU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU.

~~(j) is open to all the Member States, in accordance with Article 43b.~~

~~*Article 43a*~~

~~[ex Art. 43a TEU, replaced by Article 10 (renumbered 20) TEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]~~

~~Enhanced cooperation may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of the Treaties.~~

~~*Article 43b*~~

~~[ex Art. 43b TEU, replaced by Article 10 (renumbered 20) TEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]~~

~~When enhanced cooperation is being established, it shall be open to all Member States. It shall also be open to them at any time, in accordance with Articles 27e and 40b of this Treaty and with Article 11a of the Treaty establishing the European Community, subject to compliance with the basic decision and with the decisions taken within that framework. The Commission and the Member States participating in enhanced cooperation shall ensure that as many Member States as possible are encouraged to take part.~~

~~*Article 44*~~

~~[ex Art. 44 TEU, replaced by Article 10 (renumbered 20) TEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]~~

~~1. For the purposes of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation referred to in Article 43, the relevant institutional provisions of this Treaty and of the Treaty establishing the European Community shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing Member States participating in enhanced cooperation shall take part in the adoption of decisions. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members concerned as laid down in Article 205(2) of the Treaty establishing the European Community, and in the second and third subparagraphs of Article 23(2) of this Treaty as regards enhanced cooperation established on the basis of Article 27e. Unanimity shall be constituted by only those Council members concerned.~~

~~Such acts and decisions shall not form part of the Union *acquis*.~~

~~2. Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the enhanced cooperation in which they participate. Such acts and decisions shall be binding only on those Member States which participate in such cooperation and, as appropriate, shall be directly applicable only in those States. Member States which do not participate in such cooperation shall not impede the implementation thereof by the participating Member States.~~

~~*Article 44a*~~

~~[ex Art. 44a TEU, replaced by Article 10 (renumbered 20) TEU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]~~

~~Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.~~

Article 45

[ex Art. 45 EU, replaced by Article 10 (renumbered 20) EU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU]

~~The Council and the Commission shall ensure the consistency of activities undertaken on the basis of this title and the consistency of such activities with the policies of the Union and the Community, and shall cooperate to that end.~~

TITLE VIII VI

FINAL PROVISIONS

Article 46

[ex Art. 46 TEU, repealed]

~~The provisions of the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:~~

~~(a) provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;~~

~~(b) provisions of Title VI, under the conditions provided for by Article 35;~~

~~(c) provisions of Title VII, under the conditions provided for by Articles 11 and 11a of the Treaty establishing the European Community and Article 40 of this Treaty;~~

~~(d) Article 6(2) with regard to action of the institutions, in so far as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty;~~

~~(e) the purely procedural stipulations in Article 7, with the Court acting at the request of the Member State concerned within one month from the date of the determination by the Council provided for in that Article;~~

~~(f) Articles 46 to 53.~~

Article 46a [47]
[new article] [⁶²]

The Union shall have legal personality.

Article 47

[ex Art. 47 EU is replaced by Article 25b (renumbered 40) EU]

~~Subject to the provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, and~~

⁶² Article I-7 of the Constitution.

~~to these final provisions, nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.~~

Article 48
[ex Art. 48 TEU, replaced] ^[63]

~~The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.~~

~~If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.~~

~~The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.~~

1. The Treaties may be amended in accordance with an ordinary revision procedure. They may also be amended in accordance with simplified revision procedures.

Ordinary revision procedure

2. The Government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may, *inter alia*, serve either to increase or to reduce the competences conferred on the Union in the Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

3. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 4.

The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

4. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

5. If, two years after the signature of a treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Simplified revision procedures

⁶³ Merges Article IV-443, Article IV-445 and Article IV-444 of the Constitution.

6. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

7. Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.

Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the decisions referred to in the first and second subparagraphs, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

Article 49

[ex Art. 49 TEU, amended] ^[64]

Any European State which respects the principles set out in Article 6(1) values referred to in Article 1a [2] and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. † The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent consent of the European Parliament, which shall act by an absolute a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 49 A [50]

⁶⁴ Article I-58 of the Constitution, entitled ‘Conditions of eligibility and procedure of accession to the Union’.

[new article] [⁶⁵]

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 188 N(3) [218(3)] of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 205(3)(b) [238(3)(b)] of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Article 49 B [51]
[new article] [⁶⁶]

The Protocols and Annexes to the Treaties shall form an integral part thereof.

Article 49 C [52]
[new article] [⁶⁷]

1. The Treaties shall apply to the Kingdom of Belgium, Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

2. The territorial scope of the Treaties is specified in Article 311a [355] of the Treaty on the Functioning of the European Union.

Article 50
[ex Art. 50 TEU, repealed]

⁶⁵ Article I-60 of the Constitution, entitled 'voluntary withdrawal from the Union'.

⁶⁶ Article IV-442 of the Constitution, entitled 'Protocols and Annexes'.

⁶⁷ Article IV-440 of the Constitution, entitled 'Scope'.

~~1. Articles 2 to 7 and 10 to 19 of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Brussels on 8 April 1965, are hereby repealed.~~

~~2. Article 2, Article 3(2) and Title III of the Single European Act signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 are hereby repealed.~~

Article 51 [53]
[ex Art. 51 TEU] [68]

This Treaty is concluded for an unlimited period.

Article 52 [54]
[ex Art. 52 TEU]

1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. This Treaty shall enter into force on 1 January 1993, provided that all the Instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step.

Article 53 [55]
[ex Art. 53 TEU] [69]

1. This Treaty, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, and Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

~~Pursuant to the Accession Treaties, the Bulgarian, Czech, Estonian, Finnish, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak, Slovenian and Swedish versions of this Treaty shall also be authentic.~~

2. This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

Done at Maastricht on the seventh day of February in the year one thousand nine hundred and ninety-two.

(List of signatories not reproduced)

⁶⁸ Article IV-446 of the Constitution, entitled 'Duration'.

⁶⁹ Article IV-448 of the Constitution.

TREATY ESTABLISHING THE EUROPEAN COMMUNITY ON THE FUNCTIONING OF THE EUROPEAN UNION

Consolidated version

[Treaty establishing the European Economic Community, signed in Rome on 25 March 1957 and entering into force on 1 January 1958; as amended by the Convention amending the Treaty establishing the European Economic Community, with a view to making applicable to the Netherlands Antilles the special régime of association defined in Part IV of the said Treaty, signed in Brussels on 13 November 1962 and entering into force on 1 October 1964; by the Merger Treaty, signed in Brussels on 8 April 1965 and entering into force on 1 July 1967; by the Budgetary Treaty, signed in Luxembourg on 22 April 1970 and entering into force on 1 January 1971; by the Act of Accession of Denmark, Ireland and the United Kingdom, signed in Brussels on 22 January 1972 and entering into force on 1 January 1973; by the Treaty amending certain provisions of the Protocol on the Statute of the European Investment Bank, signed in Brussels on 10 July 1975 and entering into force on 1 XX 1978; by the Budgetary Treaty, signed in Brussels on 22 July 1975 and entering into force on 1 June 1977; by the Act of Accession of Greece, signed in Athens on 28 May 1979 and entering into force on 1 January 1981; by the Greenland Treaty, signed in Brussels on 13 March 1984 and entering into force on 1 January 1985; by the Act of Accession of Spain and Portugal, signed in Madrid and in Lisbon on 12 June 1985 and entering into force on 1 January 1986; by the Single European Act, signed in Luxembourg on 28 February 1986 and entering into force on 1 July 1987; by the Treaty on European Union, signed in Maastricht on 7 February 1992 and entering into force on 1 November 1993; by the Act of Accession of Austria, Finland and Sweden, signed in Corfu on 24 June 1994 and entering into force on 1 January 1995; by the Treaty of Amsterdam, signed on 2 October 1997 and entering into force on 1 May 1999; by the Treaty of Nice, signed on 26 February 2001 and entering into force on 1 February 2003; by the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, signed in Athens on 16 April 2003 and entering into force on 1 May 2004; by the Treaty of Accession of Bulgaria and Romania, signed in Luxembourg on 25 April 2005 and entering into force on 1 January 2007; and by the Treaty of Lisbon, signed on 13 December 2007 and entering into force on

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, [70]

DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,

RESOLVED to ensure the economic and social progress of their ~~countries~~ States by common action to eliminate the barriers which divide Europe,

AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating,

~~HAVE DECIDED to create a EUROPEAN COMMUNITY~~ and to this end HAVE DESIGNATED as their Plenipotentiaries:

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows.

PART ONE

PRINCIPLES

~~Article 1~~

[ex Art. 1 EC, repealed]

⁷⁰ The Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Republic of Slovakia, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have since become members of the European Union.

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.~~

Article 1a [1]
[new article]

1. This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences.

2. This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as “the Treaties”.

~~Article 2~~
[ex Art. 2 EC, repealed] ^[71]

~~The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.~~

TITLE I

CATEGORIES AND AREAS OF UNION COMPETENCE

Article 2 A [2]
[new article] ^[72]

1. When the **Treaties** confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the **Treaties** confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. **The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.**

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by **this Treaty**, which the Union shall have competence to provide.

4. The Union shall have competence, **in accordance with the provisions of the Treaty on European Union**, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

⁷¹ Repealed in substance by Article 2 (renumbered 3) TEU.

⁷² Article I-12 of the Constitution, entitled ‘Categories of competence’.

5. In certain areas and under the conditions laid down in the **Treaties**, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions **of the Treaties** relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions **of the Treaties** relating to each area.

Article 2 B [3]
[new article] [⁷³]

1. The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) the conservation of marine biological resources under the common fisheries policy;
- (e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope.

Article 2 C [4]
[new article] [⁷⁴]

1. The Union shall share competence with the Member States where the **Treaties** confer on it a competence which does not relate to the areas referred to in Articles **2 B [3]** and **2 E [6]**.

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;
- (b) social policy, for the aspects defined in **this Treaty**;
- (c) economic, social and territorial cohesion;
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;
- (e) environment;
- (f) consumer protection;
- (g) transport;

⁷³ Article I-13 of the Constitution, entitled 'Areas of exclusive competence'.

⁷⁴ Article I-14 of the Constitution, entitled 'Areas of shared competence'.

(h) trans-European networks;

(i) energy;

(j) area of freedom, security and justice;

(k) common safety concerns in public health matters, for the aspects defined in [this Treaty](#).

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

[Article 2 D \[5\]](#)
[new article] [⁷⁵]

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

3. The Union may take initiatives to ensure coordination of Member States' social policies.

[Article 2 E \[6\]](#)
[new article] [⁷⁶]

The Union shall have competence to carry out actions to support, coordinate or supplement [the actions of the Member States](#). The areas of such action shall, at European level, be:

(a) protection and improvement of human health;

(b) industry;

(c) culture;

(d) tourism;

(e) education, vocational training, youth and sport;

(f) civil protection;

(g) administrative cooperation.

⁷⁵ Article I-15 of the Constitution, entitled 'The coordination of economic and employment policies'.

⁷⁶ Article I-17 of the Constitution, entitled 'Areas of supporting, coordinating or complementary action'.

TITLE II ^[77]

PROVISIONS HAVING GENERAL APPLICATION

Article 2 F ^[7] [new article] ^[78]

The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.

Article 3 ^[8] [ex Art. 3 EC, amended] ^[79]

~~1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:~~

~~(a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;~~

~~(b) a common commercial policy;~~

~~Ⓜ an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;~~

~~(d) measures concerning the entry and movement of persons as provided for in Title IV;~~

~~(e) a common policy in the sphere of agriculture and fisheries;~~

~~(f) a common policy in the sphere of transport;~~

~~(g) a system ensuring that competition in the internal market is not distorted;~~

~~(h) the approximation of the laws of Member States to the extent required for the functioning of the common market;~~

~~(i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;~~

~~(j) a policy in the social sphere comprising a European Social Fund;~~

~~(k) the strengthening of economic and social cohesion;~~

~~(l) a policy in the sphere of the environment;~~

~~(m) the strengthening of the competitiveness of Community industry;~~

~~(n) the promotion of research and technological development;~~

~~(o) encouragement for the establishment and development of trans-European networks;~~

⁷⁷ Title I of Part III of the Constitution, entitled 'Provisions of general application'.

⁷⁸ Article III-115 of the Constitution. Article 2 F (renumbered 3) TFEU replaces in substance ex Article 3 TEU, which is repealed.

⁷⁹ Replaced in substance by Articles 2 B to 2 E (renumbered 3 to 6) FEU. Para. (1) is repealed.

~~(p) a contribution to the attainment of a high level of health protection;~~

~~(q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;~~

~~(r) a policy in the sphere of development cooperation;~~

~~(s) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;~~

~~(t) a contribution to the strengthening of consumer protection;~~

~~(u) measures in the spheres of energy, civil protection and tourism.~~

2. In all the **its** activities referred to in this Article, the Community **Union** shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 4

[ex Art. 4 EC is moved to become Article 97b (renumbered 119) FEU] [⁸⁰]

1. For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the Community shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

Article 5

[ex Art. 5 EC, replaced] [⁸¹]

~~The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.~~

~~In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.~~

~~Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.~~

⁸⁰ The text of ex Art. 4 EC is reproduced here for reference purposes only.

⁸¹ Replaced in substance by Article 3b (renumbered 5) FEU.

Article 5a [9]
[new article] [⁸²]

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Article 5b [10]
[new article] [⁸³]

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 6 [11]
[ex Art. 6 EC, amended] [⁸⁴]

Environmental protection requirements must be integrated into the definition and implementation of the Community Union policies and activities ~~referred to in Article 3~~, in particular with a view to promoting sustainable development.

Article 6a [12]
[ex Art. 153(2) EC, amended] [⁸⁵]

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

~~2.~~ Consumer protection requirements shall be taken into account in defining and implementing other Community Union policies and activities.

3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

⁸² Article III-117 of the Constitution.

⁸³ Article III-118 of the Constitution.

⁸⁴ Article III-119 of the Constitution.

⁸⁵ The text of ex Art. 153(2) EC is moved to become Article 6a (renumbered 12) FEU. Article III-120 of the Constitution.

Article 6b [13]

[enacting terms of ex Protocol (No 33) on protection and welfare of animals (1997), amended]
[⁸⁶]

In formulating and implementing the **Community's** **Union's** agriculture, **fisheries**, transport, internal market **and** research **and technological development and space policies**, the **Community Union** and the Member States shall, **since animals are sentient beings**, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

Article 7

[ex Art. 7 EC, repealed] [⁸⁷]

~~1. The tasks entrusted to the Community shall be carried out by the following institutions:~~

~~—a EUROPEAN PARLIAMENT,~~

~~—a COUNCIL,~~

~~—a COMMISSION,~~

~~—a COURT OF JUSTICE,~~

~~—a COURT OF AUDITORS.~~

~~Each institution shall act within the limits of the powers conferred upon it by this Treaty.~~

~~2. The Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.~~

Article 8

[ex Art. 8 EC, repealed] [⁸⁸]

~~A European system of central banks (hereinafter referred to as 'ESCB') and a European Central Bank (hereinafter referred to as 'ECB') shall be established in accordance with the procedures laid down in this Treaty; they shall act within the limits of the powers conferred upon them by this Treaty and by the Statute of the ESCB and of the ECB (hereinafter referred to as 'Statute of the ESCB') annexed thereto.~~

Article 9

[ex Art. 9 EC, repealed]

~~A European Investment Bank is hereby established, which shall act within the limits of the powers conferred upon it by this Treaty and the Statute annexed thereto.~~

Article 10

⁸⁶ Insertion of the operative part of the Protocol on protection and welfare of animals, annexed to the EC Treaty by the Treaty of Amsterdam. Article III-121 of the Constitution.

⁸⁷ Replaced in substance by Article 9 (renumbered 13) EU.

⁸⁸ Replaced in substance by Article 9 and by Article 245a(1) (renumbered 13 and 282(1)) EU.

[ex Art. 10 EC, repealed] [⁸⁹]

~~Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.~~

~~They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.~~

~~Article 11~~

[ex Art. 11 EC, replaced] [⁹⁰]

~~1. Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.~~

~~2. Authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. When enhanced cooperation relates to an area covered by the procedure referred to in Article 251 of this Treaty, the assent of the European Parliament shall be required.~~

~~A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.~~

~~3. The acts and decisions necessary for the implementation of enhanced cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided in this Article and in Articles 43 to 45 of the Treaty on European Union.~~

~~Article 11a~~

[ex Art. 11a EC, replaced] [⁹¹]

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 11 shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Commission shall take a decision on it, and on such specific arrangements as it may deem necessary.~~

~~Article 12~~

[ex Art. 12 EC is moved to become Article 16 D (renumbered 18) FEU] [⁹²]

~~Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.~~

⁸⁹ Replaced in substance by Article 3a(3) (renumbered 4(3)) TEU.

⁹⁰ Replaced in substance by Article 10 (renumbered 20) EU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU.

⁹¹ Replaced in substance by Article 10 (renumbered 20) EU and by Articles 280 A to 280 I (renumbered 326 to 334) FEU.

⁹² The text of ex Art. 12 EC is moved to Article 16 D FEU. The text is reproduced here for reference purposes only.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.

Article 13

[ex Art. 13 EC is moved to become Article 16 E (renumbered 19) FEU]

~~1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.~~

~~2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.~~

Article 14

[ex Art. 14 EC is moved to become Article 22a (renumbered 26) FEU]

~~1. The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to the other provisions of this Treaty.~~

~~2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.~~

~~3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.~~

Article 15

[ex Art. 15 EC is moved to become Article 22b (renumbered 27) FEU]

~~When drawing up its proposals with a view to achieving the objectives set out in Article 14, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.~~

~~If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.~~

Article 16 [14]

[ex Art. 16 EC, amended] [⁹³]

Without prejudice to **Article 3a [4] of the Treaty on European Union or to** Articles 73 [93], 86 [106] and 87 [107], and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the **Community Union** and the Member States, each within their respective powers and within the

⁹³ Article III-122 of the Constitution.

scope of application of ~~this Treaty~~ **the Treaties**, shall take care that such services operate on the basis of principles and conditions, **particularly economic and financial conditions**, which enable them to fulfil their missions. **The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure**, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the **Treaties**, to provide, to commission and to fund such services.

Article 16 A [15]

[ex Art. 255 EC, amended] [⁹⁴]

1. In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.

2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.

~~3.~~ **3.** Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to ~~European Parliament, Council and Commission~~ documents **of the Union institutions, bodies, offices and agencies, whatever their medium**, subject to the principles and the conditions to be defined in accordance with ~~paragraphs 2 and 3~~ **this paragraph**.

~~2.~~ General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by **the European Parliament and the Council by means of regulations**, acting in accordance with the **ordinary legislative** procedure ~~referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam~~.

~~3.~~ Each institution, **body, office or agency** ~~referred to above~~ **shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.**

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulation referred to in the second subparagraph.

Article 16 B [16]

[ex Art. 286 EC, replaced] [⁹⁵]

1. Everyone has the right to the protection of personal data concerning **them**.

2. **The European Parliament and the Council, acting in accordance with the ordinary legislative procedure**, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

⁹⁴ Article I-50 of the Constitution, entitled ‘Transparency of the proceedings of Union institutions, bodies, offices and agencies’.

⁹⁵ Article I-51 of the Constitution, entitled ‘Protection of personal data’.

The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 25a [39] of the Treaty on European Union.

Article 16 C [17]
[new article] [⁹⁶]

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status under national law of philosophical and non-confessional organisations.

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

PART TWO

NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 16 D [18]
[ex Art. 12 EC, amended]

Within the scope of application of ~~this Treaty~~ the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~, may adopt rules designed to prohibit such discrimination.

Article 16 E [19]
[ex Art. 13 EC, amended] [⁹⁷]

1. Without prejudice to the other provisions of ~~this Treaty~~ the Treaties and within the limits of the powers conferred by ~~it~~ them upon the ~~Community~~ Union, the Council, acting unanimously ~~on a proposal from the Commission~~ in accordance with a special legislative procedure and after ~~consulting~~ obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, ~~when~~ the European Parliament and the Council ~~adopts~~ ~~Community~~, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of the Union's incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, ~~it shall act in accordance with the procedure referred to in Article 251~~.

Article 17 [20]
[ex Art. 17 EC, amended] [⁹⁸]

⁹⁶ Article I-52 of the Constitution, entitled 'Status of churches and non-confessional organisations'.

⁹⁷ Article III-124 of the Constitution.

⁹⁸ Article I-10 of the Constitution, entitled 'Citizenship of the Union'.

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall **complement be additional to** and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights **conferred by this Treaty** and shall be subject to the duties **imposed thereby** provided for in the **Treaties**. They shall have, *inter alia*:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the **Treaty** languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the **Treaties** and by the measures adopted thereunder.

Article 18 [21]

[ex Art. 18 EC, amended] [⁹⁹]

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in ~~this Treaty~~ **the Treaties** and by the measures adopted to give ~~it~~ **them** effect.

2. If action by the **Community Union** should prove necessary to attain this objective and ~~this Treaty~~ **the Treaties** ~~has~~ **have** not provided the necessary powers, **the European Parliament and the Council, acting in accordance with the ordinary legislative procedure,** may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1. ~~The Council shall act in accordance with the procedure referred to in Article 251.~~

3. ~~Paragraph 2 shall not apply to provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.~~ For the same purposes as those referred to in paragraph 1 and if the **Treaties** ~~have~~ **not** provided the necessary powers, **the Council, acting in accordance with a special legislative procedure,** may **adopt** measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 19 [22]

[ex Art. 19 EC, amended] [¹⁰⁰]

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously ~~on a proposal from the Commission~~ **in accordance with a special legislative procedure** and after consulting the

⁹⁹ Article III-125 of the Constitution.

¹⁰⁰ Article III-126 of the Constitution.

European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 190(4) [223(1)] and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously ~~on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 20 [23]
[ex Art. 20 EC, amended] [¹⁰¹]

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall ~~establish~~ adopt the necessary ~~rules~~ provisions among themselves and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 21 [24]
[ex Art. 21 EC, amended]

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 8 B [11] of the Treaty on European Union, including the minimum number of Member States from which such citizens must come. [¹⁰²]

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194 [227].

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195 [228].

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 9 [13] of the Treaty on European Union in one of the languages mentioned in Article 314 53(1) [55(1)] of the Treaty on European Union and have an answer in the same language.

Article 22 [25]
[ex Art. 22 EC, amended] [¹⁰³]

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union.

¹⁰¹ Article III-127 of the Constitution.

¹⁰² Article I-47(4) of the Constitution.

¹⁰³ Article III-129 of the Constitution.

On this basis, and without prejudice to the other provisions of ~~this Treaty~~ the Treaties, the Council, acting unanimously ~~on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting obtaining the consent of the the European Parliament, may adopt provisions to strengthen or to add to the rights laid down in this Part, listed in Article 17(2) [20(2)]. These provisions shall enter into force after their approval which it shall ~~recommend to~~ by the Member States for adoption in accordance with their respective constitutional requirements.

PART THREE

COMMUNITY UNION POLICIES AND INTERNAL ACTIONS

TITLE I

THE INTERNAL MARKET

Article 22a [26]

[ex Art. 14 EC, amended] [¹⁰⁴]

1. The Community Union shall adopt measures with the aim of progressively establishing or ensuring the functioning of the internal market ~~over a period expiring on 31 December 1992~~, in accordance with ~~the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to~~ the other relevant provisions of ~~this Treaty~~ the Treaties.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of ~~this Treaty~~ the Treaties.
3. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

Article 22b [27]

[ex Art. 15 EC, amended] [¹⁰⁵]

When drawing up its proposals with a view to achieving the objectives set out in Article ~~14~~ 22a [26], the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during for the period of establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the ~~common~~ internal market.

TITLE I [a [II]]

¹⁰⁴ Article III-130(1), (2) and (3) of the Constitution.

¹⁰⁵ Article III-130(4) of the Constitution.

FREE MOVEMENT OF GOODS

Article 23 [28]
[ex Art. 23 EC, amended] [¹⁰⁶]

1. The **Community Union** shall ~~be based upon~~ **comprise** a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 25 [30] and of Chapter 2 [3] of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 24 [29]
[ex Art. 24 EC]

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

CHAPTER 1

THE CUSTOMS UNION

Article 25 [30]
[ex Art. 25 EC]

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 26 [31]
[ex Art. 26 EC]

Common Customs Tariff duties shall be fixed by the Council ~~acting by a qualified majority~~ on a proposal from the Commission.

Article 27 [32]
[ex Art. 27 EC]

In carrying out the tasks entrusted to it under this Chapter the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the **Community Union** in so far as they lead to an improvement in the competitive capacity of undertakings;

¹⁰⁶ Article III-151 of the Constitution.

(c) the requirements of the **Community Union** as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;

(d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the **Community Union**.

CHAPTER 1a [2]

CUSTOMS COOPERATION [¹⁰⁷]

Article 27a [33]

[ex Art. 135 EC, amended]

Within the scope of application of ~~this Treaty~~ the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. ~~These measures shall not concern the application of national criminal law or the national administration of justice.~~

CHAPTER 2 [3]

PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

Article 28 [34]

[ex Art. 28 EC]

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 29 [35]

[ex Art. 29 EC]

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 30 [36]

[ex Art. 30 EC]

The provisions of Articles 28 [34] and 29 [35] shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

¹⁰⁷ The title to ex Title X of Part Three ‘Customs cooperation’ EC is moved to become the title to Chapter 1a (renumbered 2) of Title Ia (renumbered II) of Part Three FEU.

Article 31 [37]
[ex Art. 31 EC]

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

TITLE II [III]

AGRICULTURE AND FISHERIES [108]

Article 32 [38]
[ex Art. 32 EC, amended] [109]

1. The Union shall define and implement a common agriculture and fisheries policy.

~~1.~~ The ~~common~~ internal market shall extend to agriculture, fisheries and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term “agricultural”, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

2. Save as otherwise provided in Articles 33 [39] to 38 [44], the rules laid down for the establishment and functioning of the ~~common~~ internal market shall apply to agricultural products.

3. The products subject to the provisions of Articles 33 [39] to 38 [44] are listed in Annex I ~~to this Treaty~~.

4. The operation and development of the ~~common~~ internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 33 [39]
[ex Art. 33 EC]

¹⁰⁸ Section 4 of Chapter III of Title III of Part III of the Constitution.

¹⁰⁹ Merges Articles III-225 and III-226 of the Constitution.

1. The objectives of the common agricultural policy shall be:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to assure the availability of supplies;
- (e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article 34 [40]
[ex Art. 34 EC, amended]

1. In order to attain the objectives set out in Article 33 [39], a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 33 [39], in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in Article 33 [39] and shall exclude any discrimination between producers or consumers within the **Community Union**.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article 35 [41]
[ex Art. 35 EC]

To enable the objectives set out in Article 33 [39] to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

Article 36 [42]
[ex Art. 36 EC, amended]

The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 37(2) [43(2)] and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33 [39].

The Council, on a proposal from the Commission, may, in particular, authorise the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

Article 37 [43]
[ex Art. 37 EC, amended]

~~1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.~~

~~1. 2. Having taken into account the work of the Conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty,~~ The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 34(1) [40(1)], and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this title.

~~The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.~~

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 34(1) [40(1)] and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.

3. The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

~~3- 4.~~ ~~The Council may, acting by a qualified majority and~~ In accordance with paragraph 2, ~~replae~~ the national market organisations ~~may be replaced~~ by the common organisation provided for in Article 34(1) ~~[40(1)]~~ if:

- (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
- (b) such an organisation ensures conditions for trade within the ~~Community~~ **Union** similar to those existing in a national market.

~~4- 5.~~ If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the ~~Community~~ **Union**.

Article 38 ~~[44]~~
[ex Art. 38 EC]

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

TITLE III ~~[IV]~~

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1

WORKERS

Article 39 ~~[45]~~
[ex Art. 39 EC, amended]

1. Freedom of movement for workers shall be secured within the ~~Community~~ **Union**.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in **implementing** regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

Article 40 [46]
[ex Art. 40 EC, amended]

The European Parliament and the Council shall, acting in accordance with the **ordinary legislative** procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 39 [45], in particular:

(a) by ensuring close cooperation between national employment services;

(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;

(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;

(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 41 [47]
[ex Art. 41 EC]

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article 42 [48]
[ex Art. 42 EC, amended] [¹¹⁰]

The European Parliament and the Council shall, acting in accordance with the **ordinary legislative** procedure ~~referred to in Article 251~~, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for **employed and self-employed** migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

¹¹⁰ Article III-136 of the Constitution.

(b) payment of benefits to persons resident in the territories of Member States.

~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~ Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

(a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure; or

(b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.

CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 43 [49]
[ex Art. 43 EC]

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48 [54], under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 44 [50]
[ex Art. 44 EC, amended]

1. In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee, shall act by means of directives.

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

(a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

(b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community Union of the various activities concerned;

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;

(d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

(e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 33(2) [39(2)];

(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 [54] with a view to making such safeguards equivalent throughout the Community Union;

(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 45 [51]
[ex Art. 45 EC, amended]

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

~~The European Parliament and the Council may, acting by a qualified majority on a proposal from the Commission,~~ in accordance with the ordinary legislative procedure, may rule that the provisions of this Chapter shall not apply to certain activities.

Article 46 [52]
[ex Art. 46 EC, amended]

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. ~~The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure referred to in Article 251,~~ issue directives for the coordination of the abovementioned provisions.

Article 47 [53]
[ex Art. 47 EC, amended]

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, ~~the European Parliament and~~ the Council shall, acting in accordance with the ordinary legislative

procedure ~~referred to in Article 251~~, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications ~~and for~~ the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.

~~2. For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.~~

~~3.~~ **2.** In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 48 **[54]**
[ex Art. 48 EC, amended]

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the **Community Union** shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

‘Companies or firms’ means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 48a **[55]**
[ex Art. 294 EC, amended]

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 48 **[53]**, without prejudice to the application of the other provisions of ~~this Treaty~~ **the Treaties**.

CHAPTER 3

SERVICES

Article 49 **[56]**
[ex Art. 49 EC, amended]

Within the framework of the provisions set out below, restrictions on freedom to provide services within the **Community Union** shall be prohibited in respect of nationals of Member States who are established in a **Member State** ~~of the Community~~ other than that of the person for whom the services are intended.

The European Parliament and the Council ~~may, acting by a qualified majority on a proposal from the Commission~~ in accordance with the ordinary legislative procedure, **may** extend the provisions

of the Chapter to nationals of a third country who provide services and who are established within the ~~Community~~ **Union**.

Article 50 **[57]**
[ex Art. 50 EC, amended]

Services shall be considered to be ‘services’ within the meaning of ~~this Treaty~~ **the Treaties** where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

‘Services’ shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the **Member State** where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 51 **[58]**
[ex Art. 51 EC]

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 52 **[59]**
[ex Art. 52 EC, amended]

1. In order to achieve the liberalisation of a specific service, the **European Parliament and the Council** shall, ~~on a proposal from the Commission~~ **acting in accordance with the ordinary legislative procedure** and after consulting the Economic and Social Committee ~~and the European Parliament~~, shall issue directives acting by a qualified majority.
2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 53 **[60]**
[ex Art. 53 EC, amended] ^[111]

The Member States ~~declare their readiness~~ shall endeavour to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1) **[59(1)]**, if their general economic situation and the situation of the economic sector concerned so permit.

¹¹¹ Article III-148 of the Constitution.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 54 [61]
[ex Art. 54 EC]

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 49 [56].

Article 55 [62]
[ex Art. 55 EC]

The provisions of Articles 45 [51] to 48 [54] shall apply to the matters covered by this Chapter.

CHAPTER 4

CAPITAL AND PAYMENTS

Article 56 [63]
[ex Art. 56 EC]

1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.
2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Article 57 [64]
[ex Art. 57 EC, amended] [¹¹²]

1. The provisions of Article 56 [63] shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or ~~Community~~ **Union** law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets. In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date shall be 31 December 1999.
2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of ~~this Treaty~~ **the Treaties**, **the European Parliament and the Council may**, acting ~~by a qualified majority on a proposal from the Commission~~ **in accordance with the ordinary legislative procedure**, **shall** adopt **the** measures on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets.
- ~~3. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalisation of the movement of capital to or from third countries. Notwithstanding paragraph 2, only~~ **the Council**, acting in accordance with a special legislative

¹¹² Article III-157 of the Constitution.

procedure, may unanimously, and after consulting the European Parliament, adopt measures which constitute a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries.

Article 58 [65]
[ex Art. 58 EC, amended] [¹¹³]

1. The provisions of Article 56 [63] shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with ~~this Treaty~~ the Treaties.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56 [63].

4. In the absence of measures pursuant to Article 57(3) [64(3)], the Commission or, in the absence of a Commission decision, within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Treaties insofar as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

Article 59 [66]
[ex Art. 59 EC, amended]

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Central Bank, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

~~*Article 60*~~
[ex Art. 60 EC is moved to become Article 61 H (renumbered 75) FEU]

1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take

¹¹³ Article III-158 of the Constitution.

unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

TITLE IV **[V]**

~~VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATED TO FREE MOVEMENT OF PERSONS~~

AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 1

GENERAL PROVISIONS

Article 61 **[67]**
[ex Art. 61 EC, replaced] ^[114]

~~In order to establish progressively an area of freedom, security and justice, the Council shall adopt:~~

~~(a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;~~

~~(b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;~~

~~(c) measures in the field of judicial cooperation in civil matters as provided for in Article 65;~~

~~(d) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;~~

~~(e) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.~~

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member

¹¹⁴ Replaced by Articles 61 to 61 I (renumbered 67 to 76) FEU. Also replaces ex Article 29 EU. The new text is identical to that of Article III-257 of the Constitution.

States, which is fair towards third-country nationals. For the purpose of this [Title](#), stateless persons shall be treated as third-country nationals.

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

[Article 61 A \[68\]](#)
[new article] [¹¹⁵]

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

[Article 61 B \[69\]](#)
[new article] [¹¹⁶]

National Parliaments ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

[Article 61 C \[70\]](#)
[new article] [¹¹⁷]

Without prejudice to Articles [226 \[258\]](#), [227 \[259\]](#) and [228 \[260\]](#), the Council may, on a proposal from the Commission, adopt [measures](#) laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this [Title](#) by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

[Article 61 D \[71\]](#)
[new article] [¹¹⁸]

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article [207 \[240\]](#), it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

[Article 61 E \[72\]](#)
[new article] [¹¹⁹]

¹¹⁵ Article III-258 of the Constitution.

¹¹⁶ Article III-259 of the Constitution.

¹¹⁷ Article III-260 of the Constitution.

¹¹⁸ Article III-261 of the Constitution. Replaces ex Art. 36 EU.

This **Title** shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 61 F [73]
[new article]

It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.

Article 61 G [74]
[new article] [¹²⁰]

The Council shall adopt **measures** to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this **Title**, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article **61 I [76]**, and after consulting the European Parliament.

Article 61 H [75]
[new article]

Where necessary to achieve the objectives set out in Article 61 [67], as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.

The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

The acts referred to in this Article shall include necessary provisions on legal safeguards.

Article 61 I [76]
[new article] [¹²¹]

The acts referred to in **Chapters 4 and 5**, together with the **measures** referred to in Article **61 G [74]** which ensure administrative cooperation in the areas covered by these **Chapters**, shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

CHAPTER 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

¹¹⁹ Article III-262 of the Constitution. Replaces ex Art. 33 EU and paragraph (1) of ex Art. 64 EC.

¹²⁰ Article III-263 of the Constitution.

¹²¹ Article III-264 of the Constitution.

Article 62 [77]
[ex Art. 62 EC, replaced] [¹²²]

~~The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:~~

~~1. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;~~

~~2. measures on the crossing of the external borders of the Member States which shall establish:~~

~~(a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;~~

~~(b) rules on visas for intended stays of no more than three months, including:~~

~~(i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;~~

~~(ii) the procedures and conditions for issuing visas by Member States;~~

~~(iii) a uniform format for visas;~~

~~(iv) rules on a uniform visa;~~

~~3. measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.~~

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;

(c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;

(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;

(d) any measure necessary for the gradual establishment of an integrated management system for external borders;

(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

¹²² Article III-265 of the Constitution.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 17(2)(a) [20(2)(a)], and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 63 [78]
[ex Art. 63 EC, replaced] [¹²³]

~~The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:~~

~~1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:~~

~~(a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States;~~

~~(b) minimum standards on the reception of asylum seekers in Member States;~~

~~(c) minimum standards with respect to the qualification of nationals of third countries as refugees;~~

~~(d) minimum standards on procedures in Member States for granting or withdrawing refugee status;~~

~~2. measures on refugees and displaced persons within the following areas:~~

~~(a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection;~~

~~(b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;~~

~~3. measures on immigration policy within the following areas:~~

~~(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;~~

~~(b) illegal immigration and illegal residence, including repatriation of illegal residents;~~

~~4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.~~

~~Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.~~

¹²³ Paragraphs (1) and (2) of ex Art. 63 EC are replaced by paragraphs (1) and (2) of Article 63 (renumbered 78) FEU. Paragraphs (3) and (4) of ex Art. 63 EC are replaced by Article 63a (renumbered 79) FEU. Article 63(3) (renumbered 78(3)) FEU replaces ex Art. 64(2) EC. The new text is identical to Article III-266 of the Constitution.

~~Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.~~

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article 63a [79]
[new article] [¹²⁴]

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

¹²⁴ Article III-267 of the Constitution. Article 63a (renumbered 79) FEU replaces paragraphs (3) and (4) of ex Art. 63 EC.

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article 63b [80]
[new article] [125]

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

~~*Article 64*~~
[ex Art. 64 EC, replaced] [126]

~~1. This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.~~

~~2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.~~

CHAPTER 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article 65 [81]
[ex Art. 65 EC, replaced] [127]

¹²⁵ Article III-268 of the Constitution.

¹²⁶ Paragraph (1) of ex Art. 64 EC is replaced by Article 61 E (renumbered 72) FEU. Paragraph (2) of ex Art. 64 EC is replaced by Article 63(3) (renumbered 78(3)) FEU.

¹²⁷ Article III-269 of the Constitution.

~~Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:~~

~~(a) improving and simplifying:~~

~~— the system for cross-border service of judicial and extrajudicial documents;~~

~~— cooperation in the taking of evidence;~~

~~— the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;~~

~~(b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;~~

~~(c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.~~

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

(a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;

(b) the cross-border service of judicial and extrajudicial documents;

(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;

(d) cooperation in the taking of evidence;

(e) effective access to justice;

(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;

(g) the development of alternative methods of dispute settlement;

(h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

Article 66

[ex Art. 66 EC, replaced] [¹²⁸]

~~The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this title, as well as between those departments and the Commission.~~

Article 67

[ex Art. 67 EC, repealed]

~~1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.~~

~~2. After this period of five years:~~

~~— the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;~~

~~— the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.~~

~~3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.~~

~~4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.~~

~~5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:~~

~~— the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this Article, Community legislation defining the common rules and basic principles governing these issues;~~

~~— the measures provided for in Article 65 with the exception of aspects relating to family law.~~

Article 68

[ex Art. 68 EC, repealed]

~~1. Article 234 shall apply to this title under the following circumstances and conditions: where a question on the interpretation of this title or on the validity or interpretation of acts of the~~

¹²⁸ Replaced by Article 61 G (renumbered 74) FEU.

~~institutions of the Community based on this title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.~~

~~2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.~~

~~3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the institutions of the Community based on this title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.~~

Article 69

[ex Art. 69 EC, repealed]

~~The application of this title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.~~

CHAPTER 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 69 A [82]
[new article] [¹²⁹]

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 69 B [83].

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

¹²⁹ Replaces ex Art. 31 EU. The new text is identical to Article III-270 of the Constitution.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

3. Where a member of the Council considers that a draft **directive** as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft **directive** be referred to the European Council. In that case, the **ordinary legislative** procedure shall be suspended. After discussion, **and in case of a consensus**, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the **ordinary legislative** procedure.

Within the same timeframe, in case of disagreement, and if at least **nine** Member States wish to establish enhanced cooperation on the basis of the draft **directive** concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article **10(2) [20(2)]** of the Treaty on European Union and Article **280 D(1) [329(1)]** of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 69 B [83]
[new article] [¹³⁰]

1. The European Parliament and the Council may, by means of directives adopted in accordance with the **ordinary legislative procedure**, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, **directives** may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such **directives** shall be adopted by the same **ordinary or special legislative** procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article **61 I [76]**.

3. Where a member of the Council considers that a draft **directive** as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft

¹³⁰ Replaces ex Art. 31 EU. The new text is identical to Article III-271 of the Constitution.

directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 10(2) [20(2)] of the Treaty on European Union and Article 280 D(1) [329(1)] of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 69 C [84]
[new article] [¹³¹]

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

Article 69 D [85]
[new article] [¹³²]

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to Article 69 E [86], formal acts of judicial procedure shall be carried out by the competent national officials.

Article 69 E [86]
[new article] [¹³³]

¹³¹ Article III-272 of the Constitution.

¹³² Replaces ex Art. 31 EU. The new text is identical to Article III-273 of the Constitution.

¹³³ Article III-274 of the Constitution.

1. In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

In the absence of unanimity, a group of at least nine Member States may request that the draft regulation be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 10(2) [20(2)] of the Treaty on European Union and Article 280 D(1) [329(1)] of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

CHAPTER 5

POLICE COOPERATION

Article 69 F [87] [new article] [¹³⁴]

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:

(a) the collection, storage, processing, analysis and exchange of relevant information;

¹³⁴ Replaces ex Art. 30 EU. The new text is similar to Article III-275 of the Constitution.

(b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;

(c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

In case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 10(2) of the Treaty on European Union and Article 280 D(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen *acquis*.

Article 69 G [88]
[new article] [¹³⁵]

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article 69 H [89]
[new article] [¹³⁶]

¹³⁵ Replaces ex Art. 30 EU. The new text is identical to Article III-276 of Constitution.

¹³⁶ Replaces ex Art. 32 EU. The new text is identical to Article III-277 of the Constitution.

The Council, acting in accordance with a special legislative procedure, shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles 69 A [82] and 69 F [87] may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

TITLE V [VI]

TRANSPORT

Article 70 [90]
[ex Art. 70 EC, amended]

The objectives of ~~this Treaty~~ ~~the Treaties~~ shall, in matters governed by this Title, be pursued ~~by Member States~~ within the framework of a common transport policy.

Article 71 [91]
[ex Art. 71 EC, amended] [¹³⁷]

1. For the purpose of implementing Article 70 [90], and taking into account the distinctive features of transport, ~~the European Parliament and~~ the Council shall, acting in accordance with the ~~ordinary legislative~~ procedure ~~referred to in Article 254~~ and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate provisions.

~~2. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market. When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.~~

Article 72 [92]
[ex Art. 72 EC, amended] [¹³⁸]

¹³⁷ Article III-236 of the Constitution.

¹³⁸ Article III-237 of the Constitution.

Until the provisions referred to in Article 71(1) [92(1)] have been laid down, no Member State may, ~~without the unanimous approval of~~ unless the Council has unanimously adopted a measure granting a derogation, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article 73 [93]
[ex Art. 73 EC, amended]

Aids shall be compatible with ~~this Treaty~~ the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 74 [94]
[ex Art. 74 EC, amended]

Any measures taken within the framework of ~~this Treaty~~ the Treaties in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 75 [95]
[ex Art. 75 EC, amended] [¹³⁹]

1. In the case of transport within the Community Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be ~~abolished~~ prohibited.
2. Paragraph 1 shall not prevent the European Parliament and the Council from adopting other measures pursuant to Article 71(1) [91(1)].
3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Community Union to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

Article 76 [96]
[ex Art. 76 EC, amended]

1. The imposition by a Member State, in respect of transport operations carried out within the Community Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.

¹³⁹ Article III-240 of the Constitution.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article 77 [97]
[ex Art. 77 EC]

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this Article.

Article 78 [98]
[ex Art. 78 EC, amended] [¹⁴⁰]

The provisions of this title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this Article.

Article 79 [99]
[ex Art. 79 EC, amended] [¹⁴¹]

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters ~~without prejudice to the powers of the Economic and Social Committee.~~

Article 80 [100]
[ex Art. 80 EC, amended] [¹⁴²]

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. ~~The European Parliament and the Council may, acting by a qualified majority acting in accordance with the ordinary legislative procedure, may decide whether, to what extent and by~~

¹⁴⁰ Article III-243 of the Constitution.

¹⁴¹ Article III-244 of the Constitution.

¹⁴² Article III-245 of the Constitution.

what procedure lay down appropriate provisions may be laid down for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

~~The procedural provisions of Article 71 shall apply.~~

TITLE VI [VII]

COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

CHAPTER 1

RULES ON COMPETITION

SECTION 1

RULES APPLYING TO UNDERTAKINGS

Article 81 [101]
[ex Art. 81 EC, amended] [¹⁴³]

1. The following shall be prohibited as incompatible with the ~~common~~ internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the ~~common~~ internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,

¹⁴³ Article III-161 of the Constitution.

— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 [102]
[ex Art. 82 EC, amended]

Any abuse by one or more undertakings of a dominant position within the ~~common~~ internal market or in a substantial part of it shall be prohibited as incompatible with the ~~common~~ internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 83 [103]
[ex Art. 83 EC, amended]

1. The appropriate regulations or directives to give effect to the principles set out in Articles 81 [101] and 82 [102] shall be laid down by the Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in Article 81(1) [101(1)] and in Article 82 [102] by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of Article 81(3) [101(3)], taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 81 [101] and 82 [102];
- (d) to define the respective functions of the Commission and of the Court of Justice ~~of the~~ European Union in applying the provisions laid down in this paragraph;

(e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

Article 84 [104]
[ex Art. 84 EC, amended]

Until the entry into force of the provisions adopted in pursuance of Article 83 [103], the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the ~~common~~ internal market in accordance with the law of their country and with the provisions of Article 81 [101], in particular paragraph 3, and of Article 82 [102].

Article 85 [105]
[ex Art. 85 EC, amended] [¹⁴⁴]

1. Without prejudice to Article 84 [104], the Commission shall ensure the application of the principles laid down in Articles 81 [101] and 82 [102]. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

3. The Commission may adopt regulations relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 83(2)(b) [103(2)(b)].

Article 86 [106]
[ex Art. 86 EC, amended]

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in ~~this Treaty~~ the Treaties, in particular to those rules provided for in Article 16 D [18] and Articles 81 [101] to 89 [109].

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in ~~this Treaty~~ the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community Union.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

SECTION 2

AIDS GRANTED BY STATES

¹⁴⁴ Article III-165 of the Constitution.

Article 87 [107]
[ex Art. 87 EC, amended] [¹⁴⁵]

1. Save as otherwise provided in ~~this Treaty~~ **the Treaties**, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the ~~common~~ **internal** market.

2. The following shall be compatible with the ~~common~~ **internal** market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the **Treaty of Lisbon**, the Council, acting on a proposal from the Commission, may adopt a **decision repealing this point**.

3. The following may be considered to be compatible with the ~~common~~ **internal** market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article **299 [349]**, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the ~~Community~~ **Union** to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council ~~acting by a qualified majority~~ on a proposal from the Commission.

Article 88 [108]
[ex Art. 88 EC, amended] [¹⁴⁶]

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the ~~common~~ **internal** market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the ~~common~~ **internal** market having regard to Article 87 **[107]**, or that such aid is being misused, it shall decide

¹⁴⁵ Article III-167 of the Constitution.

¹⁴⁶ Article III-168 of the Constitution.

that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 [258] and 227 [259], refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the ~~common~~ internal market, in derogation from the provisions of Article 87 [107] or from the regulations provided for in Article 89 [109], if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the ~~common~~ internal market having regard to Article 87 [107], it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 89 [109], determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 89 [109]
[ex Art. 89 EC, amended]

The Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 87 [107] and 88 [108] and may in particular determine the conditions in which Article 88(3) [108(3)] shall apply and the categories of aid exempted from this procedure.

CHAPTER 2

TAX PROVISIONS

Article 90 [110]
[ex Art. 90 EC]

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article 91 [111]
[ex Art. 91 EC]

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article 92 [112]
[ex Art. 92 EC]

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council ~~acting by a qualified majority~~ on a proposal from the Commission.

Article 93 [113]
[ex Art. 93 EC, amended] [¹⁴⁷]

The Council shall, acting unanimously ~~on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market ~~within the time limit laid down in Article 14~~ and to avoid distortion of competition.

CHAPTER 3

APPROXIMATION OF LAWS

Article 95 ~~94~~ [114]
[ex Art. 95 EC, amended] [¹⁴⁸]

1. ~~By way of derogation from Article 94 and~~ Save where otherwise provided in ~~this Treaty~~ the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article ~~14~~ 22a [26]. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.
4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission ~~of a harmonisation measure~~, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30

¹⁴⁷ Article III-171 of the Constitution.

¹⁴⁸ Article III-172 of the Constitution.

[36], or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission ~~of a harmonisation measure~~, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 226 [258] and 227 [259], the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 30 [36], provisional measures subject to a Community Union control procedure.

Article 94 95 [115]
[ex Art. 94 EC, amended] [¹⁴⁹]

Without prejudice to Article 94 [114], the Council shall, acting unanimously ~~on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common internal market.

Article 96 [116]
[ex Art. 96 EC, amended] [¹⁵⁰]

¹⁴⁹ Article III-173 of the Constitution.

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the ~~common~~ internal market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, ~~the European Parliament and the Council shall, on a proposal from the Commission, acting by a qualified majority~~ acting in accordance with the ordinary legislative procedure, shall issue the necessary directives. ~~The Commission and the Council may take~~ Any other appropriate measures provided for in ~~this Treaty~~ the Treaties may be adopted.

Article 97 [117]
[ex Art. 97 EC]

1. Where there is a reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 96 [116], a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

2. If a State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, pursuant to Article 96 [116], to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, the provisions of Article 96 [116] shall not apply.

Article 97a [118]
[new article] [¹⁵¹]

In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament.

TITLE VII [VIII]

ECONOMIC AND MONETARY POLICY

Article 97b [119]
[ex Art. 4 EC, amended] [¹⁵²]

¹⁵⁰ Article III-174 of the Constitution.

¹⁵¹ Article III-176 of the Constitution.

¹⁵² Article III-177 of the Constitution.

1. For the purposes set out in Article ~~2~~ **2 [3]** of the Treaty on European Union, the activities of the Member States and the **Community Union** shall include, as provided in ~~this Treaty~~ **the Treaties** ~~and in accordance with the timetable set out therein~~, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in ~~this Treaty~~ **the Treaties** and in accordance with ~~the timetable and~~ the procedures set out therein, these activities shall include ~~the irrevocable fixing of exchange rates leading to the introduction of~~ a single currency, the **ecu euro**, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the **Community Union**, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the **Community Union** shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

CHAPTER 1

ECONOMIC POLICY

Article 98 [120]

[ex Art. 98 EC, amended]

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the **Community Union**, as defined in Article ~~2~~ **2 [3]** of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 99(2) **[121(2)]**. The Member States and the **Community Union** shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article ~~4~~ **97b [119]**.

Article 99 [121]

[ex Art. 99 EC, amended] [¹⁵³]

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 98 **[120]**.

2. The Council shall, ~~acting by a qualified majority~~ on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the **Community Union**, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the **Community Union**.

On the basis of this conclusion, the Council shall, ~~acting by a qualified majority~~, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

¹⁵³ Article III-179 of the Constitution.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the **Community Union** as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, **the Commission may address a warning to the Member State concerned.** The Council ~~may, acting by a qualified majority,~~ on a recommendation from the Commission, ~~make~~ **may address** the necessary recommendations to the Member State concerned. The Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, decide to make its recommendations public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)].

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

~~5- 6.~~ **6.** **The European Parliament and** the Council, acting **by means of regulations** in accordance with the **ordinary legislative** procedure ~~referred to in Article 252,~~ may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 ~~of this Article.~~

Article 100 [122]
[ex Art. 100 EC, amended]

1. Without prejudice to any other procedures provided for in ~~this Treaty~~ **the Treaties**, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission, may decide, **in a spirit of solidarity between Member States,** upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, **notably in the area of energy.**

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission, may grant, under certain conditions, **Community Union** financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

Article 101 [123]
[ex Art. 101 EC, amended] [¹⁵⁴]

1. Overdraft facilities or any other type of credit facility with the **European Central Bank** or with the central banks of the Member States (hereinafter referred to as 'national central banks') in favour of **Community Union** institutions, ~~or~~ **bodies, offices or agencies,** central governments,

¹⁵⁴ Article III-181 of the Constitution.

regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

Article 102 [124]
[ex Art. 102 EC, amended]

~~1.~~ Any measure, not based on prudential considerations, establishing privileged access by Community Union institutions, ~~or~~ bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

~~2. The Council, acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.~~

Article 103 [125]
[ex Art. 103 EC, amended] [¹⁵⁵]

1. The Community Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

~~2. If necessary,~~ The Council, ~~acting in accordance with the procedure referred to in Article 252~~ on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibition referred to in Articles 101 [123] and 102 [124] and in this Article.

Article 104 [126]
[ex Art. 104 EC, amended] [¹⁵⁶]

1. Member States shall avoid excessive government deficits.

2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

(a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:

— either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,

¹⁵⁵ Article III-183 of the Constitution.

¹⁵⁶ Article III-184 of the Constitution.

— or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;

(b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to ~~this Treaty~~ **the Treaties**.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The **Economic and Financial** Committee ~~provided for in Article 114~~ shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, ~~the Commission~~ **it** shall address an opinion to the **Member State concerned and shall inform the Council accordingly**.

6. The Council shall, ~~acting by a qualified majority~~ on a ~~recommendation~~ **proposal** from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

7. Where ~~the existence of an excessive deficit is decided according to paragraph 6,~~ the Council **decides, in accordance with paragraph 6, that an excessive deficit exists,** ~~it~~ shall ~~make~~ **adopt, without undue delay, on a recommendation from the Commission,** recommendations **addressed** to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 226 **[258]** and 227 **[259]** may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

— to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,

- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the **Community Union** until the excessive deficit has, in the view of the Council, been corrected,
- to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions **or recommendations** referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions **or recommendations** referred to in paragraphs ~~7 to 9~~ **8, 9**, 11 and 12, the Council shall act on a recommendation from the Commission ~~by a majority of two thirds of the votes of its members weighted in accordance with Article 205(2), excluding the votes of the representative of the Member State concerned.~~

When the Council adopts the measures referred to in paragraphs 6 to 9, 11 and 12, it shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)].

14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to ~~this Treaty~~ **the Treaties**.

The Council shall, acting unanimously ~~on a proposal from the Commission~~ **in accordance with a special legislative procedure** and after consulting the European Parliament and the **European Central Bank**, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, ~~before 1 January 1994, acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

CHAPTER 2

MONETARY POLICY

Article 105 [127]
[ex Art. 105 EC, amended] [¹⁵⁷]

1. The primary objective of the **European System of Central Banks**, hereinafter referred to as “**ESCB**” shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the **Community Union** with a view to contributing to the achievement of the objectives of the **Community Union** as laid down in Article ~~2~~ **2 [3] of the Treaty on European Union**. The ESCB shall act in accordance with the

¹⁵⁷ Article III-185 of the Constitution.

principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4 97b [119].

2. The basic tasks to be carried out through the ESCB shall be:

— to define and implement the monetary policy of the Community Union,

— to conduct foreign-exchange operations consistent with the provisions of Article 111 188 O [219],

— to hold and manage the official foreign reserves of the Member States,

— to promote the smooth operation of payment systems.

3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

4. The European Central Bank shall be consulted:

— on any proposed Community Union act in its fields of competence,

— by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 107(6) 107(4) [129(4)].

The European Central Bank may submit opinions to the appropriate Community Union institutions, or bodies, offices or agencies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. The Council may, acting by means of regulations in accordance with a special legislative procedure, may unanimously, on a proposal from the Commission and and after consulting the European Parliament and the European Central Bank and after receiving the assent of the European Parliament, confer upon the ECB specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 106 [128]

[ex Art. 106 EC, amended] [¹⁵⁸]

1. The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Community Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Community Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 252 on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, adopt measures to harmonise the denominations and technical

¹⁵⁸ Article III-186 of the Constitution.

specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the ~~Community~~ **Union**.

Article 107 [129]
[ex Art. 107 EC, amended] [¹⁵⁹]

~~1. The ESCB shall be composed of the ECB and of the national central banks.~~

~~2. The ECB shall have legal personality.~~

~~3.~~ 1. The ESCB shall be governed by the decision-making bodies of the **European Central Bank** which shall be the Governing Council and the Executive Board.

~~4.~~ 2. The Statute of the **European System of Central Banks and of the European Central Bank**, hereinafter referred to as “Statute of the **ESCB and of the ECB**” is laid down in a Protocol annexed to ~~this Treaty~~ **the Treaties**.

~~5.~~ 3. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB **and of the ECB** may be amended by **the European Parliament and the Council**, acting ~~either by a qualified majority~~ **in accordance with the ordinary legislative procedure**. **They shall act either** on a recommendation from the **European Central Bank** and after consulting the Commission or ~~unanimously~~ on a proposal from the Commission and after consulting the **European Central Bank**. ~~In either case, the assent of the European Parliament shall be required.~~

~~6.~~ 4. The Council, ~~acting by a qualified majority~~ either on a proposal from the Commission and after consulting the **European Parliament and the European Central Bank** or on a recommendation from the **European Central Bank** and after consulting the **European Parliament and the Commission**, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB **and of the ECB**.

Article 108 [130]
[ex Art. 108 EC, amended] [¹⁶⁰]

When exercising the powers and carrying out the tasks and duties conferred upon them by ~~this Treaty~~ **the Treaties** and the Statute of the ESCB **and of the ECB**, neither the **European Central Bank**, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from ~~Community Union~~ **institutions, or bodies, offices or agencies**, from any government of a Member State or from any other body. The ~~Community Union~~ **institutions, and bodies, offices and agencies** and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the **European Central Bank** or of the national central banks in the performance of their tasks.

Article 109 [131]
[ex Art. 109 EC, amended]

Each Member State shall ensure, ~~at the latest at the date of the establishment of the ESCB~~, that its national legislation including the statutes of its national central bank is compatible with ~~this Treaty~~ **the Treaties** and the Statute of the ESCB **and of the ECB**.

Article 110 [132]
[ex Art. 110 EC, amended]

¹⁵⁹ Article III-187 of the Constitution.

¹⁶⁰ Article III-188 of the Constitution.

1. In order to carry out the tasks entrusted to the ESCB, the European Central Bank shall, in accordance with the provisions of ~~this Treaty~~ ~~the Treaties~~ and under the conditions laid down in the Statute of the ESCB ~~and of the ECB~~:

— make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB ~~and the ECB~~ and in cases which shall be laid down in the acts of the Council referred to in Article ~~107(6)~~ ~~107(4)~~ ~~[129(4)]~~,

— take decisions necessary for carrying out the tasks entrusted to the ESCB under ~~this Treaty~~ ~~the Treaties~~ and the Statute of the ESCB ~~and the ECB~~,

— make recommendations and deliver opinions.

~~2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.~~

~~Recommendations and opinions shall have no binding force.~~

~~A decision shall be binding in its entirety upon those to whom it is addressed.~~

~~Articles 253, 254 and 256 shall apply to regulations and decisions adopted by the ECB.~~

The European Central Bank may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article ~~107(6)~~ ~~107(4)~~ ~~[129(4)]~~, the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

~~Article 111~~

[ex Art. 111 EC is moved to become Article 188 O (renumbered 219) and Article 115 C(1) (renumbered 138(1)) FEU] ^[161]

1. By way of derogation from Article 300, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the ecu in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ecu within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ecu central rates.

2. In the absence of an exchange-rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

¹⁶¹ The text of ex Art. 111 EC is reproduced here for reference purposes only.

3. By way of derogation from Article 300, where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the Community with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.

4. Subject to paragraph 1, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 and 105.

5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

Article 111a [133]
[new article] [¹⁶²]

Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.

CHAPTER 3

INSTITUTIONAL PROVISIONS

Article 112

[ex Art. 112 EC is moved to become Article 245b (renumbered 283) FEU]

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.

2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.

(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

¹⁶² Article III-191 of the Constitution.

~~Article 113~~

[ex Art. 113 EC is moved to become Article 245c (renumbered 284) FEU]

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB.

The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.

2. The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

Article 114 [134]

[ex Art. 114 EC, amended]

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, ~~a Monetary~~ **an Economic and Financial** Committee with advisory status is hereby set up.

~~It shall have the following tasks:~~

~~— to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;~~

~~— to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;~~

~~— without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 116(2), 117(6), 119, 120, 121(2) and 122(1);~~

~~— to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.~~

~~The Member States and the Commission shall each appoint two members of the Monetary Committee.~~

~~2. At the start of the third stage, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 shall be dissolved.~~

The Economic and Financial Committee shall have the following tasks:

— to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,

— to keep under review the economic and financial situation of the Member States and of the **Community Union** and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,

— without prejudice to Article 207 [240], to contribute to the preparation of the work of the Council referred to in Articles 59 [66], ~~60~~ 61 H [75], 99(2), (3), (4) and ~~(5)~~ (6) [121 (2), (3), (4) and (6)], 100 [122], 102 [124], 103 [125], 104 [126], 105(6) [127(6)], 106(2) [128(2)], ~~107(5) and (6)~~ 107(3) and (4) [129(5) and (6)], ~~111~~, 115 C(1) [138(1)], 117a(2) and (3) [140(2) and (3)], 119 [143], 120(2) and (3) [144(2) and (3)] ~~122(2), 123(4) and (5)~~ and 188 O [219], and to carry out other advisory and preparatory tasks assigned to it by the Council, [¹⁶³]

— to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of ~~this Treaty~~ **the Treaties** and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the **European Central Bank** shall each appoint no more than two members of the Committee.

3. The Council shall, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the **European Central Bank** and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles ~~122 and 123~~ 116a [139], the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

Article 115 [135]
[ex Art. 115 EC, amended]

For matters within the scope of Articles 99(4) [121(4)], 104 [126] with the exception of paragraph 14, ~~111~~, 115 C(1) [138(1)], ~~121, 122~~, 117a(1) and (2) [140(1) and (2)] and ~~123(4) and (5)~~ 117a(3) [140(3)], the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

CHAPTER 3a [4]

PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO

Article 115 A [136]
[new article] [¹⁶⁴]

¹⁶³ Articles renumbered in accordance with the Annex (Tables of equivalences referred to in Article 5 of the Treaty of Lisbon).

¹⁶⁴ Article III-194 of the Constitution.

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the [Treaties](#), the Council shall, in accordance with the relevant procedure from among those referred to in [Articles 99 \[121\]](#) and [104 \[126\]](#), with the exception of the procedure set out in [Article 104\(14\) \[126\(14\)\]](#), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;

(b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with [Article 205\(3\)\(a\) \[238\(3\)\(a\)\]](#).

Article 115 B [137]
[new article] [¹⁶⁵]

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.

Article 115 C [138]
[new article] [¹⁶⁶]

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with [Article 205\(3\)\(a\) \[238\]\(3\)\(a\)\]](#).

CHAPTER 4 [5]

TRANSITIONAL PROVISIONS

Article 116
[ex Art. 116 EC, repealed]

~~1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.~~

¹⁶⁵ Article III-195 of the Constitution.

¹⁶⁶ Article III-196 of the Constitution.

~~2. Before that date:~~

~~(a) each Member State shall:~~

~~—adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 56 and in Articles 101 and 102(1),~~

~~—adopt, if necessary, with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;~~

~~(b) the Council shall, on the basis of a report from the Commission, assess the progress made with regard to economic and monetary convergence, in particular with regard to price stability and sound public finances, and the progress made with the implementation of Community law concerning the internal market.~~

~~3. The provisions of Articles 101, 102(1), 103(1) and 104 with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.~~

~~The provisions of Articles 100(2), 104(1), (9) and (11), 105, 106, 108, 111, 112, 113 and 114(2) and (4) shall apply from the beginning of the third stage.~~

~~4. In the second stage, Member States shall endeavour to avoid excessive government deficits.~~

~~5. During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 109.~~

Article 116a [139]
[new article] [¹⁶⁷]

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as “Member States with a derogation”.

2. The following provisions of the **Treaties** shall not apply to Member States with a derogation:

(a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article **99(2) [121(2)]**);

(b) coercive means of remedying excessive deficits (Article **104(9) and (11) [126(9) and (11)]**);

(c) the objectives and tasks of the **ESCB** (Article **105(1), (2), (3) and (5) [127(1), (2), (3) and (5)]**);

(d) issue of the euro (Article **106 [128]**);

(e) acts of the European Central Bank (Article **110 [132]**);

(f) measures governing the use of the euro (Article **111a [133]**);

(g) monetary agreements and other measures relating to exchange-rate policy (Article **188 O [219]**);

¹⁶⁷ Article III-197 of the Constitution.

(h) appointment of members of the Executive Board of the European Central Bank (Article 245b(2) [283(2)]);

(i) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article 115 C(1) [138(1)]);

(j) measures to ensure unified representation within the international financial institutions and conferences (Article 115 C(2) [138(2)]).

In the Articles referred to in points (a) to (j), “Member States” shall therefore mean Member States whose currency is the euro.

3. Under Chapter IX of the Statute of the ESCB and of the ECB, Member States with a derogation and their national central banks are excluded from rights and obligations within the ESCB.

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, and in the following instances:

(a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article 99(4) [121(4)]);

(b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article 104(6), (7), (8), (12) and (13) [126(6), (7), (8), (12) and (13)]).

A qualified majority of the other members of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)].

Article 117

[ex Art. 117 EC, repealed, with the exception of the first five indents of paragraph 2 thereof, which are moved to become the first five indents of Article 118a(2) (renumbered 141(2)) FEU]

~~1. At the start of the second stage, a European Monetary Institute (hereinafter referred to as ‘EMI’) shall be established and take up its duties; it shall have legal personality and be directed and managed by a Council, consisting of a President and the Governors of the national central banks, one of whom shall be Vice-President.~~

~~The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognised standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President.~~

~~The Statute of the EMI is laid down in a Protocol annexed to this Treaty.~~

~~2. The EMI shall:~~

~~— strengthen cooperation between the national central banks,~~

~~— strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,~~

~~— monitor the functioning of the European Monetary System,~~

— hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,

— take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI,

~~— facilitate the use of the ecu and oversee its development, including the smooth functioning of the ecu clearing system.~~

3. ~~For the preparation of the third stage, the EMI shall:~~

~~— prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;~~

~~— promote the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;~~

~~— prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB;~~

~~— promote the efficiency of cross-border payments;~~

~~— supervise the technical preparation of ecu banknotes.~~

~~At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in the third stage. This framework shall be submitted for decision to the ECB at the date of its establishment.~~

4. ~~The EMI, acting by a majority of two thirds of the members of its Council, may:~~

~~— formulate opinions or recommendations on the overall orientation of monetary policy and exchange rate policy as well as on related measures introduced in each Member State;~~

~~— submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System;~~

~~— make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.~~

5. ~~The EMI, acting unanimously, may decide to publish its opinions and its recommendations.~~

6. ~~The EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.~~

~~Within the limits and under the conditions set out by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence.~~

7. ~~The Council may, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the EMI, confer upon the EMI other tasks for the preparation of the third stage.~~

8. ~~Where this Treaty provides for a consultative role for the ECB, references to the ECB shall be read as referring to the EMI before the establishment of the ECB.~~

~~9. During the second stage, the term ‘ECB’ used in Articles 230, 232, 233, 234, 237 and 288 shall be read as referring to the EMI.~~

Article 117a [140]

[ex Art. 121(1) EC; ex Art. 122(2) EC, second sentence thereof; and ex Art. 123(5) EC, amended]
[¹⁶⁸]

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ~~EMI~~ European Central Bank shall report to the Council on the progress made ~~in the fulfilment~~ by the Member States with a derogation ~~of~~ in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between ~~each Member State’s~~ the national legislation of each of these Member States, including the statutes of its national central bank, and Articles 108 [130] and 109 [131] ~~of this Treaty~~ and the Statute of the ESCB and of the ECB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

— the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,

— the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104(6) [126(6)],

— the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the ~~currency of any other Member State~~ euro,

— the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism ~~of the European Monetary System~~ being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to ~~this Treaty~~ the Treaties. The reports of the Commission and the ~~EMI~~ European Central Bank shall also take account of ~~the development of the eeu~~, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices. [¹⁶⁹]

2. After consulting the European Parliament and after discussion in the European Council, ~~meeting in the composition of the Heads of State or Government~~, the Council shall, ~~acting by a qualified majority~~ on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in ~~Article 121(1) paragraph 1~~, and abrogate the derogations of the Member States concerned. [¹⁷⁰]

The Council shall act having received a recommendation of a qualified majority of those among its members representing Member States whose currency is the euro. These members shall act within six months of the Council receiving the Commission’s proposal.

¹⁶⁸ Article III-198 of the Constitution.

¹⁶⁹ The text of ex Art. 121(1) EC is moved to become Article 117a(1) (renumbered 140(1)) FEU.

¹⁷⁰ The text of ex Art. 122(2) EC, second sentence, is moved to become Article 117a(2) (renumbered 140(2)) FEU.

The qualified majority of the said members, as referred to in the second subparagraph, shall be defined in accordance with Article 205(3)(a) [238(3)(a)].

~~5.~~^{3.} If it is decided, according in accordance to with the procedure set out in ~~Article 122(2) paragraph 2~~, to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the European Central Bank, adopt irrevocably fix the rate at which the ~~ecu~~ euro shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ~~ecu~~ euro as the single currency in the Member State concerned. [¹⁷¹]

Article 118

[ex Art. 118 EC, repealed]

~~The currency composition of the ecu basket shall not be changed.~~

~~From the start of the third stage, the value of the ecu shall be irrevocably fixed in accordance with Article 123(4).~~

Article 118a [141]

[ex Art. 123(3) EC; and ex Art. 117(2) EC, first five indents thereof, amended] [¹⁷²]

~~3.~~^{1.} If and as long as there are Member States with a derogation, and without prejudice to Article ~~107(3)~~ 107(1) [129(1)] of this Treaty, the General Council of the European Central Bank referred to in Article 45 [44] of the Statute of the ESCB and of the ECB shall be constituted as a third decision-making body of the European Central Bank.

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

- strengthen cooperation between the national central banks,
- strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,
- monitor the functioning of the ~~European Monetary System~~ exchange-rate mechanism,
- hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,
- ~~take over~~ carry out the former tasks of the European Monetary Cooperation Fund, which shall be dissolved had subsequently been taken over by the European Monetary Institute; ~~the modalities of dissolution are laid down in the Statute of the EMI.~~

Article 118b [142]

[ex Art. 124(1) EC, amended] [¹⁷³]

~~1. Until the beginning of the third stage,~~ Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the ~~European~~

¹⁷¹ The text of ex Art. 123(5) EC is moved to become Article 117a(3) (renumbered 140(3)) FEU.

¹⁷² Article III-199 of the Constitution.

¹⁷³ Article III-200 of the Constitution.

~~Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field exchange-rate mechanism.~~

Article 119 [143]
[ex Art. 119 EC, amended] [¹⁷⁴]

1. Where a Member State **with a derogation** is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the ~~common~~ **internal** market or the ~~progressive~~ implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of ~~this Treaty~~ **the Treaties**. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State **with a derogation** and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the **Economic and Financial** Committee ~~referred to in Article 114~~, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council, ~~acting by a qualified majority~~, shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:

(a) a concerted approach to or within any other international organisations to which Member States **with a derogation** may have recourse;

(b) measures needed to avoid deflection of trade where the **Member** State **with a derogation** which is in difficulties maintains or reintroduces quantitative restrictions against third countries;

(c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the **Member** State **with a derogation**, which is in difficulties, to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council ~~acting by a qualified majority~~.

~~4. Subject to Article 122(6), this Article shall cease to apply from the beginning of the third stage.~~

Article 120 [144]
[ex Art. 120 EC, amended] [¹⁷⁵]

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) [143(2)] is not immediately taken, the Member State ~~concerned~~ **with a derogation** may, as a precaution, take the necessary protective measures. Such measures must cause the least

¹⁷⁴ Article III-201 of the Constitution.

¹⁷⁵ Article III-202 of the Constitution.

possible disturbance in the functioning of the **common internal** market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 119 [143].

3. After the Commission has delivered **an opinion a recommendation** and the **Economic and Financial** Committee ~~referred to in Article 114~~ has been consulted, the Council may, ~~acting by a qualified majority,~~ decide that the **Member** State concerned shall amend, suspend or abolish the protective measures referred to above.

~~4. Subject to Article 122(6), this Article shall cease to apply from the beginning of the third stage.~~

Article 121

[ex Art. 121 EC, repealed] [¹⁷⁶]

1. The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 108 and 109 of this Treaty and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

— the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,

— the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104(6),

— the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State,

— the durability of convergence achieved by the Member State and of its participation in the exchange-rate mechanism of the European Monetary System being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to this Treaty. The reports of the Commission and the EMI shall also take account of the development of the ecu, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

~~2. On the basis of these reports, the Council, acting by a qualified majority on a recommendation from the Commission, shall assess:~~

~~— for each Member State, whether it fulfils the necessary conditions for the adoption of a single currency;~~

¹⁷⁶ The text of ex Art. 121(1) EC is moved to become Article 117a(1) (renumbered 140(1)) FEU. The rest of ex Art. 121 EC is repealed.

~~—whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency,~~

~~and recommend its findings to the Council, meeting in the composition of the Heads of State or Government. The European Parliament shall be consulted and forward its opinion to the Council, meeting in the composition of the Heads of State or Government.~~

~~3. Taking due account of the reports referred to in paragraph 1 and the opinion of the European Parliament referred to in paragraph 2, the Council, meeting in the composition of the Heads of State or Government, shall, acting by a qualified majority, not later than 31 December 1996:~~

~~—decide, on the basis of the recommendations of the Council referred to in paragraph 2, whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency,~~

~~—decide whether it is appropriate for the Community to enter the third stage,~~

~~and if so:~~

~~—set the date for the beginning of the third stage.~~

~~4. If, by the end of 1997, the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999. Before 1 July 1998, the Council, meeting in the composition of the Heads of State or Government, after a repetition of the procedure provided for in paragraphs 1 and 2, with the exception of the second indent of paragraph 2, taking into account the reports referred to in paragraph 1 and the opinion of the European Parliament, shall, acting by a qualified majority and on the basis of the recommendations of the Council referred to in paragraph 2, confirm which Member States fulfil the necessary conditions for the adoption of a single currency.~~

Article 122

[ex Art. 122 EC, repealed] [¹⁷⁷]

~~1. If the decision has been taken to set the date in accordance with Article 121(3), the Council shall, on the basis of its recommendations referred to in Article 121(2), acting by a qualified majority on a recommendation from the Commission, decide whether any, and if so which, Member States shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as ‘Member States with a derogation’.~~

~~If the Council has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, in accordance with Article 121(4), those Member States which do not fulfil the conditions shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as ‘Member States with a derogation’.~~

~~2. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB shall report to the Council in accordance with the procedure laid down in Article 121(1). After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in Article 121(1), and abrogate the derogations of the Member States concerned.~~

¹⁷⁷ The text of the second sentence of ex Art. 122(2) EC is moved to become the first subparagraph of Article 117a(2) (renumbered 140(2)) FEU.

~~3. A derogation referred to in paragraph 1 shall entail that the following articles do not apply to the Member State concerned: Articles 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(2)(b). The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.~~

~~4. In Articles 105(1), (2) and (3), 106, 110, 111 and 112(2)(b), ‘Member States’ shall be read as ‘Member States without a derogation’.~~

~~5. The voting rights of Member States with a derogation shall be suspended for the Council decisions referred to in the articles of this Treaty mentioned in paragraph 3. In that case, by way of derogation from Articles 205 and 250(1), a qualified majority shall be defined as two thirds of the votes of the representatives of the Member States without a derogation weighted in accordance with Article 205(2), and unanimity of those Member States shall be required for an act requiring unanimity.~~

~~6. Articles 119 and 120 shall continue to apply to a Member State with a derogation.~~

Article 123

[ex Art. 123 EC, repealed] [¹⁷⁸]

~~1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 121(3), or, as the case may be, immediately after 1 July 1998:~~

~~— the Council shall adopt the provisions referred to in Article 107(6),~~

~~— the governments of the Member States without a derogation shall appoint, in accordance with the procedure set out in Article 50 of the Statute of the ESCB, the President, the Vice-President and the other members of the Executive Board of the ECB. If there are Member States with a derogation, the number of members of the Executive Board may be smaller than provided for in Article 11.1 of the Statute of the ESCB, but in no circumstances shall it be less than four.~~

~~As soon as the Executive Board is appointed, the ESCB and the ECB shall be established and shall prepare for their full operation as described in this Treaty and the Statute of the ESCB. The full exercise of their powers shall start from the first day of the third stage.~~

~~2. As soon as the ECB is established, it shall, if necessary, take over tasks of the EMI. The EMI shall go into liquidation upon the establishment of the ECB; the modalities of liquidation are laid down in the Statute of the EMI.~~

~~3. If and as long as there are Member States with a derogation, and without prejudice to Article 107(3) of this Treaty, the General Council of the ECB referred to in Article 45 of the Statute of the ESCB shall be constituted as a third decision-making body of the ECB.~~

~~4. At the starting date of the third stage, the Council shall, acting with the unanimity of the Member States without a derogation, on a proposal from the Commission and after consulting the ECB, adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu shall be substituted for these currencies, and the ecu will become a currency in its own right. This measure shall by itself not modify the external value of the ecu.~~

~~The Council, acting by a qualified majority of the said Member States, on a proposal from the Commission and after consulting the ECB, shall take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States. The second sentence of Article 122(5) shall apply.~~

¹⁷⁸ The text of ex Art. 123(3) EC is moved to become Article 118a(1) (renumbered 141(1)) FEU. The text of ex Art. 123(5) EC is moved to become Article 117a(3) (renumbered 140(3)) FEU.

5. If it is decided, according to the procedure set out in Article 122(2), to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB, adopt the rate at which the ecu shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ecu as the single currency in the Member State concerned.

Article 124

[ex Art. 124 EC, repealed] [¹⁷⁹]

1. Until the beginning of the third stage, each Member State shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field.

~~2. From the beginning of the third stage and for as long as a Member State has a derogation, paragraph 1 shall apply by analogy to the exchange rate policy of that Member State.~~

TITLE VIII [IX]

EMPLOYMENT

Article 125 [145]

[ex Art. 125 EC, amended]

Member States and the **Community Union** shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 2 [3] of the Treaty on European Union ~~and in Article 2 of this Treaty.~~

Article 126 [146]

[ex Art. 126 EC, amended]

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 125 [145] in a way consistent with the broad guidelines of the economic policies of the Member States and of the **Community Union** adopted pursuant to Article 99(2) [121(2)].

2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 128 [148].

Article 127 [147]

[ex Art. 127 EC, amended]

¹⁷⁹ The text of ex Art. 124(1) EC is moved to become Article 118b (renumbered 142) FEU.

1. The **Community Union** shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of **Community Union** policies and activities.

Article 128 [148]
[ex Art. 128 EC, amended]

1. The European Council shall each year consider the employment situation in the **Community Union** and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130 [150], shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2) [121(2)].

3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, ~~acting by a qualified majority~~ on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the **Community Union** and on the implementation of the guidelines for employment.

Article 129 [149]
[ex Art. 129 EC, amended]

The European Parliament and the Council, acting in accordance with the **ordinary legislative procedure** ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

Article 130 [150]
[ex Art. 130 EC, amended] [¹⁸⁰]

¹⁸⁰ Article III-208 of the Constitution.

The Council, acting by a simple majority after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

— to monitor the employment situation and employment policies in the Member States and the Community Union,

— without prejudice to Article 207 [240], to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 128 [148].

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

TITLE IX

COMMON COMMERCIAL POLICY [181]

Article 131

[ex Art. 131 EC is moved to become Article 188 B (renumbered 206) FEU]

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Article 132

[ex Art. 132 EC, repealed]

~~1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.~~

~~On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.~~

~~2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.~~

Article 133

[ex Art. 133 EC is moved to become Article 188 C (renumbered 207) FEU]

¹⁸¹ The title to ex Title IX of Part Three ‘Common commercial policy’ EC is moved to become the title to Title II of Part Five FEU.

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

Article 134

[ex Art. 134 EC, repealed]

~~In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.~~

~~In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.~~

~~In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.~~

TITLE X

CUSTOMS COOPERATION ^[182]

Article 135

[ex Art. 135 EC is moved to become Article 27a (renumbered 33) FEU]

Within the scope of application of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

TITLE ~~XI~~ IX [X]

SOCIAL POLICY, ~~EDUCATION, VOCATIONAL TRAINING AND~~ YOUTH

CHAPTER 1

SOCIAL PROVISIONS

¹⁸² The title to ex Title X of Part Three ‘Customs cooperation’ EC is moved to become the title to Chapter 1a (renumbered 2) of Title Ia (renumbered II) of Part Three FEU.

Article 136 [151]
[ex Art. 136 EC, amended]

The **Community Union** and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the **Community Union** and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the **Community Union** economy.

They believe that such a development will ensue not only from the functioning of the **common internal** market, which will favour the harmonisation of social systems, but also from the procedures provided for in ~~this Treaty~~ **the Treaties** and from the approximation of provisions laid down by law, regulation or administrative action.

Article 136a [152]
[new article] [¹⁸³]

The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.

Article 137 [153]
[ex Art. 137 EC, amended] [¹⁸⁴]

1. With a view to achieving the objectives of Article 136 [151], the **Community Union** shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including codetermination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in **Community Union** territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150 [166];

¹⁸³ Article I-48 of the Constitution.

¹⁸⁴ Article III-210 of the Constitution.

- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, **the European Parliament and** the Council:

(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The European Parliament and the Council shall act in accordance with the **ordinary legislative procedure** ~~referred to in Article 251~~ after consulting the Economic and Social Committee and the Committee of the Regions;

~~except~~ In the fields referred to in paragraph 1(c), (d), (f) and (g) ~~of this Article, where~~ the Council shall act unanimously ~~on a proposal from the Commission,~~ **in accordance with a special legislative procedure,** after consulting the European Parliament and the said Committees.

The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the **ordinary legislative** procedure ~~referred to in Article 251~~ applicable to paragraph 1(d), (f) and (g) ~~of this Article~~.

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2 **or, where appropriate, with the implementation of a Council decision** adopted in accordance with Article **139 [155]**.

In this case, it shall ensure that, no later than the date on which a directive **or a decision** must be transposed **or implemented** ~~in accordance with Article 249~~, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive **or that decision**.

4. The provisions adopted pursuant to this Article:

— shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,

— shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with ~~this Treaty~~ **the Treaties**.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article 138 **[154]**
[ex Art. 138 EC, amended]

1. The Commission shall have the task of promoting the consultation of management and labour at **Community Union** level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of **Community Union** action.

3. If, after such consultation, the Commission considers **Community Union** action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of ~~such~~ **the** consultation **referred to in paragraphs 2 and 3**, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139 **[155]**. The duration of ~~the procedure~~ **this process** shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 139 **[155]**
[ex Art. 139 EC, amended]

1. Should management and labour so desire, the dialogue between them at **Community Union** level may lead to contractual relations, including agreements.

2. Agreements concluded at **Community Union** level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137 **[153]**, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. **The European Parliament shall be informed.**

The Council shall act ~~by qualified majority, except~~ **unanimously** where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2) **[153(2)]**. ~~In that case, it shall act unanimously.~~

Article 140 **[156]**
[ex Art. 140 EC, amended]

With a view to achieving the objectives of Article 136 **[151]** and without prejudice to the other provisions of ~~this Treaty~~ **the Treaties**, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this ~~Chapter~~ **Title**, particularly in matters relating to:

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on

those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

Article 141 [157]
[ex Art. 141 EC, amended]

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 142 [158]
[ex Art. 142 EC]

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

Article 143 [159]
[ex Art. 143 EC, amended] [¹⁸⁵]

The Commission shall draw up a report each year on progress in achieving the objectives of Article 136 [151], including the demographic situation in the Community Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

~~The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.~~

¹⁸⁵ Article III-216 of the Constitution.

Article 144 [160]
[ex Art. 144 EC, amended]

The Council, acting by a simple majority after consulting the European Parliament, shall establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The tasks of the Committee shall be:

- to monitor the social situation and the development of social protection policies in the Member States and the Community Union,
- to promote exchanges of information, experience and good practice between Member States and with the Commission,
- without prejudice to Article 207 [240], to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Article 145 [161]
[ex Art. 145 EC, amended]

The Commission shall include a separate chapter on social developments within the Community Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

CHAPTER 2

THE EUROPEAN SOCIAL FUND ^[186]

TITLE X [XI]

THE EUROPEAN SOCIAL FUND

Article 146 [162]
[ex Art. 146 EC, amended]

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Community Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

¹⁸⁶ The heading to ex Chapter 2 of Title XI of Part Three EC is moved to become the heading to Title X (renumbered XI) FEU.

Article 147 [163]
[ex Art. 147 EC]

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

Article 148 [164]
[ex Art. 148 EC, amended]

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing ~~decisions~~ regulations relating to the European Social Fund.

CHAPTER 3

EDUCATION, VOCATIONAL TRAINING AND YOUTH [187]

TITLE XI [XII]

EDUCATION, VOCATIONAL TRAINING, AND YOUTH AND SPORT

Article 149 [165]
[ex Art. 149 EC, amended] [188]

1. The Community Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Community Union action shall be aimed at:

— developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,

— encouraging mobility of students and teachers, by encouraging *inter alia*, the academic recognition of diplomas and periods of study,

— promoting cooperation between educational establishments,

¹⁸⁷ The heading to ex Chapter 3 of Title XI of Part Three EC is moved to become the heading to Title XI (renumbered XII) FEU.

¹⁸⁸ Article III-282 of the Constitution.

- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socioeducational instructors and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education;
- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The **Community Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article, ~~the Council~~:

- ~~the European Parliament and the Council~~, acting in accordance with the ~~ordinary legislative procedure referred to in Article 251~~, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- ~~the Council, acting by a qualified majority~~ on a proposal from the Commission, shall adopt recommendations.

Article 150 [166]
[ex Art. 150 EC, amended] [¹⁸⁹]

1. The **Community Union** shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

2. **Community Union** action shall aim to:

- facilitate adaptation to industrial changes, in particular through vocational training and retraining,
- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,
- facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people,
- stimulate cooperation on training between educational or training establishments and firms,
- develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The **Community Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

¹⁸⁹ Article III-283 of the Constitution.

4. ~~The European Parliament and~~ the Council, acting in accordance with the ~~ordinary legislative procedure referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States, ~~and~~ the Council, on a proposal from the Commission, shall adopt recommendations.

TITLE XII [XIII]

CULTURE

Article 151 [167]

[ex Art. 151 EC, amended] [¹⁹⁰]

1. The ~~Community~~ Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the ~~Community~~ Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

— improvement of the knowledge and dissemination of the culture and history of the European peoples,

— conservation and safeguarding of cultural heritage of European significance,

— non-commercial cultural exchanges,

— artistic and literary creation, including in the audiovisual sector.

3. The ~~Community~~ Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The ~~Community~~ Union shall take cultural aspects into account in its action under other provisions of ~~this Treaty~~ the Treaties, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article, ~~the Council~~:

— ~~the European Parliament and the Council~~, acting in accordance with the ~~ordinary legislative procedure referred to in Article 251~~ and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States; ~~The Council shall act unanimously throughout the procedure referred to in Article 251;~~

— ~~the Council~~, acting ~~unanimously~~ on a proposal from the Commission, shall adopt recommendations.

¹⁹⁰ Article III-280 of the Constitution.

TITLE XIII [XIV]

PUBLIC HEALTH

Article 152 [168]
[ex Art. 152 EC, amended] [¹⁹¹]

1. A high level of human health protection shall be ensured in the definition and implementation of all **Community Union** policies and activities.

Community Union action, which shall complement national policies, shall be directed towards improving public health, preventing **human physical and mental** illness and diseases, and obviating sources of danger to **human physical and mental** health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, **and monitoring, early warning of and combating serious cross-border threats to health.**

The **Community Union** shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The **Community Union** shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. **It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.**

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, **in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.**

3. The **Community Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. **By way of derogation from Article 2 A(5) [2(5)] and Article 2 E(a) [6(a)] and in accordance with Article 2 C(2)(k) [4(2)(k)], the European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting **in order to meet common safety concerns:****

(a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

(b) ~~by way of derogation from Article 37,~~ measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

(c) measures setting high standards of quality and safety for medicinal products and devices for medical use.

¹⁹¹ Article III-278 of the Constitution.

~~(e) 5. incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States.

6. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, may also adopt recommendations for the purposes set out in this Article.

~~5-7.~~ Community Union action in the field of public health shall fully respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. ~~In particular, The~~ measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

TITLE XIV [XV]

CONSUMER PROTECTION

Article 153 [169]
[ex Art. 153(1), (3), (4) and (5) EC, amended] [192]

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities. [193]

~~3-2.~~ The Community Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article ~~95~~ 94 [114] in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

~~4-3.~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph ~~3(b)~~ 2(b).

~~5-4.~~ Measures adopted pursuant to paragraph 4 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with ~~this Treaty~~ the Treaties. The Commission shall be notified of them.

¹⁹² Article III-235 of the Constitution.

¹⁹³ The text of ex Art. 153(2) is moved to become Article 6a (renumbered 12) FEU.

TITLE XV [XVI]

TRANS-EUROPEAN NETWORKS

Article 154 [170]

[ex Art. 154 EC, amended] [¹⁹⁴]

1. To help achieve the objectives referred to in Articles 14 [22a [26]] and 158 [174] and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Community Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Community Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community Union.

Article 155 [171]

[ex Art. 155 EC, amended] [¹⁹⁵]

1. In order to achieve the objectives referred to in Article 154 [170], the Community Union:

— shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,

— shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,

— may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community Union may also contribute, through the Cohesion Fund set up pursuant to Article 161 [177], to the financing of specific projects in Member States in the area of transport infrastructure.

The Community's Union's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 154 [170]. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Community Union may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 156 [172]

[ex Art. 156 EC, amended] [¹⁹⁶]

¹⁹⁴ Article III-246 of the Constitution.

¹⁹⁵ Article III-247(1), (3) and (4) of the Constitution.

The guidelines and other measures referred to in Article 155(1) [171(1)] shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

TITLE XVI [XVII]

INDUSTRY

Article 157 [173]
[ex Art. 157 EC, amended] [¹⁹⁷]

1. The Community Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- speeding up the adjustment of industry to structural changes,
- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community Union, particularly small and medium-sized undertakings,
- encouraging an environment favourable to cooperation between undertakings,
- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Community Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of this Treaty the Treaties. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure referred to in Article 251 and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

This Title shall not provide a basis for the introduction by the Community Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

¹⁹⁶ Article III-247(2) of the Constitution.

¹⁹⁷ Article III-279 of the Constitution.

TITLE XVII [XVIII]

ECONOMIC, AND SOCIAL AND TERRITORIAL COHESION

Article 158 [174]
[ex Art. 158 EC, amended] [¹⁹⁸]

In order to promote its overall harmonious development, the **Community Union** shall develop and pursue its actions leading to the strengthening of its economic, and social and territorial cohesion.

In particular, the **Community Union** shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions ~~or islands, including rural areas.~~

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

Article 159 [175]
[ex Art. 159 EC, amended]

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158 [174]. The formulation and implementation of the **Community's Union's** policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 [174] and shall contribute to their achievement. The **Community Union** shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic, and social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other **Community Union** policies, such actions may be adopted by **the European Parliament and** the Council acting in accordance with the **ordinary legislative procedure** ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 160 [176]
[ex Art. 160 EC, amended]

The European Regional Development Fund is intended to help to redress the main regional imbalances in the **Community Union** through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

¹⁹⁸ Article III-220 of the Constitution.

Article 161 [177]
[ex Art. 161 EC, amended]

Without prejudice to Article 162 [178], ~~the European Parliament and~~ the Council, acting ~~unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament~~ by means of regulations in accordance with the ordinary legislative procedure and ~~after~~ consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. ~~The Council, acting by the same procedure, shall also define~~ The general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments ~~shall also be defined by the same procedure.~~

A Cohesion Fund set up ~~by the Council~~ in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.~~

Article 162 [178]
[ex Art. 162 EC, amended]

Implementing ~~decisions~~ regulations relating to the European Regional Development Fund shall be taken by ~~the European Parliament and~~ the Council, acting in accordance with the ~~ordinary legislative~~ procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 [43] and 148 [164] respectively shall continue to apply.

TITLE XVIII [XIX]

RESEARCH AND TECHNOLOGICAL DEVELOPMENT ~~AND SPACE~~

Article 163 [179]
[ex Art. 163 EC, amended] [¹⁹⁹]

1. The ~~Community~~ ~~Union~~ shall have the objective of strengthening ~~the~~ ~~its~~ scientific and technological bases ~~of Community industry~~ by achieving a European research area in which ~~researchers, scientific knowledge and technology circulate freely,~~ and encouraging it to become more competitive ~~at international level,~~ including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of ~~this Treaty~~ ~~the Treaties~~.

¹⁹⁹ Article III-248 of the Constitution.

2. For this purpose the **Community Union** shall, throughout the **Community Union**, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, **at permitting researchers to cooperate freely across borders and** at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All **Community Union** activities under ~~this Treaty~~ **the Treaties** in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this Title.

Article 164 [180]
[ex Art. 164 EC, amended]

In pursuing these objectives, the **Community Union** shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;

(b) promotion of cooperation in the field of **Community Union** research, technological development and demonstration with third countries and international organisations;

(c) dissemination and optimisation of the results of activities in **Community Union** research, technological development and demonstration;

(d) stimulation of the training and mobility of researchers in the **Community Union**.

Article 165 [181]
[ex Art. 165 EC, amended] [²⁰⁰]

1. The **Community Union** and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and **Community Union** policy are mutually consistent.

2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the **establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.**

Article 166 [182]
[ex Art. 166 EC, amended] [²⁰¹]

1. A multiannual framework programme, setting out all the activities of the **Community Union**, shall be adopted by **the European Parliament and** the Council, acting in accordance with the **ordinary legislative** procedure ~~referred to in Article 251~~ after consulting the Economic and Social Committee.

The framework programme shall:

²⁰⁰ Article III-250 of the Constitution.

²⁰¹ Article III-251 of the Constitution.

— establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 [180] and fix the relevant priorities,

— indicate the broad lines of such activities,

— fix the maximum overall amount and the detailed rules for **Community Union** financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, acting ~~by a qualified majority on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

5. As a complement to the activities planned in the multiannual framework programme, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the measures necessary for the implementation of the European research area.

Article 167 [183]

[ex Art. 167 EC, amended]

For the implementation of the multiannual framework programme the **Council Union** shall:

— determine the rules for the participation of undertakings, research centres and universities,

— lay down the rules governing the dissemination of research results.

Article 168 [184]

[ex Art. 168 EC, amended]

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible **Community Union** participation.

The **Council Union** shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

Article 169 [185]

[ex Art. 169 EC, amended]

In implementing the multiannual framework programme, the **Community Union** may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 170 [186]

[ex Art. 170 EC, amended]

In implementing the multiannual framework programme the **Community Union** may make provision for cooperation in **Community Union** research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the **Community Union** and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article 300.~~

Article 171 [187]

[ex Art. 171 EC, amended] [²⁰²]

The **Community Union** may set up joint undertakings or any other structure necessary for the efficient execution of **Community Union** research, technological development and demonstration programmes.

Article 172 [188]

[ex Art. 172 EC, amended]

The Council, ~~acting by qualified majority~~ on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171 [187].

The **European Parliament and** the Council, acting in accordance with the **ordinary legislative procedure** ~~referred to in Article 251~~ and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167 [183], 168 [184] and 169 [185]. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

Article 172a [189]

[new article]

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, **the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.**

3. The Union shall establish any appropriate relations with the European Space Agency.

4. This Article shall be without prejudice to the other provisions of this Title.

Article 173 [190]

[ex Art. 173 EC]

At the beginning of each year the Commission shall send a report to the European Parliament and to the Council. The report shall include information on research and technological development

²⁰² Article III-253 of the Constitution.

activities and the dissemination of results during the previous year, and the work programme for the current year.

TITLE XIX [XX]

ENVIRONMENT

Article 174 [191]
[ex Art. 174 EC, amended]

1. ~~Community~~ Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. ~~Community~~ Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the ~~Community~~ Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a ~~Community inspection~~ procedure of inspection by the Union.

3. In preparing its policy on the environment, the ~~Community~~ Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the ~~Community~~ Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the ~~Community~~ Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the ~~Community~~ Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for ~~Community~~ Union cooperation may be the subject of agreements between the ~~Community~~ Union and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article 300.~~

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 175 [192]
[ex Art. 175 EC, amended] [²⁰³]

1. **The European Parliament and** the Council, acting in accordance with the **ordinary legislative procedure** ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the **Community Union** in order to achieve the objectives referred to in Article 174 [191].

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article ~~95~~ 94 [114], the Council, acting unanimously ~~on a proposal from the Commission~~ **in accordance with a special legislative procedure** and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

— town and country planning,

— quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,

— land use, with the exception of waste management;

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council, **acting** unanimously on a proposal from the Commission **and** after consulting the **European Parliament**, the Economic and Social Committee and the Committee of the Regions, may, ~~under the conditions laid down~~ **make** the ordinary legislative procedure applicable to the **matters referred to** in the first subparagraph, ~~define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.~~

3. ~~In other areas,~~ General action programmes setting out priority objectives to be attained shall be adopted by **the European Parliament and** the Council, acting in accordance with the **ordinary legislative** procedure ~~referred to in Article 251~~ and after consulting the Economic and Social Committee and the Committee of the Regions.

~~The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.~~ The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures ~~of a Community nature~~ **adopted by the Union**, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, ~~the Council~~ **such measure** shall, ~~in the act adopting that measure,~~ lay down appropriate provisions in the form of:

— temporary derogations, and/or

— financial support from the Cohesion Fund set up pursuant to Article 161 [177].

²⁰³ Article III-234 of the Constitution.

Article 176 [193]
[ex Art. 176 EC, amended]

The protective measures adopted pursuant to Article 175 [192] shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with ~~this Treaty~~ the Treaties. They shall be notified to the Commission.

TITLE XX [XXI]

DEVELOPMENT COOPERATION [204]

ENERGY

Article 176 A [194]
[new article] [205]

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

(a) ensure the functioning of the energy market;

(b) ensure security of energy supply in the Union; and

(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

(d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 175(2)(c) [192(2)(c)].

3. By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.

TITLE XXI [XXII]

²⁰⁴ The heading to ex Title XX of Part Three EC is moved to become the heading to Chapter 1 of Title III of Part Five FEU.

²⁰⁵ Article III-256 of the Constitution.

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES ^[206]

TOURISM

Article 176 B [195]
[new article] ^[207]

1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector.

To that end, Union action shall be aimed at:

(a) encouraging the creation of a favourable environment for the development of undertakings in this sector;

(b) promoting cooperation between the Member States, particularly by the exchange of good practice.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.

TITLE XXII [XXIII]

CIVIL PROTECTION

Article 176 C [196]
[new article] ^[208]

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

(a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

(b) promote swift, effective operational cooperation within the Union between national civil-protection services;

(c) promote consistency in international civil-protection work.

²⁰⁶ The heading to ex Title XXI of Part Three EC is moved to become the heading to Chapter 2 of Title III of Part Five FEU.

²⁰⁷ Article III-281 of the Constitution.

²⁰⁸ Article III-284 of the Constitution.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

TITLE XXIII [XXIV]

ADMINISTRATIVE COOPERATION

Article 176 D [197]
[new article] [²⁰⁹]

1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the *Treaties* providing for administrative cooperation among the Member States and between them and the Union.

TITLE XX

DEVELOPMENT COOPERATION [²¹⁰]

~~*Article 177*~~

[ex Art. 177 EC is moved to become Article 188 D (renumbered 208) FEU]

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
- the smooth and gradual integration of the developing countries into the world economy,
- the campaign against poverty in the developing countries.

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

²⁰⁹ Article III-285 of the Constitution.

²¹⁰ The heading to ex Title XX of Part Three EC is moved to become the heading to Chapter 1 of Title III of Part Five FEU.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

~~Article 178~~

[ex Art. 178 EC, repealed] [²¹¹]

~~The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.~~

~~Article 179~~

[ex Art. 179 EC is moved to become Article 188 E (renumbered 209) FEU]

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

~~Article 180~~

[ex Art. 180 EC is moved to become Article 188 F (renumbered 210) FEU]

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

~~Article 181~~

[ex Art. 181 EC is moved to become Article 188 G (renumbered 211) FEU]

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

²¹¹ Replaced in substance by the second sentence of the second subparagraph of Article 188 D(1) (renumbered 208(1)) FEU.

TITLE XXI

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES ^[212]

Article 181a

[ex Art. 181a EC is moved to become Article 188 H (renumbered 212) FEU]

1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.

3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article 182 ^[198]

[ex Art. 182 EC, amended] ^[213]

The Member States agree to associate with the ~~Community~~ **Union** the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the 'countries and territories') are listed in Annex II ~~to this Treaty~~.

²¹² The heading to ex Title XXI of Parth Three EC is moved to become the heading to Chapter 2 of Title III of Part Five FEU.

²¹³ Article III-286 of the Constitution.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the ~~Community~~ **Union** as a whole.

In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 183 [199]
[ex Art. 183 EC, amended]

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to ~~this Treaty~~ **the Treaties**.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the ~~Community~~ **Union**, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 187 [203].

Article 184 [200]
[ex Art. 184 EC, amended]

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of ~~this Treaty~~ **the Treaties**.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 25 [30].
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 185 [201]
[ex Art. 185 EC, amended]

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 184(1) [200(1)] have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

Article 186 [202]
[ex Art. 186 EC, amended] [214]

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be ~~governed by agreements to be concluded subsequently with the unanimous approval of Member States~~ regulated by acts adopted in accordance with Article 187 [203].

Article 187 [203]
[ex Art. 187 EC] [215]

The Council, acting unanimously on a proposal from the Commission, shall, on the basis of the experience acquired under the association of the countries and territories with the ~~Community~~ Union and of the principles set out in ~~this Treaty~~ the Treaties, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the ~~Community~~ Union. Where the provisions in question are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after consulting the European Parliament.

Article 188 [204]
[ex Art. 188 EC, amended]

The provisions of Articles 182 [198] to 187 [203] shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to ~~this Treaty~~ the Treaties.

PART FIVE

EXTERNAL ACTION BY THE UNION

TITLE I

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

²¹⁴ Article III-290 of the Constitution.

²¹⁵ Article III-291 of the Constitution.

Article 188 A [205]
[new article] [²¹⁶]

The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union.

TITLE II

COMMON COMMERCIAL POLICY [²¹⁷]

Article 188 B [206]
[ex Art. 131 EC, amended] [²¹⁸]

By establishing a customs union in accordance with Articles 23 [28] to 27 [32], ~~between themselves Member States aim to~~ the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

~~The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.~~

Article 188 C [207]
[ex Art. 133 EC, amended] [²¹⁹]

1. The common commercial policy shall be based on uniform principles, particularly ~~in~~ with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. ~~The Commission shall submit proposals to the Council~~ The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more States third countries or international organisations need to be negotiated and concluded, Article 188 N [218] shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community Union policies and rules.

²¹⁶ Article III-292(1) of the Constitution.

²¹⁷ The title to ex Title IX of Part Three 'Common commercial policy' EC is moved to become the title to Title II of Part Five FEU.

²¹⁸ Article III-314 of the Constitution.

²¹⁹ Article III-315 of the Constitution.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee **and to the European Parliament** on the progress of negotiations.

~~The relevant provisions of Article 300 shall apply.~~

~~4. In exercising the powers conferred upon it by this Article~~ **For the negotiation and conclusion of the agreements referred to in paragraph 3,** the Council shall act by a qualified majority.

~~5. Paragraphs 1 to 4 shall also apply to~~ **For** the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, **as well as foreign direct investment,** ~~in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6~~ the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

~~By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.~~

The Council shall **also** act unanimously ~~with respect to~~ **for** the negotiation and conclusion of a ~~horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.~~ **agreements:**

(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;

(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

~~This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.~~

~~6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.~~

~~In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.~~

5. The negotiation and conclusion of international agreements in the field of transport shall ~~continue to be governed by~~ **subject to** the provisions of Title V **of Part Three** and ~~to~~ **Article 300 188 N [218].**

6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States insofar as the **Treaties** exclude such harmonisation.

~~7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.~~

TITLE III

COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

CHAPTER 1

DEVELOPMENT COOPERATION [220]

Article 188 D [208]

[ex Art. 177 EC, amended] [221]

~~1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:~~

~~— the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,~~

~~— the smooth and gradual integration of the developing countries into the world economy,~~

~~— the campaign against poverty in the developing countries.~~

~~2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.~~

1. Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

~~3.~~ 2. The Community Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 188 E [209]

[ex Art. 179 EC, amended] [222]

²²⁰ The heading to ex Title XX of Part Three EC is moved to become the heading to Chapter 1 of Title III of Part Five FEU.

²²¹ Article III-316 of the Constitution. The second sentence of the second subparagraph of Article 188 D(1) (renumbered 208(1)) FEU replaces in substance ex Art. 178 EC.

1. ~~Without prejudice to the other provisions of this Treaty,~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251,~~ shall adopt the measures necessary ~~to further the objectives referred to in Article 177~~ for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach. ~~Such measures may take the form of multiannual programmes.~~

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 10 A [21] of the Treaty on European Union and in Article 188 D [208] of this Treaty.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

~~2- 3.~~ The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

~~3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.~~

Article 188 F [210]

[ex Art. 180 EC, amended] [²²³]

1. In order to promote the complementarity and efficiency of their action, the Community Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 188 G [211]

[ex Art. 181 EC, amended] [²²⁴]

Within their respective spheres of competence, the Community Union and the Member States shall cooperate with third countries and with the competent international organisations. ~~The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.~~

~~The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.~~

CHAPTER 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES [²²⁵]

²²² Article III-317 of the Constitution.

²²³ Article III-318(1) and (2) of the Constitution.

²²⁴ Article III-318(3) of the Constitution.

Article 188 H [212]

[ex Art. 181a EC, amended] [²²⁶]

1. Without prejudice to the other provisions of ~~this Treaty~~ **the Treaties**, and in particular ~~those of Title XX~~ **Articles 188 D [208] to 188 G [211]**, the **Community Union** shall carry out, ~~within its spheres of competence~~, economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries ~~other than developing countries~~. Such measures shall be ~~complementary to those carried out by the Member States and~~ consistent with the development policy of the **Community Union** and shall be carried out within the framework of the principles and objectives of its external action. The Union's **operations** and those of the Member States shall complement and reinforce each other.

~~Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.~~

2. **The European Parliament and** the Council, acting ~~by a qualified majority on a proposal from the Commission and after consulting the European Parliament~~ **in accordance with the ordinary legislative procedure**, shall adopt the measures necessary for the implementation of paragraph 1. ~~The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.~~

3. Within their respective spheres of competence, the **Community Union** and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for **Community Union** cooperation may be the subject of agreements between the **Community Union** and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article 300.~~

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 188 I [213]

[new article] [²²⁷]

When the situation in a third country requires urgent financial assistance from the Union, the Council shall adopt the necessary decisions on a proposal from the Commission.

CHAPTER 3

HUMANITARIAN AID

Article 188 J [214]

[new article] [²²⁸]

²²⁵ The heading to ex Title XXI of Part Three EC is moved to become the heading to Chapter 2 of Title III of Part Five FEU.

²²⁶ Article III-319 of the Constitution.

²²⁷ Article III-320 of the Constitution.

²²⁸ Article III-321 of the Constitution.

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's measures and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in Article 10 A [21] of the Treaty on European Union.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall determine the rules and procedures for the operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian aid operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

TITLE IV

RESTRICTIVE MEASURES

Article 301 [188 K [215]]
[ex Art. 301 EC, replaced] [²²⁹]

~~Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.~~

1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security

²²⁹ Article III-322 of the Constitution.

Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.

TITLE V

INTERNATIONAL AGREEMENTS

Article 188 L [216]
[new article] [²³⁰]

1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

Article 188 M [217]
[ex Art. 310 EC, amended] [²³¹]

The Community Union may conclude with one or more States third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

Article 188 N [218]
[ex Art. 300 EC, replaced] [²³²]

~~1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.~~

~~In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.~~

~~2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion~~

²³⁰ Article III-323 of the Constitution.

²³¹ Article III-324 of the Constitution.

²³² Article III-325 of the Constitution.

~~of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.~~

~~By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.~~

~~The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.~~

~~3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.~~

~~By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.~~

~~The Council and the European Parliament may, in an urgent situation, agree upon a time limit for the assent.~~

~~4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.~~

~~5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.~~

~~6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.~~

~~7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.~~

1. Without prejudice to the specific provisions laid down in Article 188 C [207], agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision

authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a timelimit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 188 H [212] with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

Article 188 O [219]

[ex Art. 111(1), (2), (3) and (5) EC, amended] ^[233]

1. By way of derogation from Article 300 188 N(1) [218(1)], the Council ~~may, acting unanimously,~~ either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, ~~after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements,~~ may conclude formal agreements on an exchange-rate system for the ~~eeu~~ euro in relation to ~~non-Community~~ the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3.

The Council may, ~~acting by a qualified majority~~ either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ~~eeu~~ euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ~~eeu~~ euro central rates.

2. In the absence of an exchange-rate system in relation to one or more ~~non-Community~~ currencies of third States as referred to in paragraph 1, the Council, ~~acting by a qualified majority~~ either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 300 188 N [218], where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the ~~Community~~ Union with one or more third States or international organisations, the Council, ~~acting by a qualified majority~~ on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the ~~Community~~ Union expresses a single position. The Commission shall be fully associated with the negotiations.

~~Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.~~

~~5-4.~~ Without prejudice to ~~Community~~ Union competence and ~~Community~~ Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

TITLE VI

²³³ Article III-326 of the Constitution.

THE UNION'S RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

Article 188 P [220]

[ex Art. 302, ex Art. 303 and ex Art. 304 EC, replaced] [²³⁴]

Article 302

~~It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.~~

~~The Commission shall also maintain such relations as are appropriate with all international organisations.~~

Article 303

~~The Community shall establish all appropriate forms of cooperation with the Council of Europe.~~

Article 304

~~The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.~~

1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

The Union shall also maintain such relations as are appropriate with other international organisations.

2. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall be instructed to implement this Article.

Article 188 Q [221]

[new article] [²³⁵]

1. Union delegations in third countries and at international organisations shall represent the Union.

2. Union delegations shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy. They shall act in close cooperation with Member States' diplomatic and consular missions.

TITLE VII

SOLIDARITY CLAUSE

Article 188 R [222]

²³⁴ Article III-327 of the Constitution.

²³⁵ Article III-328 of the Constitution.

[new article] [²³⁶]

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) — prevent the terrorist threat in the territory of the Member States;

— protect democratic institutions and the civilian population from any terrorist attack;

— assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 15b(1) [31(1)] of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 207 [240], the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 61 D [71]; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

PART ~~FIVE~~ SIX

INSTITUTIONS OF THE ~~COMMUNITY~~ UNION

TITLE I

PROVISIONS GOVERNING THE INSTITUTIONS

CHAPTER 1

THE INSTITUTIONS

²³⁶ Article I-43(1) and III-329 of the Constitution.

SECTION 1

THE EUROPEAN PARLIAMENT

Article 189

[ex Art. 189 EC, repealed] [²³⁷]

~~The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.~~

~~The number of Members of the European Parliament shall not exceed 736.~~

Article 190 [223]

[ex Art. 190 EC, amended] [²³⁸]

~~1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.~~

~~2. The number of representatives elected in each Member State shall be as follows:~~

Belgium	22	Luxembourg	6
Bulgaria	17	Hungary	22
Czech Republic	22	Malta	5
Denmark	13	Netherlands	25
Germany	99	Austria	17
Estonia	6	Poland	50
Ireland	12	Portugal	22
Greece	22	Romania	33
Spain	50	Slovenia	7
France	72	Slovakia	13
Italy	72	Finland	13
Cyprus	6	Sweden	18
Latvia	8	United Kingdom	72
Lithuania	12		

²³⁷ Replaced in substance by Article 9 A(1) and (2) (renumbered 14(1) and (2)) TEU.

²³⁸ Article III-330 of the Constitution. Paragraphs (1), (2) and (3) of ex Art. 190 EC are replaced in substance by Article 9 A(1), (2) and (3) (renumbered 14(1), (2) and (3)) EU.

~~In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.~~

~~3. Representatives shall be elected for a term of five years.~~

4. 1. The European Parliament shall draw up a proposal to lay down provisions necessary for the elections of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously in accordance with a special legislative procedure and after obtaining the assent consent of the European Parliament, which shall act by a majority of its component members, shall lay down the appropriate necessary provisions, which it shall recommend to These provisions shall enter into force following their approval by the Member States for adoption in accordance with their respective constitutional requirements.

~~5. 2.~~ The European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Article 191 [224]
[ex Art. 191 EC, amended] [239]

~~Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure referred to in Article 251, shall lay down, by means of regulations, the regulations governing political parties at European level referred to in Article 8 A(4) [10(4)] of the Treaty on European Union and in particular the rules regarding their funding.

Article 192 [225]
[ex Art. 192 EC, amended] [240]

~~In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions.~~

The European Parliament may, acting by a majority of its component members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community Union act is required for the purpose of implementing this Treaty the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

Article 193 [226]
[ex Art. 193 EC, amended] [241]

²³⁹ Article III-331 of the Constitution. The first paragraph of ex Art. 191 EC is replaced in substance by Article 8 A(4) (renumbered 10(4)) EU.

²⁴⁰ Article III-332 of the Constitution. The first paragraph of ex Art. 192 EC is replaced in substance by Article 9 A(1) (renumbered 14(1)) EU.

²⁴¹ Article III-333 of the Constitution.

In the course of its duties, the European Parliament may, at the request of a quarter of its **component** members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by ~~this Treaty~~ **the Treaties** on other institutions or bodies, alleged contraventions or maladministration in the implementation of **Community Union** law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by ~~common accord of~~ the European Parliament, **acting by means of regulations on its own initiative in accordance with a special legislative procedure**, **after obtaining the consent of** the Council and the Commission.

Article 194 **[227]**
[ex Art. 194 EC, amended] ^[242]

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the **Community's Union's** fields of activity and which affects him, her or it directly.

Article 195 **[228]**
[ex Art. 195 EC, amended] ^[243]

1. **A European Ombudsman, elected by** the European Parliament, shall ~~appoint an Ombudsman~~ be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the **Community Union** institutions, ~~or~~ **bodies, offices or agencies**, with the exception of the Court of Justice **of the European Union** ~~and the Court of First Instance~~ acting in their judicial role. **He or she shall examine such complaints and report on them.**

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution, **body, office or agency** concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, **body, office or agency** concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be ~~appointed~~ **elected** after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

²⁴² Article III-334 of the Constitution.

²⁴³ Article III-335 of the Constitution.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any **Government, institution, body, office, or entity**. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament **acting by means of regulations on its own initiative in accordance with a special legislative procedure** shall, after seeking an opinion from the Commission and with the approval of the Council ~~acting by a qualified majority~~, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

Article 196 **[229]**
[ex Art. 196 EC, amended] [²⁴⁴]

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary **part-session** at the request of a majority of its **component** members or at the request of the Council or of the Commission.

Article 197 **[230]**
[ex Art. 197 EC, amended] [²⁴⁵]

~~The European Parliament shall elect its President and its officers from among its Members.~~

~~Members of~~ The Commission may attend all meetings and shall, at their request, be heard ~~on behalf of the Commission~~.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The European Council and the Council shall be heard by the European Parliament in accordance with the conditions laid down ~~by the Council in its~~ **the** Rules of Procedure **of the European Council and those of the Council**.

Article 198 **[231]**
[ex Art. 198 EC, amended] [²⁴⁶]

Save as otherwise provided in ~~this Treaty~~ **the Treaties**, the European Parliament shall act by ~~an absolute~~ **a** majority of the votes cast.

The Rules of Procedure shall determine the quorum.

Article 199 **[232]**
[ex Art. 199 EC, amended] [²⁴⁷]

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

²⁴⁴ Article III-336 of the Constitution.

²⁴⁵ Article III-337(1) and (2) of the Constitution. The first paragraph of ex Art. 197 EC is repealed in substance by Article 9 A(4) (renumbered 14(4)) EU.

²⁴⁶ Article III-338 of the Constitution.

²⁴⁷ Article III-339 of the Constitution.

The proceedings of the European Parliament shall be published in the manner laid down in the Treaties and in its Rules of Procedure.

Article 200 [233]
[ex Art. 200 EC] [²⁴⁸]

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Article 201 [234]
[ex Art. 201 EC, amended] [²⁴⁹]

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component members of the European Parliament, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Article 244 9 D [17] of the Treaty on European Union. In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

SECTION 1a [2]

THE EUROPEAN COUNCIL

Article 201a [235]
[new article] [²⁵⁰]

1. Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member.

Article 9 C(4) [16(4)] of the Treaty on European Union and Article 205(2) [238(2)] of this Treaty shall apply to the European Council when it is acting by a qualified majority. Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote.

Abstentions by members present in person or represented shall not prevent the adoption by the European Council of acts which require unanimity.

2. The President of the European Parliament may be invited to be heard by the European Council.

3. The European Council shall act by a simple majority for procedural questions and for the adoption of its Rules of Procedure.

²⁴⁸ Article III-337(3) of the Constitution.

²⁴⁹ Article III-340 of the Constitution.

²⁵⁰ Article III-341 of the Constitution.

4. The European Council shall be assisted by the General Secretariat of the Council.

Article 201b [236]
[new article] [²⁵¹]

The European Council shall adopt by a qualified majority:

(a) a decision establishing the list of Council configurations, other than those of the General Affairs Council and of the Foreign Affairs Council, in accordance with Article 9 C(6) [16(6)] of the Treaty on European Union;

(b) a decision on the Presidency of Council configurations, other than that of Foreign Affairs, in accordance with Article 9 C(9) [16(9)] of the Treaty on European Union.

SECTION 2 [3]

THE COUNCIL

Article 202
[ex Art. 202 EC, repealed] [²⁵²]

~~To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:~~

~~—ensure coordination of the general economic policies of the Member States;~~

~~—have power to take decisions;~~

~~—confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament.~~

Article 203
[ex Art. 203 EC, repealed] [²⁵³]

~~The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.~~

~~The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.~~

Article 204 [237]
[ex Art. 204 EC] [²⁵⁴]

²⁵¹ Article I-24(4) and (7) of the Constitution.

²⁵² Replaced in substance by Article 9 C(1) (renumbered 16(1)) EU and Articles 249 B and 249 C (renumbered 290 and 291) FEU.

²⁵³ Replaced in substance by Article 9 C(2) and (9) (renumbered 16(2) and (9)) EU.

The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.

Article 205 [238]
[ex Art. 205 EC, amended]

- ~~1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members.~~
- ~~2. Where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows:~~

Belgium	12	Luxembourg	4
Bulgaria	10	Hungary	12
Czech Republic	12	Malta	3
Denmark	7	Netherlands	13
Germany	29	Austria	10
Estonia	4	Poland	27
Ireland	7	Portugal	12
Greece	12	Romania	14
Spain	27	Slovenia	4
France	29	Slovakia	7
Italy	29	Finland	7
Cyprus	4	Sweden	10
Latvia	4	United Kingdom	29
Lithuania	7		

~~Acts of the Council shall require for their adoption at least 232 votes in favour cast by a majority of the members where this Treaty requires them to be adopted on a proposal from the Commission.~~

~~In other cases, for their adoption acts of the Council shall require at least 232 votes in favour, cast by at least two thirds of the members.~~

1 Where it is required to act by a simple majority, the Council shall act by a majority of its component members. ^[255]

2 By way of derogation from Article 9 C(4) [16(4)] of the Treaty on European Union, as from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall

²⁵⁴ Article III-342 of the Constitution.

²⁵⁵ Article III-343(2) of the Constitution.

be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union. ^[256]

3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:

(a) A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;

(b) By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. ^[257]

~~3.~~ 4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity. ^[258]

~~4. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.~~

Article 206 ^[239]
[ex Art. 206 EC] ^[259]

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

Article 207 ^[240]
[ex Art. 207 EC, amended] ^[260]

1. A committee consisting of the Permanent Representatives **of the Governments** of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the ~~Council~~ **latter**. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General **appointed by the Council**, ~~High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat.~~

~~The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting~~

²⁵⁶ Article I-25(2) of the Constitution.

²⁵⁷ Article 205(3)(a) and (b) (renumbered 238(3)(a) and (b)) FEU is similar to Article I-44(3) of the Constitution, third, fourth and fifth subparagraphs thereof.

²⁵⁸ Article III-343(3) of the Constitution.

²⁵⁹ Article III-343(1) of the Constitution.

²⁶⁰ Article III-344 of the Constitution.

~~by a qualified majority.~~

The Council shall decide on the organisation of the General Secretariat **by a simple majority.**

~~3. The Council shall adopt its Rules of Procedure.~~

~~For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.~~

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

Article 208 [241]
[ex Art. 208 EC, amended] [261]

The Council **acting by a simple majority** may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. **If the Commission does not submit a proposal, it shall inform the Council of the reasons.**

Article 209 [242]
[ex Art. 209 EC, amended] [262]

The Council **acting by a simple majority** shall, after ~~receiving an opinion from~~ **consulting** the Commission, determine the rules governing the committees provided for in ~~this Treaty~~ **the Treaties.**

Article 210 [243]
[ex Art. 210 EC, amended] [263]

The Council shall, ~~acting by a qualified majority,~~ determine the salaries, allowances and pensions of the President **of the European Council, the President of the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, and the members of the Commission, and of the Presidents, Judges, Advocates-General members and Registrars of the Court of Justice of the European Union, and of the Members and Registrar of the Court of First Instance the Secretary-General of the Council.** It shall also, ~~again by a qualified majority,~~ determine any payment to be made instead of remuneration.

SECTION 3 [4]

THE COMMISSION

Article 211

²⁶¹ Article III-345 of the Constitution.

²⁶² Article III-346 of the Constitution.

²⁶³ Article III-400(1)(a) and (c) of the Constitution.

[ex Art. 211 EC, repealed] [²⁶⁴]

~~In order to ensure the proper functioning and development of the common market, the Commission shall:~~

~~— ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied,~~

~~— formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary,~~

~~— have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty,~~

~~— exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.~~

Article 211a [244]

[new article] [²⁶⁵]

In accordance with Article 9 D(5) [17(5)] of the Treaty on European Union, the members of the Commission shall be chosen on the basis of a system of rotation established unanimously by the European Council and on the basis of the following principles:

(a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;

(b) subject to point (a), each successive Commission shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States.

Article 212

[ex Art. 212 EC is moved to become Article 218(2) (renumbered 249(2)) FEU]

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.

Article 213 [245]

[ex Art. 213 EC, amended] [²⁶⁶]

~~1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.~~

~~The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.~~

~~The number of Members of the Commission shall be set by the Council, acting unanimously.~~

²⁶⁴ Replaced in substance by Article 9 D(1) (renumbered 17(1)) EU.

²⁶⁵ Article I-26(6) of the Constitution, second subparagraph thereof.

²⁶⁶ Article III-347 of the Constitution.

~~2. The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to shall respect this principle their independence and not to seek to influence the Members of the Commission them in the performance of their tasks.~~

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 [247] or deprived of his right to a pension or other benefits in its stead.

Article 214

[ex Art. 214 EC, repealed] [267]

~~1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.~~

~~Their term of office shall be renewable.~~

~~2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.~~

~~The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.~~

~~The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.~~

Article 215 [246]

[ex Art. 215 EC, amended] [268]

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the member's term of office by a new member of the same nationality appointed by the Council, acting by a qualified majority by common accord with the President of the Commission, after consulting the European Parliament and in accordance with the criteria set out in the second subparagraph of Article 9 D(3) [17(3)] of the Treaty on European Union. ~~The Council may, acting unanimously, decide that such a vacancy need not be filled.~~

The Council may, acting unanimously on a proposal from the President of the Commission, decide that such a vacancy need not be filled, in particular when the remainder of the member's

²⁶⁷ Replaced in substance by Article 9 D(3) and (7) (renumbered 17(3) and (7)) TEU.

²⁶⁸ Article III-348 of the Constitution.

term of office is short.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article ~~214(2)~~ **9 D(7) [17(7)]** of the Treaty on European Union shall be applicable for the replacement of the President.

In the event of resignation, compulsory retirement or death, the **High Representative of the Union for Foreign Affairs and Security Policy** shall be replaced, for the remainder of his or her term of office, in accordance with Article **9 E(1) [18(1)]** of the Treaty on European Union.

~~Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced or until the Council has decided that the vacancy need not be filled, as provided for in the second paragraph of this Article.~~

In the case of the resignation of all the members of the Commission, they shall remain in office and continue to deal with current business until they have been replaced, for the remainder of their term of office, in accordance with **Article 9 D [17]** of the Treaty on European Union.

Article 216 **[247]**
[ex Art. 216 EC] [²⁶⁹]

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council **acting by a simple majority** or the Commission, compulsorily retire him.

Article 217 **[248]**
[ex Art. 217 EC, amended] [²⁷⁰]

~~1. The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.~~

~~2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President.~~ Without prejudice to Article **9 E(4) [18(4)]** of the Treaty on European Union, the responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article **9 D(6) [17(6)]** of that Treaty. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

~~3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.~~

~~4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.~~

Article 218 **[249]**
[ex Art. 218 EC and ex Art. 212 EC, amended] [²⁷¹]

~~1. The Council and the Commission shall consult each other and shall settle by common accord~~

²⁶⁹ Article III-349 of the Constitution.

²⁷⁰ Article III-350 of the Constitution.

²⁷¹ Article III-352 of the Constitution.

~~their methods of cooperation.~~

~~2-~~ 1. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate ~~in accordance with the provisions of this Treaty~~. It shall ensure that these Rules are published.

2. The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the ~~Community~~ **Union**.
[²⁷²]

Article 219 [250]
[ex Art. 219 EC, amended] [²⁷³]

The Commission shall act by a majority ~~of the number~~ of **its** members ~~provided for in Article 213~~.

~~A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.~~ **Its Rules of Procedure shall determine the quorum.**

SECTION 4 [5]

THE COURT OF JUSTICE **OF THE EUROPEAN UNION**

Article 220
[ex Art. 220 EC, repealed] [²⁷⁴]

~~The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.~~

~~In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in Article 225a in order to exercise, in certain specific areas, the judicial competence laid down in this Treaty.~~

Article 221 [251]
[ex Art. 221 EC, amended] [²⁷⁵]

~~The Court of Justice shall consist of one judge per Member State.~~ [²⁷⁶]

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice **of the European Union**.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

Article 222 [252]
[ex Art. 222 EC, amended] [²⁷⁷]

²⁷² The text of ex Art. 212 EC is moved to become Article 218(2) (renumbered 249(2)) FEU.

²⁷³ Article III-351 of the Constitution.

²⁷⁴ Replaced in substance by Article 9 F (renumbered 19) EU.

²⁷⁵ Article III-353 of the Constitution.

²⁷⁶ Replaced in substance by Article 9 F(2) (renumbered 19(2)) EU, first subparagraph thereof.

²⁷⁷ Article III-354 of the Constitution.

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice **of the European Union**, require his involvement.

Article 223 [253]
[ex Art. 223 EC, amended] [²⁷⁸]

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years, **after consultation of the panel provided for in Article 224a** [255].

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice **of the European Union**.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, ~~acting by a qualified majority~~.

Article 224 [254]
[ex Art. 224 EC, amended] [²⁷⁹]

~~The Court of First Instance shall comprise at least one judge per Member State.~~ The number of Judges **of the Court** shall be determined by the Statute of the Court of Justice **of the European Union**. The Statute may provide for the ~~Court of First Instance~~ **General Court** to be assisted by Advocates-General.

The members of the ~~Court of First Instance~~ **General Court** shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years, **after consultation of the panel provided for in Article 224a** [255]. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the ~~Court of First Instance~~ **General Court** from among their number for a term of three years. He may be re-elected.

The ~~Court of First Instance~~ **General Court** shall appoint its Registrar and lay down the rules governing his service.

²⁷⁸ Article III-355 of the Constitution.

²⁷⁹ Article III-356 of the Constitution. The first sentence of the first subparagraph is replaced in substance by Article 9 F(2) (renumbered 19(2)) EU, second subparagraph thereof.

The ~~Court of First Instance~~ General Court shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, ~~acting by a qualified majority~~.

Unless the Statute of the Court of Justice of the European Union provides otherwise, the provisions of ~~this Treaty~~ the Treaties relating to the Court of Justice shall apply to the ~~Court of First Instance~~ General Court.

Article 224a [255]
[new article] [²⁸⁰]

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 223 [253] and 224 [254].

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

Article 225 [256]
[ex Art. 225 EC, amended] [²⁸¹]

1. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230 [263], 232 [265], 235 [268], 236 [270] and 238 [272], with the exception of those assigned to a ~~judicial panel~~ specialised court set up under Article 225a [257] and those reserved in the Statute for the Court of Justice of the European Union. The Statute may provide for the ~~Court of First Instance~~ General Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the ~~Court of First Instance~~ General Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the ~~judicial panels~~ specialised courts set up under Article 225a.

Decisions given by the ~~Court of First Instance~~ General Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of ~~Community~~ Union law being affected.

3. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234 [267], in specific areas laid down by the Statute.

Where the ~~Court of First Instance~~ General Court considers that the case requires a decision of principle likely to affect the unity or consistency of ~~Community~~ Union law, it may refer the case to the Court of Justice for a ruling.

²⁸⁰ Article III-357 of the Constitution.

²⁸¹ Article III-358 of the Constitution.

Decisions given by the ~~Court of First Instance~~ **General Court** on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of **Community Union** law being affected.

Article 225a [257]
[ex Art. 225a EC, amended] [²⁸²]

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

The ~~decision~~ **regulation** establishing a ~~judicial panel~~ **specialised court** shall lay down the rules on the organisation of the ~~panel court~~ and the extent of the jurisdiction conferred upon it.

Decisions given by ~~judicial panels~~ **specialised courts** may be subject to a right of appeal on points of law only or, when provided for in the ~~decision~~ **regulation** establishing the ~~panel~~ **specialised court**, a right of appeal also on matters of fact, before the ~~Court of First Instance~~ **General Court**.

The members of the ~~judicial panels~~ **specialised courts** shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The ~~judicial panels~~ **specialised courts** shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, ~~acting by a qualified majority.~~

Unless the ~~decision~~ **regulation** establishing the judicial panel provides otherwise, the provisions of ~~this Treaty~~ **the Treaties** relating to the Court of Justice **of the European Union** and the provisions of the Statute of the Court of Justice **of the European Union** shall apply to the ~~judicial panels~~ **specialised courts**. **Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.**

Article 226 [258]
[ex Art. 226 EC, amended] [²⁸³]

If the Commission considers that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Treaties**, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice **of the European Union**.

Article 227 [259]

²⁸² Article III-359 of the Constitution.

²⁸³ Article III-360 of the Constitution.

[ex Art. 227 EC, amended] [²⁸⁴]

A Member State which considers that another Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Treaties** may bring the matter before the Court of Justice **of the European Union**.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under ~~this Treaty~~ **the Treaties**, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court ~~of Justice~~.

Article 228 **[260]**

[ex Art. 228 EC, amended] [²⁸⁵]

1. If the Court of Justice **of the European Union** finds that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Treaties**, the State shall be required to take the necessary measures to comply with the judgment of the Court ~~of Justice~~.

~~2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.~~

~~If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.~~

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court ~~of Justice~~ finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227 **[259]**.

3. When the Commission brings a case before the Court pursuant to Article **226 [258]** on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a **directive adopted under a legislative procedure**, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

²⁸⁴ Article III-361 of the Constitution.

²⁸⁵ Article III-362 of the Constitution.

Article 229 [261]
[ex Art. 229 EC, amended] [²⁸⁶]

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of ~~this Treaty~~ ~~the Treaties~~, may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in such regulations.

Article 229a [262]
[ex Art. 229a EC, amended] [²⁸⁷]

Without prejudice to the other provisions of ~~this Treaty~~ ~~the Treaties~~, the Council, acting unanimously in accordance with a special legislative procedure ~~on a proposal from the Commission~~ and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice in disputes relating to the application of acts adopted on the basis of this Treaty which create ~~Community industrial~~ European intellectual property rights. ~~The Council shall recommend those~~ ~~These~~ provisions ~~to shall enter into force after their approval by~~ the Member States ~~for adoption~~ in accordance with their respective constitutional requirements.

Article 230 [263]
[ex Art. 230 EC, amended] [²⁸⁸]

The Court of Justice of the European Union shall review the legality of legislative acts ~~adopted jointly by the European Parliament and the Council~~, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of ~~this Treaty~~ ~~the Treaties~~ or of any rule of law relating to ~~its~~ ~~their~~ application, or misuse of powers.

The Court ~~of Justice~~ shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, ~~and~~ by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions laid down in the first and second paragraphs, institute proceedings against ~~a decision~~ ~~an act~~ addressed to that person or ~~against a decision~~ which, ~~although in the form of a regulation or a decision addressed to another person~~, is of direct and individual concern to ~~the former~~ ~~them~~, and against a regulatory act which is of direct concern to ~~them~~ and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the

²⁸⁶ Article III-363 of the Constitution.

²⁸⁷ Article III-364 of the Constitution.

²⁸⁸ Article III-365 of the Constitution.

day on which it came to the knowledge of the latter, as the case may be.

Article 231 [264]
[ex Art. 231 EC, amended] [289]

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

~~In the case of a regulation,~~ However, the Court of Justice shall, if it considers this necessary, state which of the effects of the ~~regulation~~ act which it has declared void shall be considered as definitive.

Article 232 [265]
[ex Article 232 EC, amended] [290]

Should the European Parliament, the European Council, the Council, ~~or~~ the Commission or the European Central Bank, in infringement of ~~this Treaty~~ the Treaties, fail to act, the Member States and the other institutions of the Community Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution, body, office or agency of the Community Union has failed to address to that person any act other than a recommendation or an opinion.

~~The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.~~

Article 233 [266]
[ex Art. 233 EC, amended] [291]

The institution, ~~or institutions~~ body, office or agency whose act has been declared void or whose failure to act has been declared contrary to ~~this Treaty~~ the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 288 [340].

~~This Article shall also apply to the ECB.~~

Article 234 [267]
[ex Art. 234 EC, amended] [292]

²⁸⁹ Article III-366 of the Constitution.

²⁹⁰ Article III-367 of the Constitution.

²⁹¹ Article III-368 of the Constitution.

²⁹² Article III-369 of the Constitution.

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of ~~this Treaty~~ the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices and agencies of the Community Union and of the ECB;
- ~~(c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.~~

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Article 235 [268]
[ex Art. 235 EC, amended] [²⁹³]

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraph of Article 288 [340].

Article 235a [269]
[new article] [²⁹⁴]

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

Article 236 [270]
[ex Art. 236 EC, amended] [²⁹⁵]

The Court of Justice of the European Union shall have jurisdiction in any dispute between the Community Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and of the Conditions of Employment of other servants of the Union.

Article 237 [271]
[ex Art. 237 EC, amended] [²⁹⁶]

²⁹³ Article III-370 of the Constitution.

²⁹⁴ Article III-371 of the Constitution.

²⁹⁵ Article III-372 of the Constitution.

The Court of Justice **of the European Union** shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

(a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 226 **[258]**;

(b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 230 **[263]**;

(c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 230 **[263]**, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;

(d) the fulfilment by national central banks of obligations under ~~this Treaty~~ **the Treaties** and the Statute of the ESCB **and of the ECB**. In this connection the powers of the **Governing Council** of the **European Central Bank** in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 226 **[258]**. If the Court ~~of Justice~~ finds that a national central bank has failed to fulfil an obligation under ~~this Treaty~~ **the Treaties**, that bank shall be required to take the necessary measures to comply with the judgment of the Court ~~of Justice~~.

Article 238 **[272]**
[ex Art. 272 EC, amended] ^[297]

The Court of Justice **of the European Union** shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ~~Community~~ **Union**, whether that contract be governed by public or private law.

Article 239 **[273]**
[ex Art. 239 EC, amended] ^[298]

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of ~~this Treaty~~ **the Treaties** if the dispute is submitted to it under a special agreement between the parties.

Article 240 **[274]**
[ex Art. 240 EC, amended] ^[299]

Save where jurisdiction is conferred on the Court of Justice **of the European Union** by ~~this Treaty~~ **the Treaties**, disputes to which the ~~Community~~ **Union** is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 240a **[275]**
[new article] ^[300]

²⁹⁶ Article III-373 of the Constitution.

²⁹⁷ Article III-374 of the Constitution.

²⁹⁸ Article III-375(3) of the Constitution.

²⁹⁹ Article III-375(1) of the Constitution.

³⁰⁰ Article III-376 of the Constitution.

The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 25b [40] of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 230 [263] of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

Article 240b [276]
[new article] [³⁰¹]

In exercising its powers regarding the provisions of Chapters 4 and 5 of Title IV of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 241 [277]
[ex Art. 241 EC, amended] [³⁰²]

Notwithstanding the expiry of the period laid down in ~~the fifth paragraph of~~ Article 230 [263], ~~fifth paragraph~~, any party may, in proceedings in which ~~a regulation~~ an act of general application adopted ~~jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB~~ by an institution, body, office or agency of the Union is at issue, plead the grounds specified in ~~the second paragraph of~~ Article 230 [263], second paragraph, in order to invoke before the Court of Justice of the European Union the inapplicability of that ~~regulation~~ act.

Article 242 [278]
[ex Art. 242 EC, amended] [³⁰³]

Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 243 [279]
[ex Art. 243 EC, amended] [³⁰⁴]

The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

Article 244 [280]
[ex Art. 244 EC, amended] [³⁰⁵]

³⁰¹ Article III-377 of the Constitution.

³⁰² Article III-378 of the Constitution.

³⁰³ Article III-379(1) of the Constitution.

³⁰⁴ Article III-379(2) of the Constitution.

³⁰⁵ Article III-380 of the Constitution.

The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article 256 [299].

Article 245 [281]
[ex Art. 245 EC, amended] [306]

The Statute of the Court of Justice of the European Union shall be laid down in a separate Protocol.

~~The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, may amend the provisions of the Statute, with the exception of Title I.~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.

SECTION 4a [6]

THE EUROPEAN CENTRAL BANK

Article 245a [282]
[new article] [307]

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2. The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

3. The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence. [308]

4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles 105 [127] to 111a [133], with Article 115 C [138], and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.

³⁰⁶ Article III-381 of the Constitution.

³⁰⁷ Article I-30(1), (2), (3), (4) and (5) of the Constitution.

³⁰⁸ Jean-Claude Trichet wrote a letter to the Secretary of State for European Affairs, representing the Portuguese Presidency, requesting clarification as to the ECB being included as an institution of the Union at Article 9 (renumbered 13) EU. However, the Constitution, in clear unambiguous terms, stated that "The European Central Bank is an institution" in the first sentence of Article I-30(3), but it did not specify whether it was an institution of the Union. This provision is not reproduced in the Treaty of Lisbon, but the latter does specify that the ECB is an institution of the Union.

5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

Article 245b [283]

[ex Art. 112 EC, amended] [³⁰⁹]

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.

2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.

(b) The President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters ~~by common accord of the governments of the Member States at the level of Heads of State or Government~~, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

Article 245c [284]

[ex Art. 113 EC, amended] [³¹⁰]

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

SECTION 5 [7]

THE COURT OF AUDITORS

³⁰⁹ Article III-382 of the Constitution.

³¹⁰ Article III-383 of the Constitution.

Article 246 [285]
[ex Art. 246 EC, amended] [³¹¹]

The Court of Auditors shall carry out the Union's audit.

It shall consist of one national of each Member State. Its members shall be completely independent in the performance of their duties, in the Union's general interest.

Article 247 [286]
[ex Art. 247 EC, amended] [³¹²]

~~1. The Court of Auditors shall consist of one national from each Member State.~~

~~2.~~ 1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries States to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

~~3.~~ 2. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, acting by a qualified majority after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

~~4.~~ 3. The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

~~5.~~ 4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

~~6.~~ 5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7 6.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

~~7.~~ 6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

³¹¹ Article I-31(1) and (3) of the Constitution.

³¹² Article III-385 of the Constitution

~~8-~~ **7.** The Council, ~~acting by a qualified majority~~, shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

~~9-~~ **8.** The provisions of the Protocol on the privileges and immunities of the European Communities Union applicable to the Judges of the Court of Justice of the European Union shall also apply to the Members of the Court of Auditors.

Article 248 [287]
[ex Art. 248 EC, amended] [³¹³]

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices and agencies set up by the Community Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of Community Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Community Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Community Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Community Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Community Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of

³¹³ Article III-384 of the Constitution.

~~Community~~ Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the ~~Community~~ Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the ~~Community~~ Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council, ~~acting by a qualified majority~~.

CHAPTER 2

~~PROVISIONS COMMON TO SEVERAL INSTITUTIONS~~

LEGAL ACTS OF THE UNION, ADOPTION PROCEDURES AND OTHER PROVISIONS

SECTION 1

THE LEGAL ACTS OF THE UNION

Article 249 [288]
[ex Art. 249 EC, amended] [³¹⁴]

~~In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.~~

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety ~~upon those to whom it is addressed~~. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

³¹⁴ Article I-33 of the Constitution,

Article 249 A [289]
[new article] [³¹⁵]

1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 251 [294].

2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.

3. Legal acts adopted by legislative procedure shall constitute legislative acts.

4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Article 249 B [290]
[new article] [³¹⁶]

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective “delegated” shall be inserted in the title of delegated acts.

Article 249 C [291]
[new article] [³¹⁷]

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts

³¹⁵ Article I-34 of the Constitution.

³¹⁶ Article I-36 of the Constitution. Articles 249 B and 249 C (renumbered 290 and 291) FEU replaces in substance the third indent of ex Article 202 EC.

³¹⁷ Article I-37 of the Constitution. Articles 249 B and 249 C (renumbered 290 and 291) FEU replaces in substance the third indent of ex Article 202 EC.

shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 11 [24] and 13 [26] of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word "implementing" shall be inserted in the title of implementing acts.

Article 249 D [292]
[new article] [³¹⁸]

The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. The Commission, and the European Central Bank in the specific cases provided for in the Treaties, shall adopt recommendations.

SECTION 2

PROCEDURES FOR THE ADOPTION OF ACTS AND OTHER PROVISIONS

Article 250 [293]
[ex Art. 250 EC, amended] [³¹⁹]

1. Where, ~~in pursuance of this Treaty~~ pursuant to the Treaties, the Council acts on a proposal from the Commission, ~~unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 251(4) and (5)~~ the Council may amend that proposal only by acting unanimously, except in the cases referred to in paragraphs 10 and 13 of Article 251 [294], in Articles 268 [310], 270a [312] and 272 [314] and in the second paragraph of Article 273 [315].

2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community Union act.

Article 251 [294]
[ex Art. 251 EC, amended] [³²⁰]

1. Where reference is made in ~~this Treaty~~ the Treaties to ~~this Article~~ the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

~~The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:~~

~~— if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;~~

³¹⁸ Article I-35(3) of the Constitution.

³¹⁹ Article III-395 of the Constitution.

³²⁰ Article III-396 of the Constitution.

~~—if the European Parliament does not propose any amendments, may adopt the proposed act,
—shall otherwise adopt a common position and communicate it to the European Parliament.~~

~~The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.~~

~~If, within three months of such communication, the European Parliament:~~

~~(a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;~~

~~(b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;~~

~~(c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.~~

~~3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.~~

~~4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.~~

~~5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.~~

~~6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.~~

~~7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.~~

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament:

(a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

(b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Special provisions

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

Article 252

[ex Art. 252 EC, repealed]

~~Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:~~

~~(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.~~

~~(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.~~

~~If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.~~

~~(c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.~~

~~If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.~~

~~(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.~~

~~The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.~~

~~(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.~~

~~Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.~~

~~(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a~~

~~period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.~~

~~(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.~~

Article 252a [295]
[new article] [³²¹]

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the **Treaties**, conclude interinstitutional agreements which may be of a binding nature.

Article 253 [296]
[ex Art. 253 EC, replaced] [³²²]

~~Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.~~

Where the **Treaties do** not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.

Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the **Treaties**.

When considering draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the relevant legislative procedure in the area in question.

Article 254 [297]
[ex Art. 254 EC, replaced] [³²³]

~~1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the President of the European Parliament and by the President of the Council and published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.~~

~~2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.~~

~~3. Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.~~

1. **Legislative acts** adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council.

³²¹ Article III-397 of the Constitution.

³²² Article I-38 and I-33(2) of the Constitution.

³²³ Article I-39 of the Constitution.

Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them.

Legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

2. Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

Article 254a [298]

[new article]

1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 283 [336], the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.

Article 255

[ex Art. 255 EC is moved to become Article 16 A (renumbered 15) FEU]

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

Article 256 [299]

[ex Art. 256 EC, amended] [³²⁴]

Decisions Acts of the Council, ~~or of~~ the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory

³²⁴ Article III-401 of the Constitution.

of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice **of the European Union**.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court ~~of Justice~~. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

THE UNION'S ADVISORY BODIES

Article 256a [300] [new article] [³²⁵]

1. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions, exercising advisory functions.

2. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas.

3. The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.

4. The members of the Economic and Social Committee and of the Committee of the Regions shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest.

5. The rules referred to in paragraphs 2 and 3 governing the nature of **the composition of the Committees** shall be reviewed at regular intervals by the Council to take account of economic, social and demographic developments within the Union. The Council, on a proposal from the Commission, shall adopt decisions to that end.

CHAPTER 3

SECTION 1

THE ECONOMIC AND SOCIAL COMMITTEE

~~Article 257~~ [ex Art. 257 EC, repealed] [³²⁶]

³²⁵ Article I-32 of the Constitution.

³²⁶ Replaced in substance by Article 256a(2) (renumbered 300(2)) FEU.

~~An Economic and Social Committee is hereby established. It shall have advisory status.~~

~~The Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.~~

Article 258 [301]
[ex Art. 258 EC, amended] [³²⁷]

The number of members of the Economic and Social Committee shall not exceed 350.

~~The number of members of the Committee shall be as follows:~~

Belgium	12	Luxembourg	6
Bulgaria	12	Hungary	12
Czech Republic	12	Malta	5
Denmark	9	Netherlands	12
Germany	24	Austria	12
Estonia	7	Poland	12
Ireland	9	Portugal	12
Greece	12	Romania	15
Spain	12	Slovenia	7
France	24	Slovakia	9
Italy	24	Finland	9
Cyprus	6	Sweden	12
Latvia	7	United Kingdom	12
Lithuania	9		

~~The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.~~

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The Council, ~~acting by a qualified majority~~, shall determine the allowances of members of the Committee.

Article 259 [302]

³²⁷ Article III-389 of the Constitution. The first, second and fourth paragraphs of ex Art. 258 EC are replaced in substance by Article 256a(4) (renumbered 300(4)) FEU. The third paragraph of ex Art. 258 EC is repealed.

[ex Art. 259 EC, amended] [³²⁸]

1. The members of the Committee shall be appointed for ~~four~~ **five** years, ~~on proposals from the Member States~~. The Council, ~~acting by a qualified majority~~, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable.

2. The Council shall **act after** consulting the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors **and of civil society** to which the **Union's** activities ~~of the Community~~ are of concern.

Article 260 **[303]**

[ex Art. 260 EC, amended] [³²⁹]

The Committee shall elect its chairman and officers from among its members for a term of two **and a half** years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament**, of the Council or of the Commission. It may also meet on its own initiative.

~~*Article 261*~~

[ex Art. 261 EC, repealed]

~~The Committee shall include specialised sections for the principal fields covered by this Treaty.~~

~~These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.~~

~~Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.~~

~~The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.~~

Article 262 **[304]**

[ex Art. 262 EC, amended] [³³⁰]

The Committee ~~must~~ **shall** be consulted by **the European Parliament**, the Council or by the Commission where ~~this Treaty~~ **the Treaties** so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee ~~and that of the specialised section~~, together with a record of the proceedings, shall be forwarded to **the European Parliament**, the Council and to the Commission.

³²⁸ Article III-390 of the Constitution.

³²⁹ Article III-391 of the Constitution.

³³⁰ Article III-392 of the Constitution.

~~The Committee may be consulted by the European Parliament.~~

CHAPTER 4

SECTION 2

THE COMMITTEE OF THE REGIONS

Article 263 [305]
[ex Art. 263 EC, amended] [³³¹]

~~A committee, hereinafter referred to as ‘the Committee of the Regions’, consisting of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly, is hereby established with advisory status.~~

The number of members of the Committee of the Regions shall not exceed 350.

~~The number of members of the Committee shall be as follows:~~

Belgium	12	Luxembourg	6
Bulgaria	12	Hungary	12
Czech Republic	12	Malta	5
Denmark	9	Netherlands	12
Germany	24	Austria	12
Estonia	7	Poland	21
Ireland	9	Portugal	12
Greece	12	Romania	15
Spain	21	Slovenia	7
France	24	Slovakia	9
Italy	24	Finland	9
Cyprus	6	Sweden	12
Latvia	7	United Kingdom	24
Lithuania	9		

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee’s composition.

³³¹ Article III-386 of the Constitution. The first and fifth paragraphs of ex Art. 263 EC are replaced in substance by Article 256a(3) and (4) (renumbered 300(3) and (4)) FEU.

The members of the Committee and an equal number of alternate members shall be appointed for ~~four~~ **five** years, ~~on proposals from the respective Member States~~. Their term of office shall be renewable. The Council, ~~acting by a qualified majority~~, shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in ~~the first paragraph~~ **Article 256a(3) [300(3)]** on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

~~The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.~~

Article 264 **[306]**
[ex Art. 264 EC, amended] [³³²]

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two **and a half** years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament**, of the Council or of the Commission. It may also meet on its own initiative.

Article 265 **[307]**
[ex Art. 265 EC, amended] [³³³]

The Committee of the Regions shall be consulted by **the European Parliament**, the Council or by the Commission where ~~this Treaty~~ **the Treaties** so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these ~~two~~ institutions considers it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to Article 262 **[304]**, the Committee of the Regions shall be informed by **the European Parliament**, the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

~~The Committee of the Regions may be consulted by the European Parliament.~~

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to **the European Parliament**, the Council and to the Commission.

³³² Article III-387 of the Constitution.

³³³ Article III-388 of the Constitution.

CHAPTER 5 4

THE EUROPEAN INVESTMENT BANK

Article 266 [308]
[ex Art. 266 EC, amended] [³³⁴]

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to ~~this Treaty~~ ~~the Treaties~~. The Council acting unanimously ~~in accordance with a special legislative procedure~~, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or ~~at the request of~~ ~~on a proposal from~~ the Commission and after consulting the European Parliament and the European Investment Bank, may amend ~~Articles 4, 11 and 12 and Article 18(5) of~~ the Statute of the Bank.

Article 267 [309]
[ex Art. 267 EC, amended] [³³⁵]

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the ~~common~~ ~~internal~~ market in the interest of the ~~Community~~ ~~Union~~. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the ~~progressive~~ establishment ~~or functioning~~ of the ~~common~~ ~~internal~~ market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other ~~Community~~ ~~Union~~ Financial Instruments.

TITLE II

FINANCIAL PROVISIONS

Article 268 [310]
[ex Art. 268 EC, amended] [³³⁶]

³³⁴ Article III-393 of the Constitution.

³³⁵ Article III-394 of the Constitution.

³³⁶ Article I-53 of the Constitution.

1. All items of revenue and expenditure of the ~~Community~~ **Union**, ~~including those relating to the European Social Fund~~, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

~~Administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.~~

The Union's annual budget shall be established by the European Parliament and the Council in accordance with Article 272 [314].

The revenue and expenditure shown in the budget shall be in balance.

2. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the **regulation** referred to in Article 279 [322].

3. The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure in accordance with the **regulation** referred to in Article 279 [322], except in cases for which that law provides.

4. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework referred to in Article 270a [312].

5. The budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with this principle.

6. The Union and the Member States, in accordance with Article 280 [325], shall counter fraud and any other illegal activities affecting the financial interests of the Union.

CHAPTER 1

THE UNION'S OWN RESOURCES

Article 269 [311]
[ex Art. 269 EC, amended] [³³⁷]

The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.~~

³³⁷ Article I-54 of the Constitution.

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The Council, acting by means of regulations in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system insofar as this is provided for in the decision adopted on the basis of the third paragraph. The Council shall act after obtaining the consent of the European Parliament.

Article 270

[ex Art. 270 EC, repealed] [³³⁸]

~~With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.~~

CHAPTER 2

THE MULTIANNUAL FINANCIAL FRAMEWORK

Article 270a [312]

[new article] [³³⁹]

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources.

It shall be established for a period of at least five years.

The annual budget of the Union shall comply with the multiannual financial framework.

2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

The European Council may, unanimously, adopt a decision authorising the Council to act by a qualified majority when adopting the regulation referred to in the first paragraph.

3. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity.

The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.

³³⁸ Replaced in substance by Article 268(4) (renumbered 310(4)) FEU.

³³⁹ Article I-55 and Article III-402 of the Constitution.

4. Where no Council regulation determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted.

5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption.

CHAPTER 3

THE UNION'S ANNUAL BUDGET

Article 270b [313]

[ex Art. 272(1) EC]

1. The financial year shall run from 1 January to 31 December.

~~Article 271~~

[ex Art. 271 EC is moved to become Article 273a (renumbered 316) FEU]

The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.

In accordance with conditions to be laid down pursuant to Article 279, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 279.

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 272 [314]

[ex Art. 272(2) to (10) EC, replaced; ex Art. 272(1) EC is moved to become Article 270b (renumbered 313) FEU] [³⁴⁰]

1. The financial year shall run from 1 January to 31 December.

~~2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.~~

~~The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.~~

~~3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.~~

~~The Council shall consult the Commission and, where appropriate, the other institutions~~

³⁴⁰ Article III-404 of the Constitution.

~~concerned whenever it intends to depart from the preliminary draft budget.~~

~~The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.~~

~~4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.~~

~~The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.~~

~~If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.~~

~~If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.~~

~~5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:~~

~~(a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;~~

~~(b) with regard to the proposed modifications:~~

~~— where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;~~

~~— where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;~~

~~— where, pursuant to one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.~~

~~The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.~~

~~If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.~~

~~If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The~~

~~Council shall inform the European Parliament of the results of its deliberations.~~

~~6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.~~

~~7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.~~

~~8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.~~

~~9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.~~

~~The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:~~

~~— the trend, in terms of volume, of the gross national product within the Community,~~

~~— the average variation in the budgets of the Member States,~~

~~and~~

~~— the trend of the cost of living during the preceding financial year.~~

~~The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.~~

~~If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.~~

~~Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three fifths of the votes cast.~~

~~10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.~~

The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions.

1. With the exception of the European Central Bank, each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.

4. If, within forty-two days of such communication, the European Parliament:

(a) approves the position of the Council, the budget shall be adopted;

(b) has not taken a decision, the budget shall be deemed to have been adopted;

(c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.

7. If, within the period of fourteen days referred to in paragraph 6:

(a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text; or

(b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission; or

(c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission; or

(d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or

some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation Committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted.

10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

Article 273 [315]
[ex Art. 273 EC, amended] [³⁴¹]

If, at the beginning of a financial year, the budget has not yet been ~~voted~~ definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter ~~or other subdivision~~ of the budget in accordance with the provisions of the Regulations made pursuant to Article 279 [322]; ~~this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation~~ that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

The Council ~~on a proposal from the Commission~~, may, ~~acting by a qualified majority~~, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one twelfth ~~in accordance with the regulations made pursuant~~ to Article 279 [322]. The Council shall forward the decision immediately to the European Parliament.

~~If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.~~

~~The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.~~

The decision ~~referred to in the second paragraph~~ shall lay down the necessary measures relating to resources to ensure application of this Article, in accordance with the ~~acts~~ referred to in Article 269 [311].

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

Article 273a [316]
[ex Art. 271 EC, amended] [³⁴²]

³⁴¹ Article III-405 of the Constitution.

~~The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.~~

In accordance with conditions to be laid down pursuant to Article 279 [322], any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, ~~as far as may be necessary,~~ in accordance with the regulations made pursuant to Article 279 [322].

The expenditure of the European Parliament, the European Council and the Council, the Commission and the Court of Justice of the European Union shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

CHAPTER 4

IMPLEMENTATION OF THE BUDGET AND DISCHARGE

Article 274 [317]
[ex Art. 274 EC, amended] [³⁴³]

The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 279 [322], on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

~~The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.~~

The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279 [322], transfer appropriations from one chapter to another or from one subdivision to another.

Article 275 [318]
[ex Art. 275 EC, amended] [³⁴⁴]

The Commission shall submit annually to the European Parliament and to the Council ~~and to the European Parliament~~ the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community Union.

The Commission shall also submit to the European Parliament and to the Council an evaluation

³⁴² Article III-406 of the Constitution.

³⁴³ Article III-407 of the Constitution.

³⁴⁴ Article III-408 of the Constitution.

report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 276 [319].

Article 276 [319]
[ex Art. 276 EC, amended] [³⁴⁵]

1. The European Parliament, acting on a recommendation from the Council ~~which shall act by a qualified majority~~, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, ~~and~~ the financial statement ~~and the evaluation report~~ referred to in Article 275 [318], the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1) [287(1)], second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

CHAPTER 5

COMMON PROVISIONS

Article 277 [320]
[ex Art. 277 EC, replaced] [³⁴⁶]

~~The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279.~~

The multiannual financial framework and the annual budget shall be drawn up in euro.

Article 278 [321]
[ex Art. 278 EC, amended] [³⁴⁷]

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which

³⁴⁵ Article III-409 of the Constitution.

³⁴⁶ Article III-410 of the Constitution.

³⁴⁷ Article III-411 of the Constitution.

come within the scope of ~~this Treaty~~ **the Treaties**. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Article 279 **[322]**
[ex Art. 279 EC, amended] [³⁴⁸]

~~1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:~~

~~(a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;~~

~~(b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.~~

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors.~~

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations:

(a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;

(b) rules providing for checks on the responsibility of financial actors, in particular authorising officers and accounting officers.

2. The Council, acting **unanimously** on a proposal from the Commission and after consulting the European Parliament and ~~obtaining the opinion of~~ the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the **Community's Union's** own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

Article 279a **[323]**
[new article] [³⁴⁹]

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

Article 279b **[324]**
[new article] [³⁵⁰]

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened, on the initiative of the Commission, under the budgetary procedures referred to in this Chapter. The Presidents shall take all the necessary steps to

³⁴⁸ Article III-412 of the Constitution.

³⁴⁹ Article III-413 of the Constitution.

³⁵⁰ Article III-414 of the Constitution.

promote consultation and the reconciliation of the positions of the institutions over which they preside in order to facilitate the implementation of this Title.

CHAPTER 6

COMBATING FRAUD

Article 280 [325]
[ex Art. 280 EC] [351]

1. The Community Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.
2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community Union as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of ~~this Treaty~~ the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Community Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies. ~~These measures shall not concern the application of national criminal law or the national administration of justice.~~
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

TITLE III

ENHANCED COOPERATION [352]

Article 280 A [326]
[new article] [353]

Any enhanced cooperation shall comply with the Treaties and the law of the Union.

Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

³⁵¹ Article III-415 of the Constitution.

³⁵² All articles in this Title replace ex Art. 11 and 11a EC.

³⁵³ Article III-416 of the Constitution.

Article 280 B [327]
[new article] [³⁵⁴]

Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

Article 280 C [328]
[new article] [³⁵⁵]

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible.

2. The Commission and, where appropriate, the High Representative of the Union for Foreign Affairs and Security Policy shall keep the European Parliament and the Council regularly informed regarding developments in enhanced cooperation.

Article 280 D [329]
[new article] [³⁵⁶]

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Treaties, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with the enhanced cooperation referred to in the first subparagraph shall be granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.

Article 280 E [330]
[new article] [³⁵⁷]

³⁵⁴ Article III-417 of the Constitution.

³⁵⁵ Article III-418 of the Constitution.

³⁵⁶ Article III-419 of the Constitution.

³⁵⁷ Article I-44(3) of the Constitution.

All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.

Unanimity shall be constituted by the votes of the representatives of the participating Member States only.

A qualified majority shall be defined in accordance with Article 205(3) [238(3)].

Article 280 F [331]
[new article] [³⁵⁸]

1. Any Member State which wishes to participate in enhanced cooperation in progress in one of the areas referred to in Article 280 D(1) [329(1)] shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request. The Council shall act in accordance with Article 280 E [330]. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the High Representative, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act unanimously and in accordance with Article 280 E [330].

Article 280 G [332]
[new article] [³⁵⁹]

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all

³⁵⁸ Article III-420 of the Constitution.

³⁵⁹ Article III-421 of the Constitution.

members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 280 H [333]
[new article] [³⁶⁰]

1. Where a provision of the **Treaties** which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article **280 E** [330], may adopt a decision stipulating that it will act by a qualified majority.

2. Where a provision of the **Treaties** which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt **acts** under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article **280 E** [330], may adopt a decision stipulating that it will act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.

3. Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.

Article 280 I [334]
[new article] [³⁶¹]

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

PART ~~SIX~~ SEVEN

GENERAL AND FINAL PROVISIONS

~~*Article 281*~~
[ex Art. 281 EC, repealed] [³⁶²]

~~The Community shall have legal personality.~~

Article 282 [335]
[ex Art. 282 EC, amended] [³⁶³]

In each of the Member States, the **Community Union** shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the **Community Union** shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

³⁶⁰ Article III-422 of the Constitution.

³⁶¹ Article III-423 of the Constitution.

³⁶² Replaced in substance by Article 46a (renumbered 47) EU.

³⁶³ Article III-426 of the Constitution.

Article 283 [336]
[ex Art. 283 EC, amended] [³⁶⁴]

The European Parliament and the Council shall, acting by ~~a qualified majority~~ means of regulations in accordance with the ordinary legislative procedure on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities Union and the Conditions of employment of other servants of ~~those Communities~~ the Union.

Article 284 [337]
[ex Art. 284 EC, amended]

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of ~~this Treaty~~ the Treaties, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article 285 [338]
[ex Art. 285 EC, amended]

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure ~~referred to in Article 251~~, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community Union.

2. The production of Community Union statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

~~Article 286~~
[ex Art. 286 EC, replaced by Article 16 B (renumbered 16) FEU]

~~1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.~~

~~2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.~~

Article 287 [339]
[ex Art. 287 EC, amended] [³⁶⁵]

The members of the institutions of the Community Union, the members of committees, and the officials and other servants of the Community Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

³⁶⁴ Article III-427 of the Constitution.

³⁶⁵ Article III-430 of the Constitution.

Article 288 [340]
[ex Art. 288 EC, amended] [³⁶⁶]

The contractual liability of the **Community Union** shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the **Community Union** shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

~~The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.~~

Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

The personal liability of its servants towards the **Community Union** shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article 289 [341]
[ex Art. 289 EC, amended]

The seat of the institutions of the **Community Union** shall be determined by common accord of the governments of the Member States.

Article 290 [342]
[ex Art. 290 EC, amended]

The rules governing the languages of the institutions of the **Community Union** shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously **by means of regulations**.

Article 291 [343]
[ex Art. 291 EC, amended]

The **Community Union** shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European **Communities Union**. The same shall apply to the European Central Bank, ~~the European Monetary Institute~~, and the European Investment Bank.

Article 292 [344]
[ex Art. 292 EC, amended]

Member States undertake not to submit a dispute concerning the interpretation or application of ~~this Treaty~~ **the Treaties** to any method of settlement other than those provided for therein.

~~*Article 293*~~
[ex Art. 293 EC, repealed]

³⁶⁶ Article III-431 of the Constitution.

~~Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:~~

~~— the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals,~~

~~— the abolition of double taxation within the Community,~~

~~— the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries,~~

~~— the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.~~

Article 294

[ex Art. 294 EC, moved to become Article 48a (renumbered 55) FEU]

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 48, without prejudice to the application of the other provisions of this Treaty.

Article 295 [345]

[ex Art. 295 EC, amended] [³⁶⁷]

~~This Treaty~~ **The Treaties** shall in no way prejudice the rules in Member States governing the system of property ownership.

Article 296 [346]

[ex Art. 296 EC, amended] [³⁶⁸]

1. The provisions of ~~this Treaty~~ **the Treaties** shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the ~~common~~ **internal** market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

Article 297 [347]

[ex Art. 297 EC, amended] [³⁶⁹]

³⁶⁷ Article III-425 of the Constitution.

³⁶⁸ Article III-436 of the Constitution.

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the **common internal** market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 298 [348]
[ex Art. 298 EC, amended] [³⁷⁰]

If measures taken in the circumstances referred to in Articles 296 [346] and 297 [347] have the effect of distorting the conditions of competition in the **common internal** market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the ~~Treaty~~ **Treaties**.

By way of derogation from the procedure laid down in Articles 226 [258] and 227 [259], the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 296 [346] and 297 [347]. The Court of Justice shall give its ruling in camera.

Article 299 [349]
[ex Art. 299(2) EC, amended] [³⁷¹]

~~1. This Treaty shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.~~

~~2. The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.~~

~~However,~~ Taking account of the structural social and economic situation of ~~the French overseas departments~~ **Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin**, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the ~~present Treaty~~ **Treaties** to those regions, including common policies. **Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament.**

~~The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account~~ **The measures** referred to in the first paragraph concern in particular areas such

³⁶⁹ Article III-131 of the Constitution.

³⁷⁰ Article III-132 of the Constitution.

³⁷¹ Article III-424 of the Constitution. The text of ex Art. 299(1) EC is replaced in substance by Article 49 C (renumbered 52) EU. The first subparagraph of ex Art. 299(2) EC and paragraphs (3) to (6) of ex Art. 299 EC are moved to become Article 311a (renumbered 355) FEU.

as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal **Community Union** programmes.

The Council shall adopt the measures referred to in the **second first** subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the **Community Union** legal order, including the internal market and common policies.

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.

This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

4. The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.

5. The provisions of this Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

(a) this Treaty shall not apply to the Faeroe Islands;

(b) this Treaty shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and in accordance with the terms of that Protocol;

(c) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

~~Article 300~~

[ex Art. 300 EC, replaced by Article 188 N (renumbered 218) FEU]

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion

of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.

By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time limit for the assent.

4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.

6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.

7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.

~~Article 301~~

[ex Art. 301 EC, replaced by Article 188 K (renumbered 215) FEU]

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

~~Article 302~~

[ex Art. 302 EC, replaced by Article 188 P (renumbered 220) FEU]

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.

The Commission shall also maintain such relations as are appropriate with all international organisations.

~~Article 303~~

[ex Art. 303 EC, replaced by Article 188 P (renumbered 220) FEU]

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

~~Article 304~~

[ex Art. 304 EC, replaced by Article 188 P (renumbered 220) FEU]

The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.

~~Article 305~~

[ex Art. 305 EC, repealed]

~~1. The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.~~

~~2. The provisions of this Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community.~~

Article 306 [350]

[ex Art. 306 EC, amended] [³⁷²]

The provisions of ~~this Treaty~~ the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of ~~this Treaty~~ the Treaties.

Article 307 [351]

[ex Art. 307 EC, amended] [³⁷³]

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of ~~this Treaty~~ the Treaties.

To the extent that such agreements are not compatible with ~~this Treaty~~ the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the

³⁷² Article IV-441 of the Constitution.

³⁷³ Article III-435 of the Constitution.

incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under ~~this Treaty~~ **the Treaties** by each Member State form an integral part of the establishment of the **Community Union** and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

Article 308 **[352]**
[ex Art. 308 EC, replaced]

~~If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.~~

1. If action by the Union should prove necessary, within the **framework of the policies defined in the Treaties**, to attain one of the objectives set out in the **Treaties**, and the **Treaties** have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the **appropriate measures**. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article **3b(3) [5(3)] of the Treaty on European Union**, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the **Treaties** exclude such harmonisation.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 25b [40], second paragraph, of the Treaty on European Union.

Article 308a **[353]**
[new article]

Article 48(7) of the Treaty on European Union shall not apply to the following Articles:

— **Article 269, third and fourth paragraphs,**

— **Article 270a(2), first subparagraph,**

— **Article 308, and**

— **Article 309.**

Article 309 **[354]**
[ex Art. 309 EC, replaced] [³⁷⁴]

³⁷⁴ Article I-59(5) and (6) of the Constitution.

~~1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with Article 7(3) of the Treaty on European Union, these voting rights shall also be suspended with regard to this Treaty.~~

~~2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has been determined in accordance with Article 7(2) of that Treaty, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.~~

~~The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.~~

~~3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken in accordance with paragraph 2 in response to changes in the situation which led to their being imposed.~~

~~4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).~~

~~This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.~~

For the purposes of Article 7 of the Treaty on European Union on the suspension of certain rights resulting from Union membership, the member of the European Council or of the Council representing the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of the one third or four fifths of Member States referred to in paragraphs 1 and 2 of that Article. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2 of that Article.

For the adoption of the decisions referred to in paragraphs 3 and 4 of Article 7 of the Treaty on European Union, a qualified majority shall be defined in accordance with Article 205(3)(b) [238(3)(b)] of this Treaty.

Where, following a decision to suspend voting rights adopted pursuant to paragraph 3 of Article 7 of the Treaty on European Union, the Council acts by a qualified majority on the basis of a provision of the Treaties, that qualified majority shall be defined in accordance with Article 205(3)(b) [238(3)(b)] of this Treaty, or, where the Council acts on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, in accordance with Article 205(3)(a) [238(3)(a)].

For the purposes of Article 7 of the Treaty on European Union, the European Parliament shall act by a two-thirds majority of the votes cast, representing the majority of its component members.

Article 310

[ex Art. 310 EC, moved to become Article 188 M (renumbered 217) FEU]

The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

Article 311

[ex Art. 311 EC, repealed] [³⁷⁵]

~~The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.~~

Article 311a [355]

[ex Art. 299(2) §1 and (3) to (6) EC, amended] [³⁷⁶]

In addition to the provisions of Article 49 C [52] of the Treaty on European Union relating to the territorial scope of the Treaties, the following provisions shall apply:

~~2.~~ **1.** The provisions of ~~this Treaty~~ **the Treaties** shall apply to ~~the French overseas departments Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin,~~ the Azores, Madeira and the Canary Islands in accordance with Article ~~299~~ **[349]**.

~~3.~~ **2.** The special arrangements for association set out in Part Four ~~of this Treaty~~ shall apply to the overseas countries and territories listed in Annex II to ~~this Treaty~~ **the Treaties**.

~~This Treaty~~ **The Treaties** shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

~~4.~~ **3.** The provisions of ~~this Treaty~~ **the Treaties** shall apply to the European territories for whose external relations a Member State is responsible.

~~5.~~ **4.** The provisions of ~~this Treaty~~ **the Treaties** shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

~~6.~~ **5.** Notwithstanding ~~the preceding paragraphs~~ **Article 49 C [52] of the Treaty on European Union and paragraphs 1 to 4 of this Article:**

(a) ~~this Treaty~~ **the Treaties** shall not apply to the Faeroe Islands;

(b) ~~this Treaty~~ **the Treaties** shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and in accordance with the terms of that Protocol;

(c) ~~this Treaty~~ **the Treaties** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

6. The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs **1 and 2**. The European Council shall act unanimously after consulting the Commission.

³⁷⁵ Replaced in substance by Article 49 B (renumbered 51) EU.

³⁷⁶ Article IV-440(2) to (7) of the Constitution.

Article 312 [356]
[ex Art. 312 EC]

This Treaty is concluded for an unlimited period.

FINAL PROVISIONS

Article 313 [357]
[ex Art. 313 EC]

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The Instruments of ratification shall be deposited with the Government of the Italian Republic.

This Treaty shall enter into force on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

Article 313a [358]
[new article]

The provisions of Article 53 of the Treaty on European Union shall apply to this Treaty.

~~Article 314~~
[ex Art. 314 EC, repealed] [³⁷⁷]

~~This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.~~

~~Pursuant to the Accession Treaties, the Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish versions of this Treaty shall also be authentic.~~

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fiftyseven.

(List of signatories not reproduced)

³⁷⁷ Replaced in substance by Article 53 (renumbered 55) EU, which applies to the Treaty on the Functioning of the European Union by virtue of Article 313a (renumbered 358) FEU.

PROTOCOLS

Consolidated version

[Protocols annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union, and, where appropriate, to the Treaty establishing the European Atomic Energy Community]

- Protocol on the role of national Parliaments in the European Union
- Protocol on the application of the principles of subsidiarity and proportionality
- Protocol on the Statute of the Court of Justice of the European Union
- Protocol on the Statute of the European System of Central Banks and of the European Central Bank
- Protocol on the Statute of the European Investment Bank
- Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union
- Protocol on the privileges and immunities of the European Union
- Protocol on the excessive deficit procedure
- Protocol on the convergence criteria
- Protocol on the Euro Group
- Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland
- Protocol on certain provisions relating to Denmark
- Protocol on France
- Protocol on the Schengen *acquis* integrated into the framework of the European Union
- Protocol on the application of certain aspects of Article 22a [26] of the Treaty on the Functioning of the European Union
- Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice
- Protocol on Denmark
- Protocol on external relations of the Member States with regard to the crossing of external borders
- Protocol on asylum for nationals of Member States of the European Union
- Protocol on permanent structured cooperation established by Article 42 of the Treaty on European Union
- Protocol on Article 42(2) of the Treaty on European Union
- Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles
- Protocol on the acquisition of property in Denmark
- Protocol on the system of public broadcasting in the Member States
- Protocol concerning Article 157 of the Treaty on the Functioning of the European Union
- Protocol on economic, social and territorial cohesion
- Protocol on special arrangements for Greenland
- Protocol on Article 40.3.3 of the Constitution of Ireland
- Protocol relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms
- Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom
- Protocol on the internal market and competition
- Protocol on the exercise of shared competence
- Protocol on services of general interest
- Protocol on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel

- Protocol on the Decision of the Council relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other
- Protocol on transitional provisions

~~PROTOCOL (No 9)~~

~~ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION (1997)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~RECALLING that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,~~

~~DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them,~~

~~HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities,~~

~~I. Information for national parliaments of Member States~~

~~1. All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States.~~

~~2. Commission proposals for legislation as defined by the Council in accordance with Article 207(3) of the Treaty establishing the European Community, shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate.~~

~~3. A six week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 251 or 252 of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.~~

~~II. The Conference of European Affairs Committees~~

~~4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter.~~

~~5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this point.~~

~~6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.~~

~~7. Contributions made by COSAC shall in no way bind national parliaments or prejudice their position.~~

PROTOCOL

ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the European Union is a matter for the particular constitutional organisation and practice of each Member State;

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the European Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

Article 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

Article 2

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments. For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

Article 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

Article 4

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

Article 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

Article 6

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

Article 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II

INTERPARLIAMENTARY COOPERATION

Article 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

Article 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

~~PROTOCOL (No 30)~~

~~ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY (1997)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 5 of the Treaty establishing the European Community with a view to defining more precisely the criteria for applying them and to ensure their strict observance and consistent implementation by all institutions;~~

~~WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;~~

~~TAKING ACCOUNT of the Interinstitutional Agreement of 25 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;~~

~~HAVE CONFIRMED that the conclusions of the Birmingham European Council on 16 October 1992 and the overall approach to the application of the subsidiarity principle agreed by the European Council meeting in Edinburgh on 11-12 December 1992 will continue to guide the action of the Union's institutions as well as the development of the application of the principle of subsidiarity, and, for this purpose,~~

~~HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community:~~

~~1. In exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.~~

~~2. The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the maintaining in full of the *acquis communautaire* and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take into account Article 6(4) of the Treaty on European Union, according to which 'the Union shall provide itself with the means necessary to attain its objectives and carry through its policies'.~~

~~3. The principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice. The criteria referred to in the second paragraph of Article 5 of the Treaty shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.~~

~~4. For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators.~~

~~5. For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in~~

~~the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.~~

~~The following guidelines should be used in examining whether the abovementioned condition is fulfilled:~~

~~— the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;~~

~~— actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;~~

~~— action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.~~

~~6. The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 249 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods.~~

~~7. Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.~~

~~8. Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 10 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.~~

~~9. Without prejudice to its right of initiative, the Commission should:~~

~~— except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents;~~

~~— justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in whole or in part from the Community budget shall require an explanation;~~

~~— take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;~~

~~— submit an annual report to the European Council, the European Parliament and the Council on the application of Article 5 of the Treaty. This annual report shall also be sent to the Committee of the Regions and to the Economic and Social Committee.~~

~~10. The European Council shall take account of the Commission report referred to in the fourth indent of point 9 within the report on the progress achieved by the Union which it is required to submit to the European Parliament in accordance with Article 4 of the Treaty on European Union.~~

~~11. While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 5 of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.~~

~~12. In the course of the procedures referred to in Articles 251 and 252 of the Treaty, the European Parliament shall be informed of the Council's position on the application of Article 5 of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 5 of the Treaty.~~

~~13. Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty.~~



PROTOCOL

ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 3b [5] of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 3b [5] of the Treaty on European Union.

Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 3

For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 61 I [76] of the Treaty on the Functioning of the European Union, on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second

subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

(a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;

(b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 230 [263] of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 3b [5] of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

PROTOCOL ~~(No 6)~~

ON THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION ~~(2001)~~

THE HIGH CONTRACTING PARTIES

DESIRING to lay down the Statute of the Court of Justice of the European Union provided for in Article 245 [281] of the Treaty establishing the European Community on the Functioning of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, the Treaty establishing the European Community on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

Article 1

The Court of Justice of the European Union shall be constituted and shall function in accordance with the provisions of the Treaty on European Union (~~EU Treaty~~), of the Treaty establishing the European Community on the Functioning of the European Union (~~EC Treaty~~), of the Treaty establishing the European Atomic Energy Community (EAEC Treaty) and of this Statute.

TITLE I

JUDGES AND ADVOCATES-GENERAL

Article 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court of Justice, sitting as a full Court, may waive the immunity. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Articles 12 to 15 and Article 18 of the Protocol on the privileges and immunities of the European Communities Union shall apply to the Judges, Advocates-General, Registrar and Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the

provisions relating to immunity from legal proceedings of Judges which are set out in the preceding paragraphs.

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council **acting by a simple majority**.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court **of Justice** for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court **of Justice**, he no longer fulfils the requisite conditions or meets the obligations arising from his office. **The Judge concerned shall not take part in any such deliberations. If the person concerned is a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.**

The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

TITLE II

ORGANISATION OF THE COURT OF JUSTICE

Article 9

When, every three years, the Judges are partially replaced, fourteen and thirteen Judges shall be replaced alternately.

When, every three years, the Advocates-General are partially replaced, four Advocates-General shall be replaced on each occasion.

Article 10

The Registrar shall take an oath before the Court of Justice to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

Article 11

The Court of Justice shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court of Justice.

Article 12

Officials and other servants shall be attached to the Court of Justice to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 13

~~On a proposal from~~ At the request of the Court of Justice, the European Parliament and the Council may, acting unanimously in accordance with the ordinary legislative procedure, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council acting by a simple majority. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 14

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court of Justice has its seat.

Article 15

The Court of Justice shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 16

The Court of Justice shall form chambers consisting of three and five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The Grand Chamber shall consist of 13 Judges. It shall be presided over by the President of the Court. The Presidents of the chambers of five Judges and other Judges appointed in accordance with the conditions laid down in the Rules of Procedure shall also form part of the Grand Chamber.

The Court shall sit in a Grand Chamber when a Member State or an institution of the Communities Union that is party to the proceedings so requests.

The Court shall sit as a full Court where cases are brought before it pursuant to Article 195(2) [228(2)], Article ~~213(2)~~ 213 [245], Article 216 [247] or Article ~~247(7)~~ 247(6) [286(6)] of the EC Treaty on the Functioning of the European Union ~~or Article 107d(2), Article 126(2), Article 129 or Article 160b(7) of the EAEC Treaty.~~

Moreover, where it considers that a case before it is of exceptional importance, the Court may decide, after hearing the Advocate-General, to refer the case to the full Court.

Article 17

Decisions of the Court of Justice shall be valid only when an uneven number of its members is sitting in the deliberations.

Decisions of the chambers consisting of either three or five Judges shall be valid only if they are taken by three Judges.

Decisions of the Grand Chamber shall be valid only if nine Judges are sitting.

Decisions of the full Court shall be valid only if 15 Judges are sitting.

In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Article 18

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court of Justice.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

TITLE III

PROCEDURE BEFORE THE COURT OF JUSTICE

Article 19

The Member States and the institutions of the Communities Union shall be represented before the Court of Justice by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

The States, other than the Member States, which are parties to the Agreement on the European Economic Area and also the EFTA Surveillance Authority referred to in that Agreement shall be represented in same manner.

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers.

Article 20

The procedure before the Court of Justice shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Communities Union whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Where it considers that the case raises no new point of law, the Court may decide, after hearing the Advocate-General, that the case shall be determined without a submission from the Advocate-General.

Article 21

A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 232 [265] of the EC Treaty on the Functioning of the European Union ~~and Article 148 of the EAEC Treaty~~, by documentary evidence of the date on which an institution was, in accordance with ~~those that~~ Articles, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.

Article 22

A case governed by Article 18 of the EAEC Treaty shall be brought before the Court of Justice by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

If the Court annuls the decision of the Arbitration Committee, the matter may be re-opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

Article 23

In the cases governed ~~by Article 35(1) of the EU Treaty~~, by Article 234 [267] of the EC Treaty on the Functioning of the European Union ~~and by Article 150 of the EAEC Treaty~~, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court of Justice by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court of Justice to the parties, to the Member States and to the Commission, and ~~also to the Council or to the European Central Bank if the act the validity or interpretation of which is in dispute originates from one of them, and to the European Parliament and the Council if~~ to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute ~~was adopted jointly by those two institutions~~.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, ~~the European Parliament, the Council and the European Central Bank~~ the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court.

In the cases governed by Article 234 [267] of the EC Treaty on the Functioning of the European Union, the decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on

the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court.

Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member States, provides that those States are to be entitled to submit statements of case or written observations where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of the agreement, the decision of the national court or tribunal containing that question shall also be notified to the non-member States concerned. Within two months from such notification, those States may lodge at the Court statements of case or written observations.

Article 24

The Court of Justice may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the Member States and institutions, bodies, offices and agencies not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 25

The Court of Justice may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

Article 26

Witnesses may be heard under conditions laid down in the Rules of Procedure.

Article 27

With respect to defaulting witnesses the Court of Justice shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

Article 28

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

Article 29

The Court of Justice may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 30

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court of Justice, the Member State concerned shall prosecute the offender before its competent court.

Article 31

The hearing in court shall be public, unless the Court of Justice, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 32

During the hearings the Court of Justice may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court of Justice only through their representatives.

Article 33

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 34

The case list shall be established by the President.

Article 35

The deliberations of the Court of Justice shall be and shall remain secret.

Article 36

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 37

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 38

The Court of Justice shall adjudicate upon costs.

Article 39

The President of the Court of Justice may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in

the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 242 [278] of the EC Treaty on the Functioning of the European Union and Article 157 of the EAEC Treaty, or to prescribe interim measures pursuant to Article 243 [279] of the EC Treaty on the Functioning of the European Union or ~~Article 158 of the EAEC Treaty~~, or to suspend enforcement in accordance with the fourth paragraph of Article 256 [299] of the EC Treaty on the Functioning of the European Union or the third paragraph of Article 164 of the EAEC Treaty.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 40

Member States and institutions of the ~~Communities~~ Union may intervene in cases before the Court of Justice.

The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establishing an interest in the result of any case submitted to the Court of Justice, ~~save~~ Natural or legal persons shall not intervene in cases between Member States, between institutions of the ~~Communities~~ Union or between Member States and institutions of the ~~Communities~~ Union.

Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application that Agreement is concerned.

An application to intervene shall be limited to supporting the form of order sought by one of the parties.

Article 41

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 42

Member States, institutions, bodies, offices and agencies of the ~~Communities~~ Union and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 43

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the ~~Communities~~ Union establishing an interest therein.

Article 44

An application for revision of a judgment may be made to the Court of Justice only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 45

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure.

Article 46

Proceedings against the Communities Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Communities Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article 230 [263] of the EC Treaty on the Functioning of the European Union and Article 146 of the EAEC Treaty; the provisions of the second paragraph of Article 232 [265] of the EC Treaty on the Functioning of the European Union and the second paragraph of Article 148 of the EAEC Treaty, respectively, shall apply where appropriate.

This Article shall also apply to proceedings against the European Central Bank regarding non-contractual liability.

TITLE IV

~~THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES~~

GENERAL COURT

Article 47

~~Articles 2 to 8, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.~~

The first paragraph of Article 9, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the General Court and its members.

The fourth paragraph of Article 3 and Articles 10, 11 and 14 shall apply to the Registrar of the Court of First Instance General Court *mutatis mutandis*.

Article 48

The ~~Court of First Instance~~ **General Court** shall consist of twenty-seven Judges.

Article 49

The Members of the ~~Court of First Instance~~ **General Court** may be called upon to perform the task of an Advocate-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the ~~Court of First Instance~~ **General Court** in order to assist the ~~Court of First Instance~~ **General Court** in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates-General, shall be laid down in the Rules of Procedure of the ~~Court of First Instance~~ **General Court**.

A Member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

Article 50

The ~~Court of First Instance~~ **General Court** shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure, the ~~Court of First Instance~~ **General Court** may sit as a full court or be constituted by a single Judge.

The Rules of Procedure may also provide that the ~~Court of First Instance~~ **General Court** may sit in a Grand Chamber in cases and under the conditions specified therein.

Article 51

By way of derogation from the rule laid down in Article 225(1) **[256(1)]** of the ~~EC~~ Treaty **on the Functioning of the European Union** ~~and Article 140a(1) of the EAEC Treaty~~, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 230 **[263]** and 232 **[265]** of the ~~EC~~ Treaty **on the Functioning of the European Union** ~~and Articles 146 and 148 of the EAEC Treaty~~ when they are brought by a Member State against:

(a) an act of or failure to act by the European Parliament or the Council, or by both those institutions acting jointly, except for:

— decisions taken by the Council under the third subparagraph of Article 88(2) **[108(2)]** of the ~~EC~~ Treaty **on the Functioning of the European Union**;

— acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article ~~133~~ **188 C [207]** of the ~~EC~~ Treaty **on the Functioning of the European Union**;

— acts of the Council by which the Council exercises implementing powers in accordance with ~~the third indent of Article 202~~ Article 249(2) [288(2)] of the EC Treaty ~~on the Functioning of the European Union~~;

(b) against an act of or failure to act by the Commission under Article ~~11a~~ 280 F(1) [331(1)] of the EC Treaty ~~on the Functioning of the European Union~~.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the ~~Communities Union~~ ~~or by the European Central Bank~~ against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the ~~Communities~~ ~~Union~~ against an act of or failure to act by the European Central Bank.

Article 52

The President of the Court of Justice and the President of the ~~Court of First Instance~~ General Court shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the ~~Court of First Instance~~ General Court to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the ~~Court of First Instance~~ General Court under the authority of the President of the ~~Court of First Instance~~ General Court.

Article 53

The procedure before the ~~Court of First Instance~~ General Court shall be governed by Title III.

Such further and more detailed provisions as may be necessary shall be laid down in its Rules of Procedure. The Rules of Procedure may derogate from the fourth paragraph of Article 40 and from Article 41 in order to take account of the specific features of litigation in the field of intellectual property.

Notwithstanding the fourth paragraph of Article 20, the Advocate-General may make his reasoned submissions in writing.

Article 54

Where an application or other procedural document addressed to the ~~Court of First Instance~~ General Court is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the ~~Court of First Instance~~ General Court; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the ~~Court of First Instance~~ General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the ~~Court of First Instance~~ General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the ~~Court of First Instance~~ General Court, it shall refer that action to the ~~Court of First Instance~~ General Court, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the ~~Court of First Instance~~ General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the ~~Court of First Instance~~ General Court may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment or, where the action is one brought pursuant to Article 230 [263] of the EC Treaty ~~on the Functioning of the European Union~~ ~~or pursuant to Article 146 of the EAEC Treaty~~, may

decline jurisdiction so as to allow the Court of Justice to rule on such actions. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the ~~Court of First Instance~~ General Court shall continue.

Where a Member State and an institution of the Communities Union are challenging the same act, the ~~Court of First Instance~~ General Court shall decline jurisdiction so that the Court of Justice may rule on those applications.

Article 55

Final decisions of the ~~Court of First Instance~~ General Court, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the ~~Court of First Instance~~ General Court to all parties as well as all Member States and the institutions of the Communities Union even if they did not intervene in the case before the ~~Court of First Instance~~ General Court.

Article 56

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the ~~Court of First Instance~~ General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Communities Union may bring such an appeal only where the decision of the ~~Court of First Instance~~ General Court directly affects them.

With the exception of cases relating to disputes between the Communities Union and their its servants, an appeal may also be brought by Member States and institutions of the Communities Union which did not intervene in the proceedings before the ~~Court of First Instance~~ General Court. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 57

Any person whose application to intervene has been dismissed by the ~~Court of First Instance~~ General Court may appeal to the Court of Justice within two weeks from the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the ~~Court of First Instance~~ General Court made pursuant to Article 242 [278] or Article 243 [279] or the fourth paragraph of Article 256 [299] of the EC Treaty on the Functioning of the European Union or Article 157 ~~or Article 158~~ or the third paragraph of Article 164 of the EAEC Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 39.

Article 58

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the ~~Court of First Instance~~ General Court, a breach of procedure before it

which adversely affects the interests of the appellant as well as the infringement of **Community Union** law by the **Court of First Instance General Court**.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 59

Where an appeal is brought against a decision of the **Court of First Instance General Court**, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure, the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Article 60

Without prejudice to Articles 242 [278] and 243 [279] of the **EC Treaty on the Functioning of the European Union** or Articles 157 ~~and 158~~ of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 244 [280] of the **EC Treaty on the Functioning of the European Union** ~~and Article 159 of the EAEC Treaty~~, decisions of the **Court of First Instance General Court** declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 56 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 242 [278] and 243 [279] of the **EC Treaty on the Functioning of the European Union** or Articles 157 ~~and 158~~ of the EAEC Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 61

If the appeal is well founded, the Court of Justice shall quash the decision of the **Court of First Instance General Court**. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the **Court of First Instance General Court** for judgment.

Where a case is referred back to the **Court of First Instance General Court**, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or an institution of the **Communities Union**, which did not intervene in the proceedings before the **Court of First Instance General Court**, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the **Court of First Instance General Court** which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Article 62

In the cases provided for in Article 225(2) and (3) [256(2) and (3)] of the **EC Treaty on the Functioning of the European Union** ~~and Article 140a(2) and (3) of the EAEC Treaty~~, where the First Advocate-General considers that there is a serious risk of the unity or consistency of **Community Union** law being affected, he may propose that the Court of Justice review the decision of the **Court of First Instance General Court**.

The proposal must be made within one month of delivery of the decision by the ~~Court of First Instance~~ **General Court**. Within one month of receiving the proposal made by the First Advocate-General, the Court of Justice shall decide whether or not the decision should be reviewed.

Article 62a

The Court of Justice shall give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the ~~Court of First Instance~~ **General Court**.

Those referred to in Article 23 of this Statute and, in the cases provided for in Article 225(2) **[256(2)]** of the ~~EC~~ Treaty **on the Functioning of the European Union** ~~and in Article 140a(2) of the EAEC Treaty~~, the parties to the proceedings before the ~~Court of First Instance~~ **General Court** shall be entitled to lodge statements or written observations with the Court of Justice relating to questions which are subject to review within a period prescribed for that purpose.

The Court of Justice may decide to open the oral procedure before giving a ruling.

Article 62b

In the cases provided for in Article 225(2) **[256(2)]** of the ~~EC~~ Treaty **on the Functioning of the European Union** ~~and in Article 140a(2) of the EAEC Treaty~~, without prejudice to Articles 242 **[278]** and 243 **[279]** of the ~~EC~~ Treaty **on the Functioning of the European Union**, proposals for review and decisions to open the review procedure shall not have suspensory effect. If the Court of Justice finds that the decision of the ~~Court of First Instance~~ **General Court** affects the unity or consistency of **Community Union** law, it shall refer the case back to the ~~Court of First Instance~~ **General Court** which shall be bound by the points of law decided by the Court of Justice; the Court of Justice may state which of the effects of the decision of the ~~Court of First Instance~~ **General Court** are to be considered as definitive in respect of the parties to the litigation. If, however, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the ~~Court of First Instance~~ **General Court** was based, the Court of Justice shall give final judgment.

In the cases provided for in Article 225(3) **[256(3)]** of the ~~EC~~ Treaty **on the Functioning of the European Union** ~~and in Article 140a(3) of the EAEC Treaty~~, in the absence of proposals for review or decisions to open the review procedure, the answer(s) given by the ~~Court of First Instance~~ **General Court** to the questions submitted to it shall take effect upon expiry of the periods prescribed for that purpose in the second paragraph of Article 62. Should a review procedure be opened, the answer(s) subject to review shall take effect following that procedure, unless the Court of Justice decides otherwise. If the Court of Justice finds that the decision of the ~~Court of First Instance~~ **General Court** affects the unity or consistency of **Community Union** law, the answer given by the Court of Justice to the questions subject to review shall be substituted for that given by the ~~Court of First Instance~~ **General Court**.

TITLE IVa

JUDICIAL PANELS

SPECIALISED COURTS

Article 62c

The provisions relating to the jurisdiction, composition, organisation and procedure of the ~~judicial panels specialised courts~~ established under Articles 225a [257] of the ~~EC Treaty on the Functioning of the European Union~~ and ~~140b of the EAEC Treaty~~ are set out in an Annex to this Statute.

TITLE V

FINAL PROVISIONS

Article 63

The Rules of Procedure of the Court of Justice and of the ~~Court of First Instance~~ **General Court** shall contain any provisions necessary for applying and, where required, supplementing this Statute.

Article 64

The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament.

Until **the those** rules ~~governing the language arrangements applicable at the Court of Justice and the Court of First Instance~~ have been adopted ~~in this Statute~~, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the ~~Court of First Instance~~ **General Court** governing language arrangements shall continue to apply. **By way of derogation from Articles 223 [253] and 224 [254] of the Treaty on the Functioning of the European Union,** those provisions may only be amended or repealed ~~in accordance with the procedure laid down for amending this Statute~~ **with the unanimous consent of the Council.**

ANNEX I

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Article 1

The European Union Civil Service Tribunal (hereafter the Civil Service Tribunal) shall exercise at first instance jurisdiction in disputes between the ~~Communities~~ Union and their servants referred to in Article 236 [270] of the EC Treaty ~~on the Functioning of the European Union and Article 152 of the EAEC Treaty~~, including disputes between all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice ~~of the European Union~~.

Article 2

The Civil Service Tribunal shall consist of seven judges. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of judges.

The judges shall be appointed for a period of six years. Retiring judges may be reappointed.

Any vacancy shall be filled by the appointment of a new judge for a period of six years.

Article 3

1. The judges shall be appointed by the Council, acting in accordance with the fourth paragraph of Article 225a [257] of the EC Treaty ~~on the Functioning of the European Union and the fourth paragraph of Article 140b of the EAEC Treaty~~, after consulting the committee provided for by this Article. When appointing judges, the Council shall ensure a balanced composition of the Civil Service Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented.

2. Any person who is a Union citizen and fulfils the conditions laid down in the fourth paragraph of Article 225a [257] of the EC Treaty ~~on the Functioning of the European Union and the fourth paragraph of Article 140b of the EAEC Treaty~~ may submit an application. The Council, acting ~~by a qualified majority~~ on a recommendation from the Court ~~of Justice~~, shall determine the conditions and the arrangements governing the submission and processing of such applications.

3. A committee shall be set up comprising seven persons chosen from among former members of the Court of Justice and the ~~Court of First Instance~~ General Court and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting ~~by a qualified majority~~ on a recommendation by the President of the Court of Justice.

4. The committee shall give an opinion on candidates' suitability to perform the duties of judge at the Civil Service Tribunal. The committee shall append to its opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of at least twice as many candidates as there are judges to be appointed by the Council.

Article 4

1. The judges shall elect the President of the Civil Service Tribunal from among their number for a term of three years. He may be re-elected.

2. The Civil Service Tribunal shall sit in chambers of three judges. It may, in certain cases determined by its rules of procedure, sit in full court or in a chamber of five judges or of a single judge.

3. The President of the Civil Service Tribunal shall preside over the full court and the chamber of five judges. The Presidents of the chambers of three judges shall be designated as provided in paragraph 1. If the President of the Civil Service Tribunal is assigned to a chamber of three judges, he shall preside over that chamber.

4. The jurisdiction of and quorum for the full court as well as the composition of the chambers and the assignment of cases to them shall be governed by the rules of procedure.

Article 5

Articles 2 to 6, 14, 15, the first, second and fifth paragraphs of Article 17, and Article 18 of the Statute of the Court of Justice ~~of the European Union~~ shall apply to the Civil Service Tribunal and its members.

The oath referred to in Article 2 of the Statute shall be taken before the Court of Justice, and the decisions referred to in Articles 3, 4 and 6 thereof shall be adopted by the Court of Justice after consulting the Civil Service Tribunal.

Article 6

1. The Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the ~~Court of First Instance~~ General Court. The President of the Court of Justice or, in appropriate cases, the President of the ~~Court of First Instance~~ General Court, shall determine by common accord with the President of the Civil Service Tribunal the conditions under which officials and other servants attached to the Court of Justice or the ~~Court of First Instance~~ General Court shall render their services to the Civil Service Tribunal to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Civil Service Tribunal under the authority of the President of that Tribunal.

2. The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Article 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice ~~of the European Union~~ shall apply to the Registrar of the Tribunal.

Article 7

1. The procedure before the Civil Service Tribunal shall be governed by Title III of the Statute of the Court of Justice ~~of the European Union~~, with the exception of Articles 22 and 23. Such further and more detailed provisions as may be necessary shall be laid down in the rules of procedure.

2. The provisions concerning the ~~Court of First Instance's~~ General Court's language arrangements shall apply to the Civil Service Tribunal.

3. The written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, the Civil Service Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.

4. At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.

5. The Civil Service Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs should the court so decide.

Article 8

1. Where an application or other procedural document addressed to the Civil Service Tribunal is lodged by mistake with the Registrar of the Court of Justice or ~~Court of First Instance~~ **General Court**, it shall be transmitted immediately by that Registrar to the Registrar of the Civil Service Tribunal. Likewise, where an application or other procedural document addressed to the Court of Justice or to the ~~Court of First Instance~~ **General Court** is lodged by mistake with the Registrar of the Civil Service Tribunal, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice or ~~Court of First Instance~~ **General Court**.

2. Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the ~~Court of First Instance~~ **General Court** has jurisdiction, it shall refer that action to the Court of Justice or to the ~~Court of First Instance~~ **General Court**. Likewise, where the Court of Justice or the ~~Court of First Instance~~ **General Court** finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

3. Where the Civil Service Tribunal and the ~~Court of First Instance~~ **General Court** are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the ~~Court of First Instance~~ **General Court** has been delivered.

Where the Civil Service Tribunal and the ~~Court of First Instance~~ **General Court** are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the ~~Court of First Instance~~ **General Court** may act on those cases.

Article 9

An appeal may be brought before the ~~Court of First Instance~~ **General Court**, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the ~~Communities~~ **Union** may bring such an appeal only where the decision of the Civil Service Tribunal directly affects them.

Article 10

1. Any person whose application to intervene has been dismissed by the Civil Service Tribunal may appeal to the ~~Court of First Instance~~ **General Court** within two weeks of notification of the decision dismissing the application.

2. The parties to the proceedings may appeal to the ~~Court of First Instance~~ **General Court** against any decision of the Civil Service Tribunal made pursuant to Article 242 [278] or Article 243 [279] or the fourth paragraph of Article 256 [299] of the ~~EC~~ Treaty **on the Functioning of the European Union** or Article 157 ~~or Article 158~~ or the third paragraph of Article 164 of the EAEC Treaty within two months of its notification.

3. The President of the ~~Court of First Instance~~ **General Court** may, by way of summary procedure, which may, insofar as necessary, differ from some of the rules contained in this Annex and which shall be laid down in the rules of procedure of the ~~Court of First Instance~~ **General Court**, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

Article 11

1. An appeal to the ~~Court of First Instance~~ **General Court** shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of ~~Community~~ **Union** law by the Tribunal.

2. No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 12

1. Without prejudice to Articles 242 **[278]** and 243 **[279]** of the ~~EC~~ Treaty **on the Functioning of the European Union** or Articles 157 ~~and 158~~ of the EAEC Treaty, an appeal before the ~~Court of First Instance~~ **General Court** shall not have suspensory effect.

2. Where an appeal is brought against a decision of the Civil Service Tribunal, the procedure before the ~~Court of First Instance~~ **General Court** shall consist of a written part and an oral part. In accordance with conditions laid down in the rules of procedure, the ~~Court of First Instance~~ **General Court**, having heard the parties, may dispense with the oral procedure.

Article 13

1. If the appeal is well founded, the ~~Court of First Instance~~ **General Court** shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

2. Where a case is referred back to the Civil Service Tribunal, the Tribunal shall be bound by the decision of the ~~Court of First Instance~~ **General Court** on points of law.

PROTOCOL ~~(No 18)~~

ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in Article ~~8~~ ~~107(2)~~ ~~[129(2)]~~ of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union.

CHAPTER I

~~CONSTITUTION OF THE ESCB~~

THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 1

The European System of Central Banks

~~1.1. The European System of Central Banks (ESCB) and the European Central Bank (ECB) shall be established in accordance with Article 8 of this Treaty;~~ In accordance with Article 245a(1) [282(1)] of the Treaty on the Functioning of the European Union, the European Central Bank (ECB) and the national central banks shall constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

~~They~~ The ESCB and the ECB shall perform their tasks and carry on their activities in accordance with the provisions of ~~this Treaty~~ the Treaties and of this Statute.

~~1.2. In accordance with Article 107(1) of this Treaty, the ESCB shall be composed of the ECB and of the central banks of the Member States ('national central banks'). The Institut monétaire luxembourgeois will be the central bank of Luxembourg.~~

CHAPTER II

OBJECTIVES AND TASKS OF THE ESCB

Article 2

Objectives

In accordance with Article 105(1) [127(1)] and Article 245a(2) [282(2)] of ~~this~~ the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general

economic policies in the **Community Union** with a view to contributing to the achievement of the objectives of the **Community Union** as laid down in Article ~~2 of this Treaty~~ **2 [3]** of the **Treaty on European Union**. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article ~~4~~ **97b [119]** of ~~this~~ **the** **Treaty on the Functioning of the European Union**.

Article 3

Tasks

3.1. In accordance with Article 105(2) **[127(2)]** of ~~this~~ **the** **Treaty on the Functioning of the European Union**, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the **Community Union**;
- to conduct foreign-exchange operations consistent with the provisions of Article ~~111~~ **188 O [219]** of ~~this~~ **that** **Treaty**;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 105(3) **[127(3)]** of ~~this~~ **the** **Treaty on the Functioning of the European Union**, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 105(5) **[127(5)]** of ~~this~~ **the** **Treaty on the Functioning of the European Union**, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4

Advisory functions

In accordance with Article 105(4) **[127(4)]** of ~~this~~ **the** **Treaty on the Functioning of the European Union**:

(a) the ECB shall be consulted:

- on any proposed **Community Union** act in its fields of competence;
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article ~~42~~ **41**;

(b) the ECB may submit opinions to the ~~appropriate~~ **Community Union** institutions, ~~or~~ **bodies, offices or agencies** or to national authorities on matters in its fields of competence.

Article 5

Collection of statistical information

5.1. In order to undertake the tasks of the ESCB, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with the ~~Community~~ **Union** institutions, ~~or~~ bodies, offices and agencies and with the competent authorities of the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article ~~42~~ **41**, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6

International cooperation

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article ~~111(4)~~ **115 C(1) [138(1)]** of ~~this~~ **the** Treaty **on the Functioning of the European Union**.

CHAPTER III

ORGANISATION OF THE ESCB

Article 7

Independence

In accordance with Article 108 **[130]** of ~~this~~ **the** Treaty **on the Functioning of the European Union**, when exercising the powers and carrying out the tasks and duties conferred upon them by ~~this Treaty~~ **the Treaties** and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from ~~Community~~ **Union** institutions, ~~or~~ bodies, offices and agencies, from any government of a Member State or from any other body. The ~~Community~~ **Union** institutions, ~~and~~ bodies, offices and agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Article 8

General principle

The ESCB shall be governed by the decision-making bodies of the ECB.

Article 9

The European Central Bank

9.1. The ECB which, in accordance with Article ~~107(2)~~ 245a(3) [282(3)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 105(2), (3) and (5) [127(2), (3) and (5)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article ~~107(3)~~ 107(1) [129(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.

Article 10

The Governing Council

10.1. In accordance with Article ~~112(1)~~ 245b(1) [283(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks ~~of the Member States whose currency is the euro~~.

10.2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

— as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States ~~which have adopted~~ whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;

— as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;

— within each group, the governors shall have their voting rights for equal amounts of time;

— for the calculation of the shares in the aggregate gross domestic product at market prices Article 29.2 shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the European Community Union at the time of the calculation;

— whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles;

— the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, ~~10.6 and 41.2~~ 40.2 and 40.3.

Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

10.3. For any decisions to be taken under Articles 28, 29, 30, 32, and 33 ~~and 51~~, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the ECB and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

10.5. The Governing Council shall meet at least 10 times a year.

~~10.6. Article 10.2 may be amended by the Council meeting in the composition of the Heads of State or Government, acting unanimously either on a recommendation from the ECB and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the ECB. The Council shall recommend such amendments to the Member States for adoption. These amendments shall enter into force after having been ratified by all the Member States in accordance with their respective constitutional requirements.~~

~~A recommendation made by the ECB under this paragraph shall require a decision by the Governing Council acting unanimously.~~

Article 11

The Executive Board

11.1. In accordance with Article ~~112(2)(a)~~ 245b(2), first subparagraph [283(2), first subparagraph], of ~~this~~ **the** Treaty **on the Functioning of the European Union**, the Executive Board shall comprise the President, the Vice-President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

11.2. In accordance with Article ~~112(2)(b)~~ 245b(2), second subparagraph [283(2), second subparagraph], of ~~this~~ **the** Treaty **on the Functioning of the European Union**, the President, the Vice-President and the other members of the Executive Board shall be appointed **by the European Council, acting by qualified majority**, from among persons of recognised standing and professional experience in monetary or banking matters ~~by common accord of the governments of the Member States at the level of the Heads of State or Government~~, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

11.3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

11.4. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Governing Council or the Executive Board, compulsorily retire him.

11.5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12.3.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

Article 12

Responsibilities of the decision-making bodies

12.1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under ~~this Treaty~~ **the Treaties** and this Statute. The Governing Council shall formulate the monetary policy of the **Community Union** including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks. In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

12.2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.

12.5. The Governing Council shall take the decisions referred to in Article 6.

Article 13

The President

13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.

13.2. Without prejudice to Article ~~39~~ 38, the President or his nominee shall represent the ECB externally.

Article 14

National central banks

14.1. In accordance with Article 109 [131] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, each Member State shall ensure, ~~at the latest at the date of the establishment of the ESCB~~, that its national legislation, including the statutes of its national central bank, is compatible with ~~this Treaty~~ ~~the Treaties~~ and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of this Treaty or of any rule of law relating to its application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these

interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.

Article 15

Reporting commitments

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article ~~113(3)~~ 245c(3) [284(3)] of ~~this the~~ Treaty on the Functioning of the European Union, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16

Banknotes

In accordance with Article 106(1) [128(1)] of ~~this the~~ Treaty on the Functioning of the European Union, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the ~~Community~~ Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the ~~Community~~ Union.

The ECB shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV

MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

Article 17

Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral.

Article 18

Open market and credit operations

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

— operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in ~~Community~~ euro or ~~in non-Community~~ other currencies, as well as precious metals;

— conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.

Article 19

Minimum reserves

19.1. Subject to Article 2, the ECB may require credit institutions established in Member States to hold minimum reserve on accounts with the ECB and national central banks in pursuance of monetary policy objectives. Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of noncompliance the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article ~~42~~ 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of noncompliance.

Article 20

Other instruments of monetary control

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article ~~42~~ 41, define the scope of such methods if they impose obligations on third parties.

Article 21

Operations with public entities

21.1. In accordance with Article 101 [123] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of ~~Community~~ Union institutions, ~~or~~ bodies, offices and agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3. The provisions of this Article shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 22

Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the ~~Community~~ **Union** and with other countries.

Article 23

External operations

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term ‘foreign exchange asset’ shall include securities and all other assets in the currency of any country or units of account and in whatever form held;
- hold and manage the assets referred to in this Article;
- conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

Article 24

Other operations

In addition to operations arising from their tasks, the ECB and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION

Article 25

Prudential supervision

25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of ~~Community~~ **Union** legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any ~~decision~~ **regulation** of the Council under Article 105(6) **[127(6)]** of ~~this the~~ Treaty **on the Functioning of the European Union**, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE ESCB

Article 26

Financial accounts

26.1. The financial year of the ECB and national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardizing the accounting and reporting of operations undertaken by the national central banks.

Article 27

Auditing

27.1. The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the ECB and national central banks and obtain full information about their transactions.

27.2. The provisions of Article 248 [287] of ~~this~~ **the** Treaty **on the Functioning of the European Union** shall only apply to an examination of the operational efficiency of the management of the ECB.

Article 28

Capital of the ECB

28.1. The capital of the ECB, ~~which shall become operational upon its establishment~~, shall be ~~ECU~~ 5 000 million **euro**. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article ~~42~~ **41**.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

Article 29

Key for capital subscription

29.1. ~~When in accordance with the procedure referred to in Article 123(1) of this Treaty the ESCB and the ECB have been established,~~ The key for subscription of the ECB's capital, fixed for the first time in 1998 when the ESCB was established, shall be established determined by assigning to each national central bank ~~shall be assigned~~ a weighting in this key which shall be equal to the sum of:

— 50 % of the share of its respective Member State in the population of the Community Union in the penultimate year preceding the establishment of the ESCB;

— 50 % of the share of its respective Member State in the gross domestic product at market prices of the Community Union as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up or down to the nearest multiple of ~~0.05~~ 0,0001 percentage points.

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article ~~42~~ 41.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30

Transfer of foreign reserve assets to the ECB

30.1. Without prejudice to Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, ~~ECUs~~ euro, IMF reserve positions and SDRs, up to an amount equivalent to ~~ECU~~ 50 000 million euro. The Governing Council shall decide upon the proportion to be called up by the ECB following its establishment and the amounts called up at later dates. The ECB shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article ~~42~~ 41.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31

Foreign reserve assets held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.

31.2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Members States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the ~~Community~~ Union.

31.3. The Governing Council shall issue guidelines with a view to facilitating such operations.

Article 32

Allocation of monetary income of national central banks

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as 'monetary income') shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. ~~Subject to Article 32.3,~~ The amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

32.3. If, after the ~~start of the third stage~~ introduction of the euro, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; these amounts may be offset against the national central banks' monetary income.

32.5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid up shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

32.6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with guidelines established by the Governing Council.

32.7. The Governing Council shall take all other measures necessary for the application of this Article.

Article 33

Allocation of net profits and losses of the ECB

33.1. The net profit of the ECB shall be transferred in the following order:

(a) an amount to be determined by the Governing Council, which may not exceed 20 % of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100 % of the capital;

(b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

CHAPTER VII

GENERAL PROVISIONS

Article 34

Legal acts

34.1. In accordance with Article 110 [132] of ~~this~~ **the** Treaty **on the Functioning of the European Union**, the ECB shall:

— make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article ~~42~~ **41**;

— take decisions necessary for carrying out the tasks entrusted to the ESCB under ~~this Treaty~~ **the Treaties** and this Statute;

— make recommendations and deliver opinions.

~~34.2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.~~

~~Recommendations and opinions shall have no binding force.~~

~~A decision shall be binding in its entirety upon those to whom it is addressed.~~

~~Articles 253, 254 and 256 of this Treaty shall apply to regulations and decisions adopted by the ECB.~~

The ECB may decide to publish its decisions, recommendations and opinions.

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article ~~42~~ 41, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 35

Judicial control and related matters

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice **of the European Union** in the cases and under the conditions laid down in ~~this Treaty~~ **the Treaties**. The ECB may institute proceedings in the cases and under the conditions laid down in ~~this Treaty~~ **the Treaties**.

35.2. Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred upon the Court of Justice **of the European Union**.

35.3. The ECB shall be subject to the liability regime provided for in Article 288 **[340]** of this **the Treaty on the Functioning of the European Union**. The national central banks shall be liable according to their respective national laws.

35.4. The Court of Justice **of the European Union** shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.5. A decision of the ECB to bring an action before the Court of Justice **of the European Union** shall be taken by the Governing Council.

35.6. The Court of Justice **of the European Union** shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under **the Treaties and** this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under **the Treaties and** this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice **of the European Union**.

Article 36

Staff

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2. The Court of Justice **of the European Union** shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

Article 37

Seat

~~Before the end of 1992, the decision as to where the seat of the ECB will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or Government.~~

Article ~~38~~ 37

Professional secrecy

38.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

38.2. Persons having access to data covered by ~~Community~~ Union legislation imposing an obligation of secrecy shall be subject to such legislation.

Article ~~39~~ 38

Signatories

The ECB shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Article ~~40~~ 39

Privileges and immunities

The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European ~~Communities~~ Union.

CHAPTER VIII

AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

Article ~~41~~ 40

Simplified amendment procedure

~~41.1.~~ 40.1 In accordance with Article 107(5) [129(5)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the European Parliament and the Council, acting ~~in accordance with the ordinary legislative procedure~~ either ~~by a qualified majority~~ on a recommendation from the ECB and after consulting the Commission, or ~~unanimously~~ on a proposal from the Commission and after consulting the ECB. ~~In either case the assent of the European Parliament shall be required.~~

40.2. Article 10.2 may be amended by a decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after

consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

~~41.2.~~ **40.3.** A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

Article ~~42~~ 41

Complementary legislation

In accordance with Article 107(6) **[129(4)]** of ~~this~~ **the** Treaty **on the Functioning of the European Union**, ~~immediately after the decision on the date for the beginning of the third stage,~~ the Council, ~~acting by a qualified majority~~ either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

CHAPTER IX

TRANSITIONAL AND OTHER PROVISIONS FOR THE ESCB

Article ~~43~~ 42

General provisions

~~43.1.~~ **42.1.** A derogation as referred to in Article ~~122(1)~~ **[116a [139]]** of ~~this~~ **the** Treaty **on the Functioning of the European Union** shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, ~~34, 50~~ and ~~52~~ **49**.

~~43.2.~~ **42.2.** The central banks of Member States with a derogation as specified in Article ~~122(1)~~ **[116a [139]]** of ~~this~~ **the** Treaty **on the Functioning of the European Union** shall retain their powers in the field of monetary policy according to national law.

~~43.3.~~ **42.3.** In accordance with Article ~~122(4)~~ **[116a [139]]** of ~~this~~ **the** Treaty **on the Functioning of the European Union**, ‘Member States’ shall be read as ‘Member States ~~without a derogation whose currency is the euro~~’ in the following Articles of this Statute: 3, 11.2, ~~and 19, and 34.2 and 50.~~

~~43.4.~~ **42.4.** ‘National central banks’ shall be read as ‘central banks of Member States ~~without a derogation whose currency is the euro~~’ in the following Articles of this Statute: 9.2, ~~10.1~~ **10.2**, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and ~~52~~ **49**.

~~43.5.~~ **42.5.** ‘Shareholders’ shall be read as ‘central banks of Member States ~~without a derogation whose currency is the euro~~’ in Articles 10.3 and 33.1.

~~43.6.~~ **42.6.** ‘Subscribed capital of the ECB’ shall be read as ‘capital of the ECB subscribed by the central banks of Member States ~~without a derogation whose currency is the euro~~’ in Articles 10.3 and 30.2.

Article ~~44~~ 43

Transitional tasks of the ECB

The ECB shall take over ~~those~~ the former tasks of the EMI referred to in Article 118a(2) [141(2)] of the Treaty on the Functioning of the European Union which, because of the derogations of one or more Member States, still have to be performed ~~in the third stage~~ after the introduction of the euro.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article ~~122~~ 117a [141] of ~~this~~ the Treaty on the Functioning of the European Union.

Article ~~45~~ 44

The General Council of the ECB

~~45.1.~~ 44.1. Without prejudice to Article 107(3) [129(1)] of ~~this~~ the Treaty on the Functioning of the European Union, the General Council shall be constituted as a third decision-making body of the ECB.

~~45.2.~~ 44.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

~~45.3.~~ 44.3. The responsibilities of the General Council are listed in full in Article ~~47~~ 46 of this Statute.

Article ~~46~~ 45

Rules of Procedure of the General Council

~~46.1.~~ 45.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.

~~46.2.~~ 45.2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.

~~46.3.~~ 45.3. The President shall prepare the meetings of the General Council.

~~46.4.~~ 45.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.

~~46.5.~~ 45.5. The Secretariat of the General Council shall be provided by the ECB.

Article ~~47~~ 46

Responsibilities of the General Council

~~47.1.~~ 46.1. The General Council shall:

- perform the tasks referred to in Article ~~44~~ 43;
- contribute to the advisory functions referred to in Articles 4 and 25.1.

~~47.2.~~ 46.2. The General Council shall contribute to:

- the collection of statistical information as referred to in Article 5;

- the reporting activities of the ECB as referred to in Article 15;
- the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;
- the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;
- the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

~~47.3.~~ **46.3.** The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the ~~currencies, or the single currency, of the Member States without a derogation~~ **euro**, as referred to in Article ~~123(5)~~ **117a(3)** [**140(3)**] of ~~this~~ **the** Treaty **on the Functioning of the European Union**.

~~47.4.~~ **46.4.** The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

*Article ~~48~~ **47***

Transitional provisions for the capital of the ECB

In accordance with Article 29.1 each national central bank shall be assigned a weighting in the key for subscription of the ECB's capital. By way of derogation from Article 28.3, central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

*Article ~~49~~ **48***

Deferred payment of capital, reserves and provisions of the ECB

~~49.1.~~ **48.1.** The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States ~~without a derogation~~ **whose currency is the euro**, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the ~~ECU~~ **euro** value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

~~49.2.~~ **48.2.** In addition to the payment to be made in accordance with Article ~~49.1~~ **48.1**, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

~~49.3.~~ **48.3.** Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the subscribed capital of the ECB and the limit on the amount of foreign reserve assets that may be transferred to the ECB shall be automatically

increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key, between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the ESCB. Each national central bank's weighting in the capital key shall be calculated by analogy with Article 29.1 and in compliance with Article 29.2. The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29.3.

Article 50

Initial appointment of the members of the Executive Board

~~When the Executive Board of the ECB is being established, the President, the Vice-President and the other members of the Executive Board shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council and after consulting the European Parliament and the Council of the EMI. The President of the Executive Board shall be appointed for eight years. By way of derogation from Article 11.2, the Vice-President shall be appointed for four years and the other members of the Executive Board for terms of office of between five and eight years. No term of office shall be renewable. The number of members of the Executive Board may be smaller than provided for in Article 11.1, but in no circumstance shall it be less than four.~~

Article 51

Derogation from Article 32

~~51.1. If, after the start of the third stage, the Governing Council decides that the application of Article 32 results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed 60 % in the first financial year after the start of the third stage and which shall decrease by at least 12 percentage points in each subsequent financial year.~~

~~51.2. Article 51.1 shall be applicable for not more than five financial years after the start of the third stage.~~

Article 52 **49**

Exchange of banknotes in Community currencies

Following the irrevocable fixing of exchange rates, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

Article 53 **50**

Applicability of the transitional provisions

If and as long as there are Member States with a derogation Articles ~~43~~ **42** to ~~48~~ **47** shall be applicable.

PROTOCOL ~~(No 11)~~

ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK ~~(1957)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article 266 of the Treaty,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to ~~this the~~ Treaty on the Functioning of the European Union:

Article 1

The European Investment Bank established by Article 266 [308] of the Treaty on the Functioning of the European Union (hereinafter called the 'Bank') is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of ~~this Treaty the Treaties~~ and of this Statute.

~~The seat of the Bank shall be determined by common accord of the governments of the Member States.~~

Article 2

The task of the Bank shall be that defined in Article 267 [309] of the Treaty on the Functioning of the European Union.

Article 3

In accordance with Article 266 [308] of the Treaty on the Functioning of the European Union, ~~the following shall be members of the Bank:~~ the Bank's members shall be the Member States.

- ~~— the Kingdom of Belgium,~~
- ~~— the Republic of Bulgaria,~~
- ~~— the Czech Republic,~~
- ~~— the Kingdom of Denmark,~~
- ~~— the Federal Republic of Germany,~~
- ~~— the Republic of Estonia,~~
- ~~— the Hellenic Republic,~~
- ~~— the Kingdom of Spain,~~
- ~~— the French Republic,~~
- ~~— Ireland,~~

- ~~— the Italian Republic,~~
- ~~— the Republic of Cyprus,~~
- ~~— the Republic of Latvia,~~
- ~~— the Republic of Lithuania,~~
- ~~— the Grand Duchy of Luxembourg,~~
- ~~— the Republic of Hungary,~~
- ~~— the Republic of Malta,~~
- ~~— the Kingdom of the Netherlands,~~
- ~~— the Republic of Austria,~~
- ~~— the Republic of Poland,~~
- ~~— the Portuguese Republic,~~
- ~~— Romania,~~
- ~~— the Republic of Slovenia,~~
- ~~— the Slovak Republic,~~
- ~~— the Republic of Finland,~~
- ~~— the Kingdom of Sweden,~~
- ~~— the United Kingdom of Great Britain and Northern Ireland.~~

Article 4

1. The capital of the Bank shall be EUR ~~164 795 737 000~~ 164 808 169 000, subscribed by the Member States as follows:

Germany	26 649 532 500
France	26 649 532 500
Italy	26 649 532 500
United Kingdom	26 649 532 500
Spain	15 989 719 500
Belgium	7 387 065 000
Netherlands	7 387 065 000
Sweden	4 900 585 500
Denmark	3 740 283 000

Austria	3 666 973 500
Poland	3 635 030 500 3 411 263 500
Finland	2 106 816 000
Greece	2 003 725 500
Portugal	1 291 287 000
Czech Republic	1 212 590 000 1 258 785 500
Hungary	1 121 583 000 1 190 868 500
Ireland	935 070 000
Romania	846 000 000 863 514 500
Slovakia	408 489 500 428 490 500
Slovenia	379 429 000 397 815 000
Bulgaria	296 000 000 290 917 500
Lithuania	250 852 000 249 617 500
Luxembourg	187 015 500
Cyprus	180 747 000 183 382 000
Latvia	156 192 500 152 335 000
Estonia	115 172 000 117 640 000
Malta	73 849 000 69 804 000

~~The unit of account shall be defined as being the euro established as the single currency of the Member States participating in the third stage of Economic and Monetary Union. The Board of Governors, acting unanimously on a proposal from the Board of Directors, may alter the definition of the unit of account.~~

The Member States shall be liable only up to the amount of their share of the capital subscribed and not paid up.

2. The admission of a new member shall entail an increase in the subscribed capital corresponding

to the capital brought in by the new member.

3. The Board of Governors may, acting unanimously, decide to increase the subscribed capital.
4. The share of a member in the subscribed capital may not be transferred, pledged or attached.

Article 5

1. The subscribed capital shall be paid in by Member States to the extent of 5 % on average of the amounts laid down in Article 4(1).

2. In the event of an increase in the subscribed capital, the Board of Governors, acting unanimously, shall fix the percentage to be paid up and the arrangements for payment. **Cash payments shall be made exclusively in euro.**

3. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the Bank to meet its obligations ~~towards those who have made loans to it.~~

Each Member State shall make this payment in proportion to its share of the subscribed capital ~~in the currencies required by the Bank to meet these obligations.~~

Article 6

~~1. The Board of Governors may, acting by a qualified majority on a proposal from the Board of Directors, decide that Member States shall grant the Bank special interest bearing loans if and to the extent that the Bank requires such loans to finance specific projects and the Board of Directors shows that the Bank is unable to obtain the necessary funds on the capital markets on terms appropriate to the nature and purpose of the projects to be financed.~~

~~2. Special loans may not be called for until the beginning of the fourth year after the entry into force of this Treaty. They shall not exceed 400 million units of account in the aggregate or 100 million units of account per annum.~~

~~3. The term of special loans shall be related to the term of the loans or guarantees which the Bank proposes to grant by means of the special loans; it shall not exceed 20 years. The Board of Governors may, acting by a qualified majority on a proposal from the Board of Directors, decide upon the prior repayment of special loans.~~

~~4. Special loans shall bear interest at 4 % per annum, unless the Board of Governors, taking into account the trend and level of interest rates on the capital markets, decides to fix a different rate.~~

~~5. Special loans shall be granted by Member States in proportion to their share in the subscribed capital; payment shall be made in national currency within six months of such loans being called for.~~

~~6. Should the Bank go into liquidation, special loans granted by Member States shall be repaid only after the other debts of the Bank have been settled.~~

Article 7

~~1. Should the value of the currency of a Member State in relation to the unit of account defined in Article 4 be reduced, that State shall adjust the amount of its capital share paid in its own currency in proportion to the change in value by making a supplementary payment to the Bank.~~

~~2. Should the value of the currency of a Member State in relation to the unit of account defined in Article 4 be increased, the Bank shall adjust the amount of the capital share paid in by that State in its own currency in proportion to the change in value by making a repayment to that State.~~

~~3. For the purpose of this Article, the value of the currency of a Member State in relation to the unit of account, defined in Article 4, shall correspond to the rate for converting the unit of account into this currency and vice versa based on market rates.~~

~~4. The Board of Governors, acting unanimously on a proposal from the Board of Directors, may alter the method of converting sums expressed in units of account into national currencies and vice versa.~~

~~Furthermore, acting unanimously on a proposal from the Board of Directors, it may define the method for adjusting the capital referred to in paragraphs 1 and 2 of this Article; adjustment payments must be made at least once a year.~~

Article 8 6

The Bank shall be directed and managed by a Board of Governors, a Board of Directors and a Management Committee.

Article 9 7

1. The Board of Governors shall consist of the ministers designated by the Member States.

2. The Board of Governors shall lay down general directives for the credit policy of the Bank, ~~with particular reference to the objectives to be pursued as progress is made in the attainment of the common market~~ in accordance with the Union's objectives.

The Board of Governors shall ensure that these directives are implemented.

3. The Board of Governors shall in addition:

(a) decide whether to increase the subscribed capital in accordance with Article 4(3) and Article 5(2);

(b) ~~exercise the powers provided in Article 6 in respect of special loans~~ for the purposes of Article 9(1), determine the principles applicable to financing operations undertaken within the framework of the Bank's task;

(c) exercise the powers provided in Articles ~~11~~ 9 and ~~13~~ 11 in respect of the appointment and the compulsory retirement of the members of the Board of Directors and of the Management Committee, and those powers provided in the second subparagraph of Article ~~13(1)~~ 11(1);

(d) ~~authorise the derogation provided for in Article 18(1)~~ take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article 16(1);

(e) approve the annual report of the Board of Directors;

(f) approve the annual balance sheet and profit and loss account;

(g) exercise the other powers and functions ~~provided in Articles 4, 7, 14, 17, 26 and 27~~ conferred by this Statute;

(h) approve the Rules of Procedure of the Bank.

4. Within the framework of ~~this Treaty~~ the Treaties and this Statute, the Board of Governors shall be competent to take, acting unanimously, any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

Article 10 8

Save as otherwise provided in this Statute, decisions of the Board of Governors shall be taken by a majority of its members. This majority must represent at least 50 % of the subscribed capital. ~~Voting by the Board of Governors shall be in accordance with the provisions of Article 205 of this Treaty.~~

A qualified majority shall require eighteen votes in favour and 68 % of the subscribed capital.

Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity.

Article 11 9

1. The Board of Directors shall ~~have sole power to~~ take decisions in respect of granting finance, in particular in the form of loans and guarantees and raising loans; it shall fix the interest rates on loans granted and the commission ~~on guarantees~~ and other charges. It may, on the basis of a decision taken by a qualified majority, delegate some of its functions to the Management Committee. It shall determine the terms and conditions for such delegation and shall supervise its execution.;

¶ The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of ~~this Treaty~~ the Treaties and of this Statute and with the general directives laid down by the Board of Governors.

At the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved.

2. The Board of Directors shall consist of twenty-eight directors and eighteen alternate directors.

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State, and one nominated by the Commission.

The alternate directors shall be appointed by the Board of Governors for five years as shown below:

- two alternates nominated by the Federal Republic of Germany,
- two alternates nominated by the French Republic,
- two alternates nominated by the Italian Republic,
- two alternates nominated by the United Kingdom of Great Britain and Northern Ireland,
- one alternate nominated by common accord of the Kingdom of Spain and the Portuguese Republic,
- one alternate nominated by common accord of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,
- two alternates nominated by common accord of the Kingdom of Denmark, Ireland, the

Hellenic Republic, ~~Ireland~~ and Romania,

— two alternates nominated by common accord of the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

— three alternates nominated by common accord of the Republic of Bulgaria, the Czech Republic, the Republic of Cyprus, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,

— one alternate nominated by the Commission.

The Board of Directors shall co-opt six non-voting experts: three as members and three as alternates.

The appointments of the directors and the alternates shall be renewable.

~~Alternates may take part in the meeting of the Board of Directors. Alternates nominated by a State, or by common accord of several States, or by the Commission, may replace directors nominated by that State, by one of those States or by the Commission respectively. Alternates shall have no right of vote except where they replace one director or more than one director or where they have been delegated for this purpose in accordance with Article 12(1).~~

The Rules of Procedure shall lay down the amendments for participating in the meetings of the Board of Directors and the provisions applicable to alternates and co-opted experts.

The President of the Management Committee or, in his absence, one of the Vice-Presidents, shall preside over meetings of the Board of Directors but shall not vote.

Members of the Board of Directors shall be chosen from persons whose independence and competence are beyond doubt; they shall be responsible only to the Bank.

3. A director may be compulsorily retired by the Board of Governors only if he no longer fulfils the conditions required for the performance of his duties; the Board must act by a qualified majority.

If the annual report is not approved, the Board of Directors shall resign.

4. Any vacancy arising as a result of death, voluntary resignation, compulsory retirement or collective resignation shall be filled in accordance with paragraph 2. A member shall be replaced for the remainder of his term of office, save where the entire Board of Directors is being replaced.

5. The Board of Governors shall determine the remuneration of members of the Board of Directors. The Board of Governors shall, ~~acting unanimously~~, lay down what activities are incompatible with the duties of a director or an alternate.

Article ~~12~~ 10

1. Each director shall have one vote on the Board of Directors. He may delegate his vote in all cases, according to procedures to be laid down in the Rules of Procedure of the Bank.

2. Save as otherwise provided in this Statute, decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote representing at least fifty per cent of the subscribed capital. A qualified majority shall require eighteen votes in favour and sixty-eight per cent of the subscribed capital. The rules of procedure of the Bank shall lay down the quorum required for the decisions of the Board of Directors to be valid.

Article ~~13~~ 11

1. The Management Committee shall consist of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments shall be renewable.

The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.

2. On a proposal from the Board of Directors adopted by a qualified majority, the Board of Governors may, acting in its turn by a qualified majority, compulsorily retire a member of the Management Committee.

3. The Management Committee shall be responsible for the current business of the Bank, under the authority of the President and the supervision of the Board of Directors.

It shall prepare the decisions of the Board of Directors, in particular decisions on the raising of loans and the granting of finance, in particular in the form of loans and guarantees; it shall ensure that these decisions are implemented.

4. The Management Committee shall act by a majority when delivering opinions on proposals for raising loans or granting finance, in particular in the form of loans and guarantees.

5. The Board of Governors shall determine the remuneration of members of the Management Committee and shall lay down what activities are incompatible with their duties.

6. The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters.

7. The ~~officials and other employees~~ staff of the Bank shall be under the authority of the President. They shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States. The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.

8. The Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties.

Article ~~14~~ 12

1. A Committee consisting of ~~three~~ six members, appointed on the grounds of their competence by the Board of Governors, shall annually verify that the ~~operations~~ activities of the Bank ~~have been conducted and its books kept in a proper manner~~ conform to best banking practice and shall be responsible for the auditing of its accounts.

2. The Committee referred to in paragraph 1 shall ~~confirm that the balance sheet and profit and loss account are in agreement with the accounts and faithfully reflect the position of the Bank in respect of its assets and liabilities~~ annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.

3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under

review.

4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity.

Article ~~15~~ 13

The Bank shall deal with each Member State through the authority designated by that State. In the conduct of financial operations the Bank shall have recourse to the ~~bank of issue~~ national central bank of the Member State concerned or to other financial institutions approved by that State.

Article ~~16~~ 14

1. The Bank shall cooperate with all international organisations active in fields similar to its own.
2. The Bank shall seek to establish all appropriate contacts in the interests of cooperation with banking and financial institutions in the countries to which its operations extend.

Article ~~17~~ 15

At the request of a Member State or of the Commission, or on its own initiative, the Board of Governors shall, in accordance with the same provisions as governed their adoption, interpret or supplement the directives laid down by it under Article ~~9~~ 7 of this Statute.

Article ~~18~~ 16

1. Within the framework of the task set out in Article 267 [309] of ~~this~~ the Treaty on the Functioning of the European Union, the Bank shall grant finance, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments ~~projects~~ to be carried out in the ~~European~~ territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

However, ~~by way of derogation authorised~~ by decision of the Board of Governors, acting ~~unanimously~~ by a qualified majority on a proposal from the Board of Directors, the Bank may grant loans financing for investment ~~projects~~ to be carried out, in whole or in part, outside the ~~European~~ territories of Member States.

2. As far as possible, loans shall be granted only on condition that other sources of finance are also used.
3. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a guarantee from the Member State in whose territory the ~~project~~ investment will be carried out or on other adequate guarantees, or on the financial strength of the debtor.

Furthermore, in accordance with the principles established by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of projects provided for in Article 267 [309] of the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions of any financing operation presenting a specific risk profile and thus considered to be a special activity.

4. The Bank may guarantee loans contracted by public or private undertakings or other bodies for the purpose of carrying out projects provided for in Article 267 [309] of ~~this~~ the Treaty on the

Functioning of the European Union.

5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount shall be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.

The amount of the Bank's disbursed equity participations shall not exceed at any time an amount corresponding to the total of its paid-in subscribed capital, reserves, non-allocated provisions and profit and loss account surplus.

By way of exception, the special activities of the Bank, as described by the Board of Governors and the Board of Directors in accordance with paragraph 3, will have a specific allocation of reserve.

This paragraph shall also apply to the consolidated accounts of the Bank.

6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

Article 19 17

1. Interest rates on loans to be granted by the Bank and commission ~~on guarantees~~ and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 24.

2. The Bank shall not grant any reduction in interest rates. Where a reduction in the interest rate appears desirable in view of the nature of the ~~project~~ investment to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article 87 [107] of ~~this~~ the Treaty on the Functioning of the European Union.

Article 20 18

In its ~~loan and guarantee~~ financing operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed as rationally as possible in the interests of the ~~Community~~ Union.

It may grant loans or guarantees only:

(a) where, in the case of ~~projects carried out~~ investments by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in ~~other~~ the cases of other investments, either by a commitment entered into by the State in which the ~~project is carried out~~ investment is made or by some other means; and

(b) where the execution of the ~~project~~ investment contributes to an increase in economic productivity in general and promotes the attainment of the ~~common~~ internal market.

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

However, in accordance with the principles determined by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of operations provided for in Article 267 [309] of

the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, insofar as this is required to finance an investment or programme.

3. It may dispose of its claims on the capital market and may, to this end, require its debtors to issue bonds or other securities.

4. Neither the Bank nor the Member States shall impose conditions requiring funds lent by the Bank to be spent within a specified Member State.

5. The Bank may make its loans conditional on international invitations to tender being arranged.

6. The Bank shall not finance, in whole or in part, any ~~project~~ investment opposed by the Member State in whose territory it is to be carried out.

7. As a complement to its lending activity, the Bank may provide technical assistance services in accordance with the terms and conditions laid down by the Board of Governors, acting by a qualified majority, and in compliance with this Statute.

Article ~~21~~ 19

~~1. Applications for loans or guarantees may be made to the Bank either through the Commission or through the Member State in whose territory the project will be carried out. An undertaking may also apply direct to the Bank for a loan or guarantee.~~

1. Any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State on whose territory the investment will be carried out.

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the ~~project~~ investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission.

The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the ~~project~~ investment in question.

3. The Board of Directors shall rule on ~~applications for loans or guarantees~~ financing operations submitted to it by the Management Committee.

4. The Management Committee shall examine whether ~~applications for loans or guarantees~~ financing operations submitted to it comply with the provisions of this Statute, in particular with Articles ~~20~~ 16 and 18. Where the Management Committee is in favour of ~~granting the loan or guarantee~~ the financing operation, it shall submit the ~~draft contract~~ corresponding proposal to the Board of Directors; the Committee may make its favourable opinion subject to such conditions as it considers essential. Where the Management Committee is against granting the ~~loan or guarantee~~ finance, it shall submit the relevant documents together with its opinion to the Board of Directors.

5. Where the Management Committee delivers an unfavourable opinion, the Board of Directors may not grant the ~~loan or guarantee~~ finance concerned unless its decision is unanimous.

6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the ~~loan or guarantee~~ finance concerned unless its decision is unanimous, the director nominated by the Commission abstaining.

7. Where both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the ~~loan or guarantee~~ finance.

8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors.

Article ~~22~~ 20

1. The Bank shall borrow on the ~~international~~ capital markets the funds necessary for the performance of its tasks.

2. The Bank may borrow on the capital markets of a ~~the~~ Member States either in accordance with the legal provisions applying to ~~internal issues or, if there are no such provisions in a Member State, after the Bank and the Member State concerned have conferred together and reached agreement on the proposed loan~~ those markets.

The competent authorities ~~in the~~ of a Member State ~~concerned~~ with a derogation within the meaning of Article ~~116a(1) [139(1)]~~ of the Treaty on the Functioning of the European Union may ~~refuse to give their assent~~ oppose this only if there is reason to fear serious disturbances on the capital market of that State.

Article ~~23~~ 21

1. The Bank may employ any available funds which it does not immediately require to meet its obligations in the following ways:

(a) it may invest on the money markets;

(b) it may, subject to the provisions of Article ~~20(2)~~ 18(2), buy and sell securities ~~issued by itself or by those who have borrowed from it~~;

(c) it may carry out any other financial operation linked with its objectives.

2. Without prejudice to the provisions of Article ~~25~~ 23, the Bank shall not, in managing its investments, engage in any currency arbitrage not directly required to carry out its lending operations or fulfil commitments arising out of loans raised or guarantees granted by it.

3. The Bank shall, in the fields covered by this Article, act in agreement with the competent authorities or with the ~~bank of issue~~ national central bank of the Member State concerned.

Article ~~24~~ 22

1. A reserve fund of up to 10 % of the subscribed capital shall be built up progressively. If the state of the liabilities of the Bank should so justify, the Board of Directors may decide to set aside additional reserves. Until such time as the reserve fund has been fully built up, it shall be fed by:

(a) interest received on loans granted by the Bank out of sums to be paid up by the Member States pursuant to Article 5;

(b) interest received on loans granted by the Bank out of funds derived from repayment of the loans referred to in (a);

to the extent that this income is not required to meet the obligations of the Bank or to cover its expenses.

2. The resources of the reserve fund shall be so invested as to be available at any time to meet the purpose of the fund.

Article 25 23

1. The Bank shall at all times be entitled to transfer its assets in the currency of ~~one a~~ a Member State whose currency is not the euro ~~into the currency of another Member State~~ in order to carry out financial operations corresponding to the task set out in Article 267 [309] of ~~this the~~ Treaty on the Functioning of the European Union, taking into account the provisions of Article ~~23~~ 21 of this Statute. The Bank shall, as far as possible, avoid making such transfers if it has cash or liquid assets in the currency required.

2. The Bank may not convert its assets in the currency of a Member State whose currency is not the euro into the currency of a third country without the agreement of the Member State concerned.

3. The Bank may freely dispose of that part of its capital which is paid up ~~in gold or convertible currency~~ and of any currency borrowed on markets outside the ~~Community~~ Union.

4. The Member States undertake to make available to the debtors of the Bank the currency needed to repay the capital and pay the interest on loans or commission on guarantees granted by the Bank for ~~projects investment~~ to be carried out in their territory.

Article 26 24

If a Member State fails to meet the obligations of membership arising from this Statute, in particular the obligation to pay its share of the subscribed capital, ~~to grant its special loans~~ or to service its borrowings, the granting of loans or guarantees to that Member State or its nationals may be suspended by a decision of the Board of Governors, acting by a qualified majority.

Such decision shall not release either the State or its nationals from their obligations towards the Bank.

Article 27 25

1. If the Board of Governors decides to suspend the operations of the Bank, all its activities shall cease forthwith, except those required to ensure the due realisation, protection and preservation of its assets and the settlement of its liabilities.

2. In the event of liquidation, the Board of Governors shall appoint the liquidators and give them instructions for carrying out the liquidation. **It shall ensure that the rights of the members of staff are safeguarded.**

Article 28 26

1. In each of the Member States, the Bank shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

Article ~~29~~ 27

Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.

The Bank shall have an address for service in each Member State. It may, however, in any contract, specify a particular address for service ~~or provide for arbitration~~.

The property and assets of the Bank shall not be liable to attachment or to seizure by way of execution except by decision of a court.

Article ~~30~~ 28

1. The Board of Governors may, acting unanimously, decide to establish ~~a European Investment Fund subsidiaries or other entities~~, which shall have legal personality and financial autonomy, ~~and of which the Bank shall be a founding member~~.

2. The Board of Governors shall establish the Statutes of the ~~European Investment Fund by unanimous decision~~ bodies referred to in paragraph 1. The Statutes shall define, in particular, ~~its~~ their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship ~~between~~ with the organs of the Bank ~~and those of the Fund~~.

3. ~~Notwithstanding the provisions of Article 20(2)~~, The Bank shall be entitled to participate in the management of ~~the Fund~~ these bodies and contribute to ~~its~~ their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

~~4. The European Community may become a member of the Fund and contribute to its subscribed capital. Financial institutions with an interest in the objectives of the Fund may be invited to become members.~~

~~5.~~ 4. The Protocol on the privileges and immunities of the European Communities Union shall apply to the ~~Fund~~ bodies referred to in paragraph 1 insofar as they are incorporated under Union law, to the members of ~~its~~ their organs in the performance of their duties as such and to ~~its~~ their staff, under the same terms and conditions as those applicable to the Bank.

~~The Fund shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Fund has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Fund and of its organs carried out in accordance with its Statute shall not be subject to any turnover tax.~~

Those dividends, capital gains or other forms of revenue stemming from ~~the Fund~~ such bodies to which the members, other than the European Community Union and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

~~6.~~ 5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of ~~the Fund~~ a body incorporated under Union law. Proceedings against such measures may be instituted by any member of ~~the Fund~~ such a body in its capacity as such or by Member States under the conditions laid down in Article 230 [263] of ~~this~~ the Treaty on the Functioning of the European Union.

6. The Board of Governors may, acting unanimously, decide to admit the staff of bodies incorporated under Union law to joint schemes with the Bank, in compliance with the respective internal procedures.

PROTOCOL ~~(No 8)~~

ON THE LOCATION OF THE SEATS OF THE INSTITUTIONS AND OF CERTAIN BODIES, OFFICES, AGENCIES AND DEPARTMENTS OF THE EUROPEAN COMMUNITIES UNION ~~AND OF EUROPOL (1997)~~

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

HAVING REGARD to Article 289 [341] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, ~~Article 77 of the Treaty establishing the European Coal and Steel Community~~ and Article 189 of the Treaty establishing the European Atomic Energy Community,

~~HAVING REGARD to the Treaty on European Union,~~

RECALLING AND CONFIRMING the Decision of 8 April 1965, and without prejudice to the decisions concerning the seat of future institutions, bodies, offices, agencies and departments,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, ~~and the Treaties establishing the European Communities~~ to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community,

Sole Article

- (a) The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.
- (b) The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.
- (c) The Commission shall have its seat in Brussels. The departments listed in Articles 7, 8 and 9 of the Decision of 8 April 1965 shall be established in Luxembourg.
- (d) The Court of Justice ~~of the European Union~~ and ~~the Court of First Instance~~ shall have ~~their seats~~ its seat in Luxembourg.
- (e) The Court of Auditors shall have its seat in Luxembourg.
- (f) The Economic and Social Committee shall have its seat in Brussels.
- (g) The Committee of the Regions shall have its seat in Brussels.
- (h) The European Investment Bank shall have its seat in Luxembourg.
- (i) ~~The European Monetary Institute and~~ The European Central Bank shall have ~~their~~ its seat in Frankfurt.
- (j) The European Police Office (Europol) shall have its seat in The Hague.

PROTOCOL ~~(No 36)~~

ON THE PRIVILEGES AND IMMUNITES OF THE EUROPEAN COMMUNITIES UNION (1965)

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with ~~Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities~~ Article 291 [343] of the Treaty on the Functioning of the European Union and to Article 191 of the Treaty establishing the European Atomic Energy Community (“EAEC”), ~~these Communities and the European Investment Bank~~ the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED UPON the following provisions, which shall be annexed to ~~this~~ the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN COMMUNITIES UNION

Article 1

The premises and buildings of the Communities Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Communities Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Communities Union shall be inviolable.

Article 3

The Communities Union, their assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities Union makes, for ~~their~~ its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Communities Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The **Communities Union** shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for ~~their~~ **its** official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The **Communities Union** shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of ~~their~~ **its** publications.

Article 5

~~The European Coal and Steel Community may hold currency of any kind and operate accounts in any currency.~~

CHAPTER II

COMMUNICATIONS AND *LAISSEZ-PASSER*

Article 6 5

For their official communications and the transmission of all their documents, the institutions of the **Communities Union** shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the **Communities Union** shall not be subject to censorship.

Article 7 6

~~1.~~ *Laissez-passer* in a form to be prescribed by the Council, which shall be recognized as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the **Communities Union** by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the **Communities Union**.

The Commission may conclude agreements for these *laissez-passer* to be recognized as valid travel documents within the territory of third countries.

~~2. The provisions of Article 6 of the Protocol on the privileges and immunities of the European Coal and Steel Community shall, however, remain applicable to members and servants of the institutions who are at the date of entry into force of this Treaty in possession of the *laissez-passer* provided for in that Article, until the provisions of paragraph 1 of this Article are applied.~~

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 8 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article ~~9~~ 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article ~~10~~ 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES UNION

Article ~~11~~ 10

Representatives of Member States taking part in the work of the institutions of the Communities Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Communities Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN COMMUNITIES UNION

Article 12 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Communities Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Communities Union and, on the other hand, to the jurisdiction of the Court in disputes between the Communities Union and their officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 13 12

Officials and other servants of the Communities Union shall be liable to a tax for the benefit of the Communities Union on salaries, wages and emoluments paid to them by the Communities Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned ~~on a proposal from the Commission.~~

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities Union.

Article 14 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Communities Union, officials and other servants of the Communities Union who, solely by reason of the performance of their duties in the service of the Communities Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organizations shall not be taken into consideration in applying the provisions of this Article.

Article 15 14

The European Parliament and the Council shall, acting ~~unanimously on a proposal from the Commission~~ by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Communities Union.

Article 16 15

The European Parliament and the Council shall, acting ~~on a proposal from the Commission~~ by means of regulations in accordance with the ordinary legislative procedure, shall and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities Union to whom the provisions of Article 12 11, the second paragraph of Article 13 12, and Article 14 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN COMMUNITIES UNION

Article 17 16

The Member State in whose territory the Union ~~have their~~ has its seat shall accord the customary diplomatic immunities and privileges to Communities missions of third countries accredited to the Communities Union.

CHAPTER VII

GENERAL PROVISIONS

Article 18 17

Privileges, immunities and facilities shall be accorded to officials and other servants of the Communities Union solely in the interests of the Communities Union.

Each institution of the Communities Union shall be required to waive the immunity accorded to

an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the ~~Communities~~ Union.

Article ~~19~~ 18

The institutions of the ~~Communities~~ Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article ~~20~~ 19

Articles ~~12~~ 11 to ~~15~~ 14 and Article ~~18~~ 17 shall apply to Members of the Commission.

Article ~~21~~ 20

Articles ~~12~~ 11 to ~~15~~ 14 and Article ~~18~~ 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union ~~and to the Members and Registrar of the Court of First Instance~~, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article ~~22~~ 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article ~~23~~ 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

~~The above provisions shall also apply to the European Monetary Institute. Its dissolution or liquidation shall not give rise to any imposition.~~

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

~~Done at Brussels this eighth day of April in the year one thousand nine hundred and sixty five.~~

~~Paul-Henri SPAAK
Kurt SCHMÜCKER
Maurice COUVE-DE-MURVILLE
Amintore FANFANI
Pierre WERNER
J. M. A. H. LUNS~~

PROTOCOL ~~(No 20)~~

ON THE EXCESSIVE DEFICIT PROCEDURE ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the excessive deficit procedure referred to in Article 104 [126] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union.

Article 1

The reference values referred to in Article 104(2) [126(2)] of ~~this~~ the Treaty on the Functioning of the European Union are:

- 3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices;
- 60 % for the ratio of government debt to gross domestic product at market prices.

Article 2

In Article 104 [126] of ~~this~~ the Treaty on the Functioning of the European Union and in this Protocol:

- government means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in the European System of Integrated Economic Accounts;
- deficit means net borrowing as defined in the European System of Integrated Economic Accounts;
- investment means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;
- debt means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in the first indent.

Article 3

In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as defined in the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from ~~this Treaty~~ the Treaties. The Member States shall report their planned and actual deficits and the levels of their debt promptly and regularly to the Commission.

Article 4

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

PROTOCOL ~~(No 21)~~

ON THE CONVERGENCE CRITERIA ~~REFERRED TO IN ARTICLE 121 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY (1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Community in taking decisions ~~on the passage to the third stage of economic and monetary union to end the derogations of those Member States with a derogation~~, referred to in Article ~~121(+)~~ 117a(1) [140(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~,

HAVE AGREED upon the following provisions, which shall be annexed ~~to the Treaty on European Union and to the Treaty establishing the European Community~~ ~~on the Functioning of the European Union~~.

Article 1

The criterion on price stability referred to in the first indent of Article ~~121(+)~~ 117a (1) [140(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 1/2 percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions.

Article 2

The criterion on the government budgetary position referred to in the second indent of Article ~~121(+)~~ 117a(1) [140(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 104(6) [126(6)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ that an excessive deficit exists.

Article 3

The criterion on participation in the exchange-rate mechanism of the European Monetary System referred to in the third indent of Article ~~121(+)~~ 117a(1) [140(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ shall mean that a Member State has respected the normal fluctuation margins provided for by the exchange-rate mechanism on the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against ~~any other Member State's currency~~ the euro on its own initiative for the same period.

Article 4

The criterion on the convergence of interest rates referred to in the fourth indent of Article ~~121(+)~~ 117a(1) [140(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ shall mean that, observed over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more than 2 percentage points that of, at most, the three best performing Member States in terms of price stability. Interest

rates shall be measured on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.

Article 5

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

Article 6

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, ~~the EMI or~~ the ECB as the case may be, and the **Economic and Financial** Committee ~~referred to in Article 114~~, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 121 **[140(1)]** of ~~this~~ **the** Treaty **on the Functioning of the European Union**, which shall then replace this Protocol.

PROTOCOL

ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

PROTOCOL ~~(No 25)~~

ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to ~~move to the third stage of economic and monetary union~~ adopt the euro without a separate decision to do so by its government and parliament,

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union,

NOTING the practice of the government of the United Kingdom to fund its borrowing requirement by the sale of debt to the private sector,

HAVE AGREED the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

~~1. The United Kingdom shall notify the Council whether it intends to move to the third stage before the Council makes its assessment under Article 121(2) of this Treaty.~~

Unless the United Kingdom notifies the Council that it intends to ~~move to the third stage~~ adopt the euro, it shall be under no obligation to do so.

~~If no date is set for the beginning of the third stage under Article 121(3) of this Treaty, the United Kingdom may notify its intention to move to the third stage before 1 January 1998.~~

~~2. Paragraphs 3 to 9 shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage.~~

2 In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, paragraphs 3 to 8 and 10 shall apply to the United Kingdom.

~~3. The United Kingdom shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 121(2) and the first indent of Article 121(3) of this Treaty.~~

~~4.~~ **3.** The United Kingdom shall retain its powers in the field of monetary policy according to national law.

~~5.~~ **4.** Articles 245a(2) [282(2)], with the exception of the first and last sentences thereof, 245a(5) [282(5)], 97b, second paragraph [119, second paragraph], ~~4(2)~~, 104(1), (9) and (11) [126(1), (9) and (11)], 105(1) to (5) [127(1) to (5)], 106 [128], 108 [130], 109 [131], 110 [132], ~~111~~, and 111a [133], ~~112(1) and (2)(b) and 123(4) and (5)~~ 115 C [138], 117a(3) [140(3)], 188 O [219] and 245b [283] of ~~this the~~ Treaty on the Functioning of the European Union shall not apply to the United Kingdom. The same applies to Article ~~99(2)~~ [121(2)] of this Treaty as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally. In these provisions references to the ~~Community~~ Union or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

~~6.~~ **5.** The United Kingdom shall endeavour to avoid an excessive government deficit.

Articles ~~116(4) and~~ 119 [143] and 120 [144] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ shall continue to apply to the United Kingdom. Articles 114(4) [134(4)] and ~~124~~ [118b [142]] shall apply to the United Kingdom as if it had a derogation.

~~7.~~ **6.** The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph ~~5~~ 4 and in the instances referred to in the first subparagraph of Article 116a(4) [139(4)] of the Treaty ~~on the Functioning of the European Union~~. For this purpose the ~~weighted votes of the United Kingdom shall be excluded from any calculation of a qualified majority under Article 122(5) of this Treaty~~ second subparagraph of Article 116a(4) [139(4)] of the Treaty shall apply.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the ECB under Articles ~~112(2)(b) and 123(1)~~ 245b(2)(b) [283(2)(b)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~.

~~8.~~ **7.** Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34, ~~50~~ and ~~52~~ 49 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ('the Statute') shall not apply to the United Kingdom.

In those Articles, references to the ~~Community~~ Union or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10.3 and 30.2 of the Statute to 'subscribed capital of the ECB' shall not include capital subscribed by the Bank of England.

~~9.~~ **8.** Article ~~123(3)~~ 118a(1) [141(1)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~ and Articles ~~44~~ 43 to ~~48~~ 47 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

(a) References in Article ~~44~~ 43 to the tasks of the ECB ~~and the EMI~~ shall include those tasks that still need to be performed ~~in the third stage after the introduction of the euro~~ owing to any decision of the United Kingdom not to ~~move to that stage~~ adopt the euro.

(b) In addition to the tasks referred to in Article ~~47~~ 46 the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs ~~10(a)~~ 9(a) and ~~10(e)~~ 9(c).

(c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

~~10.~~ **9.** ~~If the United Kingdom does not move to the third stage, it may change its notification at any time after the beginning of that stage.~~ The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:

(a) The United Kingdom shall have the right to ~~move to the third stage~~ adopt the euro provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article ~~122(2)~~ 117a(1) and (2) [140(1) and (2)] of ~~this the~~ Treaty ~~on the Functioning of the European Union~~, shall decide whether it fulfills the necessary conditions.

(b) The Bank of England shall pay up its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.

(c) The Council, acting under the conditions and in accordance with the procedure laid down in Article ~~123(5)~~ ~~117a(3)~~ ~~[140(3)]~~ of the Treaty ~~on the Functioning of the European Union~~, shall take all other necessary decisions to enable the United Kingdom to ~~move to the third stage~~ ~~adopt~~ ~~the euro~~.

If the United Kingdom ~~moves to the third stage~~ ~~adopts the euro~~ pursuant to the provisions of this Protocol, paragraphs ~~3~~ ~~2~~ to ~~9~~ ~~8~~ shall cease to have effect.

~~11.~~ ~~10.~~ Notwithstanding Articles 101 ~~and 116(3)~~ of ~~this~~ ~~the~~ Treaty ~~on the Functioning of the European Union~~ and Article 21.1 of the Statute, the Government of the United Kingdom may maintain its 'ways and means' facility with the Bank of England if and so long as the United Kingdom does not ~~move to the third stage~~ ~~adopt the euro~~.

PROTOCOL ~~(No 26)~~

ON CERTAIN PROVISIONS RELATING TO DENMARK ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

~~DESIRING to settle, in accordance with the general objectives of the Treaty establishing the European Community, certain particular problems existing at the present time,~~

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to ~~Danish participation in the third stage of economic and monetary union~~ Denmark renouncing its exemption,

GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union,

HAVE AGREED on the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

~~1. The Danish Government shall notify the Council of its position concerning participation in the third stage before the Council makes its assessment under Article 121(2) of this Treaty.~~

2. ~~1.~~ In the event of a notification that Denmark will not participate in the third stage In view of the notice given to the Council by the Danish government on 3 November 1993, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of this Treaty the Treaties and the Statute of the ESCB and the ECB referring to a derogation shall be applicable to Denmark.

~~3. In such case, Denmark shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 121(2) and the first indent of Article 121(3) of this Treaty.~~

4. ~~2.~~ As for the abrogation of the exemption, the procedure referred to in Article ~~122(2)~~ 117a [140] of the Treaty on the Functioning of the European Union shall only be initiated at the request of Denmark.

~~5.~~ ~~3.~~ In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

PROTOCOL ~~(No 22)~~

ON DENMARK ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

The provisions of Article 14 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank shall not affect the right of the National Bank of Denmark to carry out its existing tasks concerning those parts of the Kingdom of Denmark which are not part of the ~~Community~~ Union.

PROTOCOL ~~(No 27)~~

ON FRANCE ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to take into account a particular point relating to France,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

France will keep the privilege of monetary emission in ~~its overseas territories~~ New Caledonia, French Polynesia and Wallis and Futuna under the terms established by its national laws, and will be solely entitled to determine the parity of the CFP franc.

PROTOCOL ~~(No 2)~~

INTEGRATING ON THE SCHENGEN ACQUIS INTEGRATED INTO THE FRAMEWORK OF THE EUROPEAN UNION ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

NOTING that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, ~~are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice~~ have been integrated into the framework of the European Union by ~~the Treaty of Amsterdam of 2 October 1997,~~

~~DESIRING to incorporate the abovementioned agreements and rules into the framework of the European Union,~~

~~DESIRING to preserve the Schengen *acquis*, as developed since the entry into force of the Treaty of Amsterdam, and to develop this *acquis* in order to contribute towards achieving the objective of offering citizens of the Union an area of freedom, security and justice without internal borders;~~

~~CONFIRMING that the provisions of the Schengen *acquis* are applicable only if and as far as they are compatible with the European Union and Community law;~~

TAKING INTO ACCOUNT the special position of Denmark,

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland ~~are not parties to and have not signed the abovementioned agreements~~ do not participate in all the provisions of the Schengen *acquis*; that provision should, however, be made to allow those Member States to accept ~~some or all of the provisions thereof~~ other provisions of this *acquis* in full or in part,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaty on European Union and of the Treaty establishing the European Community concerning closer cooperation between some Member States ~~and that those provisions should only be used as a last resort,~~

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States ~~having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996~~ being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union,

Article 1

The Kingdom of Belgium, ~~the Republic of Bulgaria,~~ the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, ~~the Republic of Estonia,~~ the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, ~~the Republic of Cyprus,~~ the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, ~~the Republic of Hungary,~~ the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, ~~the Republic of~~

Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are shall be authorised to establish closer cooperation among themselves within the scope of those agreements and related provisions, as they are listed in the Annex to this Protocol, hereinafter referred to as the 'Schengen *acquis*'. This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community in areas covered by provisions defined by the Council which constitutes the Schengen *acquis*.

Article 2

~~1. From the date of entry into force of the Treaty of Amsterdam, the Schengen *acquis*, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From the same date, the Council will substitute itself for the said Executive Committee.~~

~~The Council, acting by the unanimity of its Members referred to in Article 1, shall take any measure necessary for the implementation of this paragraph. The Council, acting unanimously, shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*.~~

~~With regard to such provisions and decisions and in accordance with that determination, the Court of Justice of the European Communities shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties. In any event, the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.~~

~~As long as the measures referred to above have not been taken and without prejudice to Article 5(2), the provisions or decisions which constitute the Schengen *acquis* shall be regarded as acts based on Title VI of the Treaty on European Union.~~

~~2. The provisions of paragraph 1 shall apply to the Member States which have signed accession protocols to the Schengen agreements, from the dates decided by the Council, acting with the unanimity of its Members mentioned in Article 1, unless the conditions for the accession of any of those States to the Schengen *acquis* are met before the date of the entry into force of the Treaty of Amsterdam.~~

The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Act of Accession of 16 April 2003 or to Article 4 of the Act of Accession of 25 April 2005. The Council will substitute itself for the Executive Committee established by the Schengen Agreements.

Article 3

~~Following the determination referred to in Article 2(1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories to the Schengen agreements, as before the said determination with regard to those parts of the Schengen *acquis* that are determined to have a legal basis in Title IV of the Treaty establishing the European Community.~~

~~With regard to those parts of the Schengen *acquis* that are determined to have legal base in Title VI of the Treaty on European Union, Denmark shall continue to have the same rights and obligations as the other signatories to the Schengen agreements.~~

The participation of Denmark in the adoption of measures constituting a development of the

Schengen *acquis*, as well as the implementation of these measures and their application to Denmark, shall be governed by the relevant provisions of the Protocol on the position of Denmark.

Article 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, ~~which are not bound by the Schengen *acquis*,~~ may at any time request to take part in some or all of the provisions of this *acquis*.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

Article 5

1. Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom ~~or both have~~ **has** not notified ~~the President of~~ the Council in writing within a reasonable period that ~~they~~ **it** wishes to take part, the authorisation referred to in Article ~~11~~ 280 D [329] of the Treaty ~~establishing the European Community~~ **on the Functioning of the European Union** ~~or Article 40 of the Treaty on European Union~~ shall be deemed to have been granted to the Member States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

~~2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.~~

2. Where either Ireland or the United Kingdom is deemed to have given notification pursuant to a decision under Article 4, it may nevertheless notify the Council in writing, within 3 months, that it does not wish to take part in such a proposal or initiative. In that case, Ireland or the United Kingdom shall not take part in its adoption. As from the latter notification, the procedure for adopting the measure building upon the Schengen *acquis* shall be suspended until the end of the procedure set out in paragraphs 3 or 4 or until the notification is withdrawn at any moment during that procedure.

3. For the Member State having made the notification referred to in paragraph 2, any decision taken by the Council pursuant to Article 4 shall, as from the date of entry into force of the proposed measure, cease to apply to the extent considered necessary by the Council and under the conditions to be determined in a decision of the Council acting by a qualified majority on a proposal from the Commission. That decision shall be taken in accordance with the following criteria: the Council shall seek to retain the widest possible measure of participation of the Member State concerned without seriously affecting the practical operability of the various parts of the Schengen *acquis*, while respecting their coherence. The Commission shall submit its proposal as soon as possible after the notification referred to in paragraph 2. The Council shall, if needed after convening two successive meetings, act within four months of the Commission proposal.

4. If, by the end of the period of four months, the Council has not adopted a decision, a Member State may, without delay, request that the matter be referred to the European Council. In that case, the European Council shall, at its next meeting, acting by a qualified majority on a proposal from the Commission, take a decision in accordance with the criteria referred to in paragraph 3.

5. If, by the end of the procedure set out in paragraphs 3 or 4, the Council or, as the case may be,

the European Council has not adopted its decision, the suspension of the procedure for adopting the measure building upon the Schengen *acquis* shall be terminated. If the said measure is subsequently adopted any decision taken by the Council pursuant to Article 4 shall, as from the date of entry into force of that measure, cease to apply for the Member State concerned to the extent and under the conditions decided by the Commission, unless the said Member State has withdrawn its notification referred to in paragraph 2 before the adoption of the measure. The Commission shall act by the date of this adoption. When taking its decision, the Commission shall respect the criteria referred to in paragraph 3.

Article 6

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen *acquis* and its further development ~~on the basis of the Agreement signed in Luxembourg on 19 December 1996~~. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its Members mentioned in Article 1. Such Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded with Iceland and Norway by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen *acquis* which apply to these States.

~~*Article 7*~~

~~The Council shall, acting by a qualified majority, adopt the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council.~~

Article 8 7

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

ANNEX

SCHENGEN ACQUIS

1. ~~The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.~~
 2. ~~The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.~~
 3. ~~The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.~~
 4. ~~Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.~~
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PROTOCOL ~~(No 3)~~

ON THE APPLICATION OF CERTAIN ASPECTS OF ARTICLE ~~14~~ 22a [26] OF THE TREATY ~~ESTABLISHING THE EUROPEAN COMMUNITY~~ ON THE FUNCTIONING OF THE EUROPEAN UNION TO THE UNITED KINGDOM AND TO IRELAND ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the existence for many years of special travel arrangements between the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union ~~and to the Treaty on European Union,~~

Article 1

The United Kingdom shall be entitled, notwithstanding Article ~~14~~ 22a [26] and 62 [77] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, any other provision of that Treaty or of the Treaty on European Union, any measure adopted under those Treaties, or any international agreement concluded by the ~~Community~~ Union or by the ~~Community~~ Union and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

(a) of verifying the right to enter the United Kingdom of citizens of ~~States which are Contracting Parties to the Agreement on the European Economic Area~~ Member States and of their dependants exercising rights conferred by ~~Community~~ Union law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and

(b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Article ~~14~~ 22a [26] and 62 [77] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the United Kingdom to adopt or exercise any such controls. References to the United Kingdom in this Article shall include territories for whose external relations the United Kingdom is responsible.

Article 2

The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ('the Common Travel Area'), while fully respecting the rights of persons referred to in Article 1, first paragraph, point (a) of this Protocol. Accordingly, as long as they maintain such arrangements, the provisions of Article 1 of this Protocol shall apply to Ireland under the same terms and conditions as for the United Kingdom. Nothing in Article ~~14~~ 22a [26] and 62 [77] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, in any other provision of that Treaty or

of the Treaty on European Union or in any measure adopted under them, shall affect any such arrangements.

Article 3

The other Member States shall be entitled to exercise at their frontiers or at any point of entry into their territory such controls on persons seeking to enter their territory from the United Kingdom or any territories whose external relations are under its responsibility for the same purposes stated in Article 1 of this Protocol, or from Ireland as long as the provisions of Article 1 of this Protocol apply to Ireland.

Nothing in Article ~~14~~ 22a [26] and 62 [77] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the other Member States to adopt or exercise any such controls.

PROTOCOL ~~(No 4)~~

ON THE POSITION OF THE UNITED KINGDOM AND IRELAND IN RESPECT OF THE AREA OF FREEDOM, SECURITY AND JUSTICE ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article ~~14~~ 22a [26] of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union ~~and to the Treaty on European Union~~,

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title IV [V] of Part Three of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union. ~~By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2).~~ The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title IV [V] of Part Three of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the ~~Community~~ Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the ~~Community or Union~~ *acquis communautaire* nor form part of ~~Community~~ Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the ~~President of the~~ Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV [V] of Part Three of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. ~~By way of derogation from Article~~

~~205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2).~~

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

Measures adopted pursuant to Article 61 C [70] of the Treaty on the Functioning of the European Union shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Title IV [V] of Part Three of that Treaty.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title IV [V] of Part Three of the Treaty ~~establishing the European Community on the Functioning of the European Union~~ notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article ~~11(3)~~ 280 F(1) [331(1)] of the Treaty ~~establishing the European Community on the Functioning of the European Union~~ shall apply *mutatis mutandis*.

Article 4a

1. The provisions of this Protocol apply for the United Kingdom and Ireland also to measures proposed or adopted pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which they are bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 or 4. For the purposes of Article 3 a further period of two months starts to run as from the date of such determination by the Council.

If at the expiry of that period of two months from the Council's determination the United Kingdom or Ireland has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless the Member State concerned has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)] of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that the United Kingdom or Ireland shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title IV [V] of Part Three of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title IV [V] of Part Three of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union, the relevant provisions of that Treaty, including ~~Article 68~~ the relevant provisions of the Treaties, shall apply to that State in relation to that measure.

Article 6a

The United Kingdom and Ireland shall not be bound by the rules laid down on the basis of Article 16 B [16] of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title IV [V] of Part Three of that Treaty where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16 B [16].

Article 7

Articles 3, and 4 and 4a shall be without prejudice to the Protocol ~~integrating~~ on the Schengen *acquis* ~~integrated~~ into the framework of the European Union.

Article 8

Ireland may notify ~~the President of~~ the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal ~~Treaty~~ provisions will apply to Ireland.

Article 9

With regard to Ireland, this Protocol shall not apply to Article 61 H [75] of the Treaty on the Functioning of the European Union.

PROTOCOL ~~(No 5)~~

ON THE POSITION OF DENMARK ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

RECALLING the Decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to Citizenship, Economic and Monetary Union, Defence Policy and Justice and Home Affairs as laid down in the Edinburgh Decision,

CONSCIOUS of the fact that a continuation under the **Treaties** of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice;

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of **Title IV [V] of Part Three of the Treaty on the Functioning of the European Union** and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements;

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark;

BEARING IN MIND Article 3 of the Protocol **integrating on** the Schengen *acquis* **integrated** into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed **to the Treaty on European Union and** to the Treaty ~~establishing the European Community~~ **on the Functioning of the European Union** ~~and to the Treaty on European Union~~,

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IV **[V] of Part Three** of the Treaty ~~establishing the European Community~~ **on the Functioning of the European Union**. ~~By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2).~~ The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union.

Article 2

None of the provisions of Title IV **[V] of Part Three** of the Treaty ~~establishing the European~~

~~Community~~ on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the ~~Community Union~~ pursuant to that Title, and no decision of the Court of Justice ~~of the European Union~~ interpreting any such provision or measure ~~or any measure amended or amendable pursuant to that Title~~ shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the ~~Community or Union~~ *acquis communautaire* nor form part of ~~Community Union~~ law as they apply to Denmark. In particular, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended shall continue to be binding upon and applicable to Denmark unchanged.

Article 2a

Article 2 of this Protocol shall also apply in respect of those rules laid down on the basis of Article 16 B [16] of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title IV [V] of Part Three of that Treaty.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

~~Article 4~~

[Article 4 is moved to become Article 6]

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

Article ~~5~~ 4

1. Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen ~~acquis under the provisions of Title IV of the Treaty establishing the European Community~~ covered by this Part, whether it will implement this ~~decision measure~~ in its national law. If it decides to do so, this ~~decision measure~~ will create an obligation under international law between Denmark and the other Member States ~~referred to in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union as well as Ireland or the United Kingdom if those Member States take part in the areas of cooperation in question~~ bound by the measure.

2. If Denmark decides not to implement a ~~decision measure~~ of the Council as referred to in paragraph 1, the Member States ~~referred to in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union~~ bound by that measure and Denmark will consider appropriate measures to be taken.

PART II

Article ~~6~~ 5

With regard to measures adopted by the Council ~~in the field of~~ pursuant to Articles 13(1) [26(1)]

and 17, Article 28 A [42] and Articles 28 B [43] to 28 E [46] of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications, ~~but will not prevent the development of closer cooperation between Member States in this area.~~ Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union.

PART III

Article 6

[ex Article 4]

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

PART IV

Article 7

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.

Article 8

1. At any time and without prejudice to Article 7, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 8 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

ANNEX

Article 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union.

Article 2

Pursuant to Article 1 and subject to Articles 3, 4 and 8, none of the provisions in Title IV [V] of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreements concluded by the Union pursuant to that Title, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

Article 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt that measure referred to in paragraph 1 in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.

Article 4

Denmark may at any time after the adoption of a measure pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 280 F(1) [331(1)] of that Treaty shall apply *mutatis mutandis*.

Article 5

1. The provisions of this Protocol apply for Denmark also to measures proposed or adopted pursuant to Title IV [V] of Part III of the Treaty on the Functioning of the European Union amending an existing measure by which it is bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of Denmark in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge it to make a notification under Article 3 or 4. For the purposes of Article 3 a further period of two

months starts to run as from the date of such determination by the Council.

If at the expiry of that period of two months from the Council's determination Denmark has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless it has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)] of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that Denmark shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 6

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

Article 7

Denmark shall not be bound by the rules laid down on the basis of Article 16 B [16] of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title IV [V] of Part Three of that Treaty where Denmark is not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16 B [16].

Article 8

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to Denmark in relation to that measure.

Article 9

Where Denmark is not bound by a measure adopted pursuant to Title IV [V] of Part Three of the Treaty on the Functioning of the European Union, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, with all its

Members acting unanimously after consulting the European Parliament, decides otherwise.

PROTOCOL ~~(No 31)~~

ON EXTERNAL RELATIONS OF THE MEMBER STATES WITH REGARD TO THE CROSSING OF EXTERNAL BORDERS ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the need of the Member States to ensure effective controls at their external borders, in cooperation with third countries where appropriate,

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union,

The provisions on the measures on the crossing of external borders included in Article ~~62(2)(a)~~ 62(2)(b) [77(2)(b)] ~~of Title IV~~ of the Treaty on the Functioning of the European Union shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect ~~Community~~ Union law and other relevant international agreements.

PROTOCOL ~~(No 29)~~

ON ASYLUM FOR NATIONALS OF MEMBER STATES OF THE EUROPEAN UNION ~~(1997)~~

THE HIGH CONTRACTING PARTIES;

~~WHEREAS pursuant to the provisions of Article 6(2) of the Treaty on European Union the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;~~

WHEREAS, in accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS pursuant to Article 6(3) of the Treaty on European Union, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitute part of the Union's law as general principles;

WHEREAS the Court of Justice of the European Communities Union has jurisdiction to ensure that in the interpretation and application of Article 6(2) 6(1) and (3) of the Treaty on European Union the law is observed by the European Community Union;

WHEREAS pursuant to Article 49 of the Treaty on European Union any European State, when applying to become a Member of the Union, must respect the principles values set out in Article 6(1) 1a [2] of the Treaty on European Union,

BEARING IN MIND that Article 309 of the Treaty establishing the European Community 7 of the Treaty on European Union establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those principles values;

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Part Two of the Treaty establishing the European Community on the Functioning of the European Union;

BEARING IN MIND that the Treaty establishing the European Community establishes an area without internal frontiers and grants every citizen of the Union the right to move and reside freely within the territory of the Member States;

~~RECALLING that the question of extradition of nationals of Member States of the Union is addressed in the European Convention on Extradition of 13 December 1957 and the Convention of 27 September 1996 drawn up on the basis of Article 31 of the Treaty on European Union relating to extradition between the Member States of the European Union;~~

WISHING to prevent the institution of asylum being resorted to for purposes alien to those for which it is intended;

WHEREAS this Protocol respects the finality and the objectives of the Geneva Convention of 28 July 1951 relating to the status of refugees;

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community on the Functioning of the European Union,

Sole Article

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

(a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;

(b) if the procedure referred to in Article 7(1) of the Treaty on European Union has been initiated and until the Council, or, where appropriate, the European Council, takes a decision in respect thereof with regard to the Member State of which the applicant is a national;

~~(c) if the Council, acting on the basis of Article 7(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article 6(1);~~

(c) if the Council has adopted a decision in accordance with Article 7(1) of the Treaty on European Union in respect of the Member State of which the applicant is a national or if the European Council has adopted a decision in accordance with Article 7(2) of that Treaty in respect of the Member State of which the applicant is a national.

(d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.

PROTOCOL

ON PERMANENT STRUCTURED COOPERATION ESTABLISHED BY ARTICLE 28 A [42] OF THE TREATY ON EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article 28 A(6) [42(6)] and Article 28 E [46] of the Treaty on European Union,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States;

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article 28 B [43] of the Treaty on European Union outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;

RECALLING the importance of the High Representative of the Union for Foreign Affairs and Security Policy being fully involved in proceedings relating to permanent structured cooperation,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The permanent structured cooperation referred to in Article 28 A(6) [42(6)] of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty of Lisbon, to:

(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and

(b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 28 B [43] of the Treaty on European Union, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

(a) cooperate, as from the entry into force of the Treaty of Lisbon, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;

(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling, and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;

(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;

(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the 'Capability Development Mechanism';

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

Article 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, *inter alia*, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 28 E [46] of the Treaty on European Union.

PROTOCOL ~~(No 1)~~

ON ARTICLE ~~17~~ 28 A [42] OF THE TREATY ON EUROPEAN UNION (1997)

THE HIGH CONTRACTING PARTIES,

BEARING IN MIND the need to implement fully the provisions of Article ~~17(1), second subparagraph, and (3)~~ 28 A(2), second subparagraph [42(2), second subparagraph] of the Treaty on European Union,

BEARING IN MIND that the policy of the Union in accordance with Article ~~17~~ 28 A [42] shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in NATO, under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework,

HAVE AGREED UPON the following provision, which is annexed to the Treaty on European Union ~~and to the Treaty on the Functioning of the European Union~~,

The European Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them, ~~within a year from the entry into force of the Treaty of Amsterdam~~.

PROTOCOL ~~(No 14)~~

CONCERNING IMPORTS INTO THE EUROPEAN ~~ECONOMIC COMMUNITY~~ UNION OF PETROLEUM PRODUCTS REFINED IN THE NETHERLANDS ANTILLES ~~(1962)~~

THE HIGH CONTRACTING PARTIES,

BEING DESIROUS of giving fuller details about the system of trade applicable to imports into the European ~~Economic Community~~ Union of petroleum products refined in the Netherlands Antilles,

HAVE AGREED UPON on the following provisions, ~~to be appended to that Treaty~~ which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

This Protocol is applicable to petroleum products coming under the Brussels Nomenclature numbers 27.10, 27.11, 27.12, ex 27.13 (paraffin wax, petroleum or shale wax and paraffin residues) and 27.14, imported for use in Member States.

Article 2

Member States shall undertake to grant to petroleum products refined in the Netherlands Antilles the tariff preferences resulting from the association of the latter with the ~~Community~~ Union, under the conditions provided for in this Protocol. These provisions shall hold good whatever may be the rules of origin applied by the Member States.

Article 3

1. When the Commission, at the request of a Member State or on its own initiative, establishes that imports into the ~~Community~~ Union of petroleum products refined in the Netherlands Antilles under the system provided for in Article 2 above are giving rise to real difficulties on the market of one or more Member States, it shall decide that customs duties on the said imports shall be introduced, increased or re-introduced by the Member States in question, to such an extent and for such a period as may be necessary to meet that situation. The rates of the customs duties thus introduced, increased or re-introduced may not exceed the customs duties applicable to third countries for these same products.

2. The provisions of paragraph 1 can in any case be applied when imports into the ~~Community~~ Union of petroleum products refined in the Netherlands Antilles reach two million metric tons a year.

3. The Council shall be informed of decisions taken by the Commission in pursuance of paragraphs 1 and 2, including those directed at rejecting the request of a Member State. The Council shall, at the request of any Member State, assume responsibility for the matter and may at any time amend or revoke them by a decision taken by a qualified majority.

Article 4

1. If a Member State considers that imports of petroleum products refined in the Netherlands Antilles, made either directly or through another Member State under the system provided for in Article 2 above, are giving rise to real difficulties on its market and that immediate action is necessary to meet them, it may on its own initiative decide to apply customs duties to such imports, the rate of which may not exceed those of the customs duties applicable to third countries in respect of the same products. It shall notify its decision to the Commission which shall decide within one month whether the measures taken by the State should be maintained or must be amended or cancelled. The provisions of Article 3(3) shall be applicable to such decision of the Commission.

2. When the quantities of petroleum products refined in the Netherlands Antilles imported either directly or through another Member State, under the system provided for in Article 2 above, into a Member State or States of the European ~~Economic Community~~ Union exceed during a calendar year the tonnage shown in the Annex to this Protocol, the measures taken in pursuance of paragraph 1 by that or those Member States for the current year shall be considered to be justified; the Commission shall, after assuring itself that the tonnage fixed has been reached, formally record the measures taken. In such a case the other Member States shall abstain from formally placing the matter before the Council.

Article 5

If the ~~Community~~ Union decides to apply quantitative restrictions to petroleum products, no matter whence they are imported, these restrictions may also be applied to imports of such products from the Netherlands Antilles. In such a case preferential treatment shall be granted to the Netherlands Antilles as compared with third countries.

Article 6

1. The provisions of Articles 2 to 5 shall be reviewed by the Council, by unanimous decision, after consulting the European Parliament and the Commission, when a common definition of origin for petroleum products from third countries and associated countries is adopted, or when decisions are taken within the framework of a common commercial policy for the products in question or when a common energy policy is established.

2. When such revision is made, however, equivalent preferences must in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 21/2 million metric tons of petroleum products.

3. The ~~Community's~~ Union's commitments in regard to equivalent preferences as mentioned in paragraph 2 of this Article may, if necessary, be broken down country by country taking into account the tonnage indicated in the Annex to this Protocol.

Article 7

For the implementation of this Protocol, the Commission is responsible for following the pattern of imports into the Member States of petroleum products refined in the Netherlands Antilles. Member States shall communicate to the Commission, which shall see that it is circulated, all useful information to that end in accordance with the administrative conditions recommended by it.

Done at Brussels, the thirteenth day of November, one thousand nine hundred and sixty-two.

ANNEX TO THE PROTOCOL

For the implementation of Article 4(2) of the Protocol concerning imports into the European ~~Economic Community~~ Union of petroleum products refined in the Netherlands Antilles, the High Contracting Parties have decided that the quantity of 2 million metric tons of petroleum products from the Antilles shall be allocated among the Member States as follows:

Germany	625 000 metric tons
Belgo-Luxembourg Economic Union	200 000 metric tons
France	75 000 metric tons
Italy	100 000 metric tons
Netherlands	1 000 000 metric tons

PROTOCOL ~~(No 16)~~

ON THE ACQUISITION OF PROPERTY IN DENMARK ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

Notwithstanding the provisions of ~~this Treaty~~ ~~the Treaties~~, Denmark may maintain the existing legislation on the acquisition of second homes.

PROTOCOL ~~(No 32)~~

ON THE SYSTEM OF PUBLIC BROADCASTING IN THE MEMBER STATES ~~(1997)~~

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism;

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union,

The provisions of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the ~~Community~~ Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

PROTOCOL ~~(No 17)~~

ON ARTICLE 141 [157] OF THE TREATY ~~ESTABLISHING THE EUROPEAN COMMUNITY~~ ON THE FUNCTIONING OF THE EUROPEAN UNION ~~(1992)~~

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union:

For the purposes of Article 141 [157] of ~~this~~ the Treaty on the Functioning of the European Union, benefits under occupational social security schemes shall not be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.

PROTOCOL ~~(No 28)~~

ON ECONOMIC, ~~AND~~ SOCIAL ~~AND TERRITORIAL~~ COHESION (1992)

THE HIGH CONTRACTING PARTIES,

~~RECALLING that the Union has set itself the objective of promoting economic and social progress, inter alia, through the strengthening of economic and social cohesion;~~

RECALLING that Article 2 [3] of the ~~Treaty establishing the European Community~~ Treaty on European Union includes the ~~task~~ objective of promoting economic, and social and territorial cohesion and solidarity between Member States and that the ~~strengthening of economic and social~~ said cohesion figures among the ~~activities of the Community~~ areas of shared competence of the Union, listed in Article ~~3~~ 2 C(2)(c) [4(2)(c)] of the Treaty on the Functioning of the European Union,

RECALLING that the provisions of Part Three, Title XVII [XVIII], on economic and social cohesion as a whole provide the legal basis for consolidating and further developing the ~~Community's~~ Union's action in the field of economic and social cohesion, including the creation of a new fund,

RECALLING that the provisions of ~~Part Three, Title XV on trans-European networks and Title XIX on environment envisage a Cohesion Fund to be set up before 31 December 1993~~ Article 161 [177] of the Treaty on the Functioning of the European Union envisage setting up a Cohesion Fund,

~~STATING their belief that progress towards economic and monetary union will contribute to the economic growth of all Member States;~~

~~NOTING that the Community's Structural Funds are being doubled in real terms between 1987 and 1993, implying large transfers, especially as a proportion of GDP of the less prosperous Member States;~~

NOTING that the European Investment Bank is lending large and increasing amounts for the benefit of the poorer regions,

NOTING the desire for greater flexibility in the arrangements for allocations from the Structural Funds,

NOTING the desire for modulation of the levels of ~~Community~~ Union participation in programmes and projects in certain countries,

NOTING the proposal to take greater account of the relative prosperity of Member States in the system of own resources,

REAFFIRM that the promotion of economic and social cohesion is vital to the full development and enduring success of the ~~Community~~ Union, ~~and underline the importance of the inclusion of economic and social cohesion in Articles 2 and 3 of this Treaty;~~

REAFFIRM their conviction that the Structural Funds should continue to play a considerable part in the achievement of ~~Community~~ Union objectives in the field of cohesion;

REAFFIRM their conviction that the European Investment Bank should continue to devote the majority of its resources to the promotion of economic and social cohesion, and declare their

willingness to review the capital needs of the European Investment Bank as soon as this is necessary for that purpose;

~~REAFFIRM the need for a thorough evaluation of the operation and effectiveness of the Structural Funds in 1992, and the need to review, on that occasion, the appropriate size of these Funds in the light of the tasks of the Community in the area of economic and social cohesion.~~

AGREE that the Cohesion Fund ~~to be set up before 31 December 1993~~ will provide **Community Union** financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90 % of the **Community Union** average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104 **[126]**;

DECLARE their intention of allowing a greater margin of flexibility in allocating financing from the Structural Funds to specific needs not covered under the present Structural Funds regulations;

DECLARE their willingness to modulate the levels of **Community Union** participation in the context of programmes and projects of the Structural Funds, with a view to avoiding excessive increases in budgetary expenditure in the less prosperous Member States;

RECOGNISE the need to monitor regularly the progress made towards achieving economic and social cohesion and state their willingness to study all necessary measures in this respect;

DECLARE their intention of taking greater account of the contributive capacity of individual Member States in the system of own resources, and of examining means of correcting, for the less prosperous Member States, regressive elements existing in the present own resources system;

AGREE to annex this Protocol **to the Treaty on European Union and** ~~to the Treaty establishing the European Community~~ **on the Functioning of the European Union**.

PROTOCOL ~~(No 15)~~

ON SPECIAL ARRANGEMENTS FOR GREENLAND ~~(1985)~~

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The treatment on import into the ~~Community~~ **Union** of products subject to the common organisation of the market in fishery products, originating in Greenland, shall, while complying with the mechanisms of the ~~common~~ **internal** market organisation, involve exemption from customs duties and charges having equivalent effect and the absence of quantitative restrictions or measures having equivalent effect if the possibilities for access to Greenland fishing zones granted to the ~~Community~~ **Union** pursuant to an agreement between the ~~Community~~ **Union** and the authority responsible for Greenland are satisfactory to the ~~Community~~ **Union**.

2. All measures relating to the import arrangements for such products, including those relating to the adoption of such measures, shall be adopted in accordance with the procedure laid down in Article 37 ~~[43]~~ of the Treaty ~~establishing the European Economic Community~~ **on the Functioning of the European Union**.

Article 2

~~The Commission shall make proposals to the Council, which shall act by a qualified majority, for the transitional measures which it considers necessary, by reason of the entry into force of the new arrangements, with regard to the maintenance of rights acquired by natural or legal persons during the period when Greenland was part of the Community and the regularisation of the situation with regard to financial assistance granted by the Community to Greenland during that period.~~

PROTOCOL ~~(No 7)~~

~~ANNEXED TO THE TREATY ON EUROPEAN UNION AND TO THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES~~ ON ARTICLE 40.3.3 OF THE CONSTITUTION OF IRELAND (1992)

THE HIGH CONTRACTING PARTIES

HAVE AGREED upon the following provision, which shall be annexed ~~to the Treaty on European Union and~~ to the Treaty on European Union, ~~and to the Treaties establishing the European Communities~~ Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

Nothing in the ~~Treaty on European Union, or in the~~ Treaties ~~establishing the European Communities~~, or in the Treaty establishing the European Atomic Energy Community, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

PROTOCOL

RELATING TO ARTICLE 6(2) OF THE TREATY ON EUROPEAN UNION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 292 [344] of the Treaty on the Functioning of the European Union.

PROTOCOL

ON THE INTERNAL MARKET AND COMPETITION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the internal market as set out in Article 2 [3] of the Treaty on European Union includes a system ensuring that competition is not distorted,

HAVE AGREED that:

to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 [352] of the Treaty on the Functioning of the European Union.

This protocol shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

PROTOCOL

ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION TO POLAND AND TO THE UNITED KINGDOM

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself;

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or

administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

PROTOCOL

ON THE EXERCISE OF SHARED COMPETENCE

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Sole Article

With reference to Article 2 A [2] of the Treaty on the Functioning of the European Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

PROTOCOL

ON SERVICES OF GENERAL INTEREST

THE HIGH CONTRACTING PARTIES,

WISHING to emphasise the importance of services of general interest,

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 16 [14] of the Treaty on the Functioning of the European Union include in particular:

— the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;

— the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;

— a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

PROTOCOL ~~(No 34)~~

ON THE FINANCIAL CONSEQUENCES OF THE EXPIRY OF THE ECSC TREATY AND ON THE RESEARCH FUND FOR COAL AND STEEL ~~(2001)~~

THE HIGH CONTRACTING PARTIES,

~~DESIRING to settle certain questions relating to the expiry of the Treaty establishing the European Coal and Steel Community (ECSC),~~

~~WISHING to confer ownership of the ECSC funds on the European Community,~~

RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the European Community on 24 July 2002;

TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and therefore the necessity to provide for certain special rules in this regard,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community:

Article 1

~~1. All assets and liabilities of the ECSC, as they exist on 23 July 2002, shall be transferred to the European Community on 24 July 2002.~~

~~2.~~ 1. The net worth of these assets and liabilities, as they appear in the balance sheet of the ECSC of 23 July 2002, subject to any increase or decrease which may occur as a result of the liquidation operations, shall be considered as assets intended for research in the sectors related to the coal and steel industry, referred to as the 'ECSC in liquidation'. On completion of the liquidation they shall be referred to as the 'assets of the Research Fund for Coal and Steel'.

~~3.~~ 2. The revenue from these assets, referred to as the 'Research Fund for Coal and Steel', shall be used exclusively for research, outside the research framework programme, in the sectors related to the coal and steel industry in accordance with the provisions of this Protocol and of acts adopted on the basis hereof.

Article 2

1. The Council, acting ~~unanimously on a proposal from the Commission~~ in accordance with a special legislative procedure and after consulting obtaining the consent of the European Parliament, shall adopt all the necessary provisions for the implementation of this Protocol, including essential principles.

~~2. and proper decision-making procedures, in particular for the adoption of~~ The Council shall adopt, on a proposal from the Commission and after consulting the European Parliament, measures establishing multiannual financial guidelines for managing the assets of the Research Fund for Coal and Steel and technical guidelines for the research programme of the Research Fund for Coal and Steel.

Article 3

Except as otherwise provided in this Protocol and in the acts adopted on the basis hereof, the provisions of the Treaty ~~establishing the European Community~~ on the Functioning of the European Union shall apply.

Article 4

~~This Protocol shall apply from 24 July 2002.~~

PROTOCOL

ON THE DECISION OF THE COUNCIL RELATING TO THE IMPLEMENTATION OF ARTICLE 9 C(4) [16(4)] OF THE TREATY ON EUROPEAN UNION AND ARTICLE 205(2) [238(2)] OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION BETWEEN 1 NOVEMBER 2014 AND 31 MARCH 2017 ON THE ONE HAND, AND AS FROM 1 APRIL 2017 ON THE OTHER

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the fundamental importance that agreeing on the Decision of the Council relating to the implementation of Article 9 C(4) [16(4)] of the Treaty on European Union and Article 205(2) [238(2)] of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other (hereinafter ‘the Decision’), had when approving the Treaty of Lisbon,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Sole Article

Before the examination by the Council of any draft which would aim either at amending or abrogating the Decision or any of its provisions, or at modifying indirectly its scope or its meaning through the modification of another legal act of the Union, the European Council shall hold a preliminary deliberation on the said draft, acting by consensus in accordance with Article 9 B(4) [15(4)] of the Treaty on European Union.

PROTOCOL

ON TRANSITIONAL PROVISIONS

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the institutional provisions of the Treaties applicable prior to the entry into force of the Treaty of Lisbon to the provisions contained in that Treaty, it is necessary to lay down transitional provisions,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

Article 1

In this Protocol, the words 'the Treaties' shall mean the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

TITLE I

PROVISIONS CONCERNING THE EUROPEAN PARLIAMENT

Article 2

In accordance with the second subparagraph of Article 9 A(2) [14(2)] of the Treaty on European Union, the European Council shall adopt a decision determining the composition of the European Parliament in good time before the 2009 European Parliament elections.

Until the end of the 2004-2009 parliamentary term, the composition and the number of representatives elected to the European Parliament shall remain the same as on the date of the entry into force of the Treaty of Lisbon.

TITLE II

PROVISIONS CONCERNING THE QUALIFIED MAJORITY

Article 3

1. In accordance with Article 9 C(4) [16(4)] of the Treaty on European Union, the provisions of that paragraph and of Article 205(2) [238(2)] of the Treaty on the Functioning of the European Union relating to the definition of the qualified majority in the European Council and the Council shall take effect on 1 November 2014.

2. Between 1 November 2014 and 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that it be adopted in accordance with the qualified majority as defined in paragraph 3. In that case, paragraphs 3 and 4 shall apply.

3. Until 31 October 2014, the following provisions shall remain in force, without prejudice to the second subparagraph of Article 201a(1) [235(1)] of the Treaty on the Functioning of the European Union.

For acts of the European Council and of the Council requiring a qualified majority, members' votes shall be weighted as follows:

Belgium	12	Luxembourg	4
Bulgaria	10	Hungary	12
Czech Republic	12	Malta	3
Denmark	7	Netherlands	13
Germany	29	Austria	10
Estonia	4	Poland	27
Ireland	7	Portugal	12
Greece	12	Romania	14
Spain	27	Slovenia	4
France	29	Slovakia	7
Italy	29	Finland	7
Cyprus	4	Sweden	10
Latvia	4	United Kingdom	29
Lithuania	7		

Acts shall be adopted if there are at least 255 votes in favour representing a majority of the members where, under the Treaties, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 255 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council may request that, where an act is adopted by the European Council or the Council by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62 % of the total population of the Union. If that proves not to be the case, the act shall not be adopted.

4. Until 31 October 2014, the qualified majority shall, in cases where, under the Treaties, not all the members of the Council participate in voting, namely in the cases where reference is made to the qualified majority as defined in Article 205(3) [238(3)] of the Treaty on the Functioning of the European Union, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 3 of this Article.

TITLE III

PROVISIONS CONCERNING THE CONFIGURATIONS OF THE COUNCIL

Article 4

Until the entry into force of the decision referred to in the first subparagraph of Article 9 C(6) [16(6)] of the Treaty on European Union, the Council may meet in the configurations laid down in the second and third subparagraphs of that paragraph and in the other configurations on the list established by a decision of the General Affairs Council, acting by a simple majority.

TITLE IV

PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

Article 5

The members of the Commission in office on the date of entry into force of the Treaty of Lisbon shall remain in office until the end of their term of office. However, on the day of the appointment of the High Representative of the Union for Foreign Affairs and Security Policy, the term of office of the member having the same nationality as the High Representative shall end.

TITLE V

PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL

Article 6

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty of Lisbon. The Council shall appoint a Secretary-General in conformity with Article 207(2) [240(2)] of the Treaty on the Functioning of the European Union.

TITLE VI

PROVISIONS CONCERNING ADVISORY BODIES

Article 7

Until entry into force of the decision referred to in Article 258 [301] of the Treaty on the Functioning of the European Union, the allocation of members of the Economic and Social Committee shall be as follows:

Belgium	12	Luxembourg	6
Bulgaria	12	Hungary	12
Czech Republic	12	Malta	5
Denmark	9	Netherlands	12
Germany	24	Austria	12
Estonia	7	Poland	21
Ireland	9	Portugal	12
Greece	12	Romania	15
Spain	21	Slovenia	7
France	24	Slovakia	9
Italy	24	Finland	9
Cyprus	6	Sweden	12
Latvia	7	United Kingdom	24
Lithuania	9		

Article 8

Until entry into force of the decision referred to in Article 263 [305] of the Treaty on the Functioning of the European Union, the allocation of members of the Committee of the Regions shall be as follows:

Belgium	12	Luxembourg	6
Bulgaria	12	Hungary	12
Czech Republic	12	Malta	5
Denmark	9	Netherlands	12
Germany	24	Austria	12
Estonia	7	Poland	21
Ireland	9	Portugal	12
Greece	12	Romania	15
Spain	21	Slovenia	7
France	24	Slovakia	9
Italy	24	Finland	9
Cyprus	6		

Latvia	7	Sweden	12
Lithuania	9	United Kingdom	24

TITLE VII

TRANSITIONAL PROVISIONS CONCERNING ACTS ADOPTED ON THE BASIS OF TITLES V AND VI OF THE TREATY ON EUROPEAN UNION PRIOR TO THE ENTRY INTO FORCE OF THE TREATY OF LISBON

Article 9

The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. The same shall apply to agreements concluded between Member States on the basis of the Treaty on European Union.

Article 10

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 226 [258] of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.

2. The amendment of an act referred to in paragraph 1 shall entail the applicability of the powers of the institutions referred to in that paragraph as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply.

3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision. A qualified majority of the Council shall be defined in accordance with Article 205(3)(a) [238(3)(a)] of the Treaty on the Functioning of the European Union.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.

5. The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph. In that case, the relevant provisions of the Protocol on the Schengen *acquis* integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply. The powers of the institutions with regard to those acts shall be those set out in the Treaties. When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

~~PROTOCOL (No 10)~~

~~ON THE ENLARGEMENT OF THE EUROPEAN UNION (2001)~~

~~THE HIGH CONTRACTING PARTIES~~

~~HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaties establishing the European Communities:~~

~~Article 1~~

~~Repeal of the Protocol on the institutions~~

~~The Protocol on the institutions with the prospect of enlargement of the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities, is hereby repealed.~~

~~Article 2~~

~~Provisions concerning the European Parliament~~

~~1. On 1 January 2004 and with effect from the start of the 2004 to 2009 term, in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community, the first subparagraph shall be replaced by the following:~~

~~‘The number of representatives elected in each Member State shall be as follows:~~

Belgium	22
Denmark	13
Germany	99
Greece	22
Spain	50
France	72
Ireland	12
Italy	72
Luxembourg	6
Netherlands	25
Austria	17
Portugal	22
Finland	13

Sweden	18
United Kingdom	72 ²

~~2. Subject to paragraph 3, the total number of representatives in the European Parliament for the 2004 to 2009 term shall be equal to the number of representatives specified in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community plus the number of representatives of the new Member States resulting from the accession treaties signed by 1 January 2004 at the latest.~~

~~3. If the total number of members referred to in paragraph 2 is less than 732, a pro rata correction shall be applied to the number of representatives to be elected in each Member State, so that the total number is as close as possible to 732, without such a correction leading to the number of representatives to be elected in each Member State being higher than that provided for in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community for the 1999 to 2004 term.~~

~~The Council shall adopt a decision to that effect.~~

~~4. By way of derogation from the second paragraph of Article 189 of the Treaty establishing the European Community and from the second paragraph of Article 107 of the Treaty establishing the European Atomic Energy Community, in the event of the entry into force of accession treaties after the adoption of the Council decision provided for in the second subparagraph of paragraph 3 of this Article, the number of members of the European Parliament may temporarily exceed 732 for the period for which that decision applies. The same correction as that referred to in the first subparagraph of paragraph 3 of this Article shall be applied to the number of representatives to be elected in the Member States in question.~~

Article 3

Provisions concerning the weighting of votes in the Council

~~1. (Repealed)~~

~~2. At the time of each accession, the threshold referred to in the second subparagraph of Article 205(2) of the Treaty establishing the European Community and in the second subparagraph of Article 118(2) of the Treaty establishing the European Atomic Energy Community shall be calculated in such a way that the qualified majority threshold expressed in votes does not exceed the threshold resulting from the table in the Declaration on the enlargement of the European Union, included in the Final Act of the Conference which adopted the Treaty of Nice.~~

Article 4

Provisions concerning the Commission

~~1. On 1 November 2004 and with effect from when the first Commission following that date takes up its duties, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:~~

~~‘1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.~~

~~The Commission shall include one national of each of the Member States.~~

~~The number of Members of the Commission may be altered by the Council, acting unanimously.²~~

~~2. When the Union consists of 27 Member States, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:~~

~~‘1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.~~

~~The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.~~

~~The number of Members of the Commission shall be set by the Council, acting unanimously.²~~

~~This amendment shall apply as from the date on which the first Commission following the date of accession of the 27th Member State of the Union takes up its duties.~~

~~3. The Council, acting unanimously after signing the treaty of accession of the 27th Member State of the Union, shall adopt:~~

~~— the number of Members of the Commission,~~

~~— the implementing arrangements for a rotation system based on the principle of equality containing all the criteria and rules necessary for determining the composition of successive colleges automatically on the basis of the following principles:~~

~~(a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;~~

~~(b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.~~

~~4. Any State which accedes to the Union shall be entitled, at the time of its accession, to have one of its nationals as a Member of the Commission until paragraph 2 applies.~~

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~~PROTOCOL (No 12)~~

~~ON ITALY (1957)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~DESIRING to settle certain particular problems relating to Italy,~~

~~HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:~~

~~THE MEMBER STATES OF THE COMMUNITY~~

~~TAKE NOTE of the fact that the Italian Government is carrying out a 10-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;~~

~~RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;~~

~~RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;~~

~~AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;~~

~~ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;~~

~~RECOGNISE that in the event of Articles 119 and 120 being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population.~~

~~Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.~~

=====

~~PROTOCOL (No 13)~~

~~ON GOODS ORIGINATING IN AND COMING FROM CERTAIN COUNTRIES AND ENJOYING SPECIAL TREATMENT WHEN IMPORTED INTO A MEMBER STATE (1957)~~

~~THE HIGH CONTRACTING PARTIES~~

~~DESIRING to define in greater detail the application of this Treaty to certain goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State,~~

~~HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:~~

~~1. The application of the Treaty establishing the European Economic Community shall not require any alteration in the customs treatment applicable on 1 January 1958 to imports into the Benelux countries of goods originating in and coming from Surinam or the Netherlands Antilles;~~

~~2. Goods imported into a Member State and benefiting from the treatment referred to above shall not be considered to be in free circulation in that State within the meaning of Article 24 of this Treaty when re-exported to another Member State.~~

~~3. Member States shall communicate to the Commission and to the other Member States their rules governing the special treatment referred to in this Protocol, together with a list of the goods entitled to such treatment.~~

~~They shall also inform the Commission and the other Member States of any changes subsequently made in those lists or in the treatment.~~

~~4. The Commission shall ensure that the application of these rules cannot be prejudicial to other Member States; to this end it may take any appropriate measures as regards relations between Member States.~~

~~Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.~~

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~~PROTOCOL (No 19)~~

~~ON THE STATUTE OF THE EUROPEAN MONETARY INSTITUTE (1992)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~DESIRING to lay down the Statute of the European Monetary Institute,~~

~~HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.~~

Article 1

Constitution and name

~~1.1. The European Monetary Institute (EMI) shall be established in accordance with Article 117 of this Treaty; it shall perform its functions and carry out its activities in accordance with the provisions of this Treaty and of this Statute.~~

~~1.2. The members of the EMI shall be the central banks of the Member States ('national central banks'). For the purposes of this Statute, the Institut monétaire luxembourgeois shall be regarded as the central bank of Luxembourg.~~

~~1.3. Pursuant to Article 117 of this Treaty, both the Committee of Governors and the European Monetary Cooperation Fund (EMCF) shall be dissolved. All assets and liabilities of the EMCF shall pass automatically to the EMI.~~

Article 2

Objectives

~~The EMI shall contribute to the realisation of the conditions necessary for the transition to the third stage of economic and monetary union, in particular by:~~

- ~~— strengthening the coordination of monetary policies with a view to ensuring price stability;~~
- ~~— making the preparations required for the establishment of the European System of Central Banks (ESCB), and for the conduct of a single monetary policy and the creation of a single currency in the third stage;~~
- ~~— overseeing the development of the ECU.~~

Article 3

General principles

~~3.1. The EMI shall carry out the tasks and functions conferred upon it by this Treaty and this Statute without prejudice to the responsibility of the competent authorities for the conduct of the monetary policy within the respective Member States~~

~~3.2. The EMI shall act in accordance with the objectives and principles stated in Article 2 of the Statute of the ESCB.~~

Article 4

Primary tasks

4.1. In accordance with Article 117(2) of this Treaty, the EMI shall:

- ~~—strengthen cooperation between the national central banks;~~
- ~~—strengthen the coordination of the monetary policies of the Member States with the aim of ensuring price stability;~~
- ~~—monitor the functioning of the European Monetary System (EMS);~~
- ~~—hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;~~
- ~~—take over the tasks of the EMCF; in particular it shall perform the function referred to in Articles 6.1, 6.2 and 6.3;~~
- ~~—facilitate the use of the ECU and oversee its development, including the smooth functioning of the ECU clearing system.~~

The EMI shall also:

- ~~—hold regular consultations concerning the course of monetary policies and the use of monetary policy instruments;~~
- ~~—normally be consulted by the national monetary authorities before they take decisions on the course of monetary policy in the context of the common framework for ex ante coordination.~~

4.2. At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in the third stage, in accordance with the principle of an open market economy with free competition. This framework shall be submitted by the Council of the EMI for decision to the ECB at the date of its establishment.

In accordance with Article 117(3) of this Treaty, the EMI shall in particular:

- ~~—prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;~~
- ~~—promote the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence;~~
- ~~—prepare the rules for operations to be undertaken by the national central banks in the framework of the ESCB;~~
- ~~—promote the efficiency of cross-border payments;~~
- ~~—supervise the technical preparation of ECU banknotes.~~

Article 5

Advisory functions

~~5.1. In accordance with Article 117(4) of this Treaty, the Council of the EMI may formulate opinions or recommendations on the overall orientation of monetary policy and exchange rate policy as well as on related measures introduced in each Member State. The EMI may submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the EMS.~~

~~5.2. The Council of the EMI may also make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.~~

~~5.3. In accordance with Article 117(6) of this Treaty, the EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.~~

~~Within the limits and under the conditions set out by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence, in particular with regard to Article 4.2.~~

~~5.4. In accordance with Article 117(5) of this Treaty, the EMI may decide to publish its opinions and its recommendations.~~

Article 6

Operational and technical functions

~~6.1. The EMI shall:~~

~~— provide for the multilateralisation of positions resulting from interventions by the national central banks in Community currencies and the multilateralisation of intra-Community settlements;~~

~~— administer the very short term financing mechanism provided for by the Agreement of 13 March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System (hereinafter referred to as ‘EMS Agreement’) and the short term monetary support mechanism provided for in the Agreement between the central banks of the Member States of the European Economic Community of 9 February 1970, as amended;~~

~~— perform the functions referred to in Article 11 of Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium term financial assistance for Member States’ balances of payments.~~

~~6.2. The EMI may receive monetary reserves from the national central banks and issue ECUs against such assets for the purpose of implementing the EMS Agreement. These ECUs may be used by the EMI and the national central banks as a means of settlement and for transactions between them and the EMI. The EMI shall take the necessary administrative measures for the implementation of this paragraph.~~

~~6.3. The EMI may grant to the monetary authorities of third countries and to international monetary institutions the status of ‘other holders’ of ECUs and fix the terms and conditions under which such ECUs may be acquired, held or used by other holders.~~

~~6.4. The EMI shall be entitled to hold and manage foreign exchange reserves as an agent for and at the request of national central banks. Profits and losses regarding these reserves shall be for the account of the national central bank depositing the reserves. The EMI shall perform this function on the basis of bilateral contracts in accordance with rules laid down in a decision of the EMI. These rules shall ensure that transaction with these reserves shall not interfere with the monetary~~

~~policy and exchange rate policy of the competent monetary authority of any Member State and shall be consistent with the objectives of the EMI and the proper functioning of the exchange rate mechanism of the EMS.~~

Article 7

Other tasks

~~7.1. Once a year the EMI shall address a report to the Council on the state of the preparations for the third stage. These reports shall include an assessment of the progress towards convergence in the Community, and cover in particular the adaptation of monetary policy instruments and the preparation of the procedures necessary for carrying out a single monetary policy in the third stage, as well as the statutory requirements to be fulfilled for national central banks to become an integral part of the ESCB.~~

~~7.2. In accordance with the Council decisions referred to in Article 117(7) of this Treaty, the EMI may perform other tasks for the preparation of the third stage.~~

Article 8

Independence

~~The members of the Council of the EMI who are the representatives of their institutions shall, with respect to their activities, act according to their own responsibilities. In exercising the powers and performing the tasks and duties conferred upon them by this Treaty and this Statute, the Council of the EMI may not seek or take any instructions from Community institutions or bodies or governments of Member States. The Community institutions and bodies as well as the governments of the Member States undertake to respect this principle and not to seek to influence the Council of the EMI in the performance of its tasks.~~

Article 9

Administration

~~9.1. In accordance with Article 117(1) of this Treaty, the EMI shall be directed and managed by the Council of the EMI.~~

~~9.2. The Council of the EMI shall consist of a President and the Governors of the national central banks, one of whom shall be Vice-President. If a Governor is prevented from attending a meeting, he may nominate another representative of his institution.~~

~~9.3. The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from, as the case may be, the Committee of Governors or the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognised standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President. The President and Vice-President shall be appointed for a period of three years.~~

~~9.4. The President shall perform his duties on a full time basis. He shall not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council of the EMI.~~

~~9.5. The President shall:~~

- ~~—prepare and chair the meetings of the Council of the EMI;~~
- ~~—without prejudice to Article 22, present the views of the EMI externally;~~
- ~~—be responsible for the day-to-day management of the EMI.~~

~~In the absence of the President, his duties shall be performed by the Vice-President.~~

~~9.6. The terms and conditions of employment of the President, in particular his salary, pension and other social security benefits, shall be the subject of a contract with the EMI and shall be fixed by the Council of the EMI on a proposal from a Committee comprising three members appointed by the Committee of Governors or the Council of the EMI, as the case may be, and three members appointed by the Council. The President shall not have the right to vote on matters referred to in this paragraph.~~

~~9.7. If the President no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council of the EMI, compulsorily retire him.~~

~~9.8. The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.~~

Article 10

Meetings of the Council of the EMI and voting procedures

~~10.1. The Council of the EMI shall meet at least 10 times a year. The proceedings of Council meetings shall be confidential. The Council of the EMI may, acting unanimously, decide to make the outcome of its deliberations public.~~

~~10.2. Each member of the Council of the EMI or his nominee shall have one vote.~~

~~10.3. Save as otherwise provided for in this Statute, the Council of the EMI shall act by a simple majority of its members.~~

~~10.4. Decisions to be taken in the context of Articles 4.2, 5.4, 6.2 and 6.3 shall require unanimity of the members of the Council of the EMI.~~

~~The adoption of opinions and recommendations under Articles 5.1 and 5.2, the adoption of decisions under Articles 6.4, 16 and 23.6 and the adoption of guidelines under Article 15.3 shall require a qualified majority of two thirds of the members of the Council of the EMI.~~

Article 11

Interinstitutional cooperation and reporting requirements

~~11.1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Council of the EMI.~~

~~11.2. The President of the EMI shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the EMI.~~

~~11.3. At a date to be established in the Rules of Procedure, the EMI shall prepare an annual report on its activities and on monetary and financial conditions in the Community. The annual report, together with the annual accounts of the EMI, shall be addressed to the European Parliament, the Council and the Commission and also to the European Council.~~

~~The President of the EMI may, at the request of the European Parliament or on his own initiative, be heard by the competent committees of the European Parliament.~~

~~11.4. Reports published by the EMI shall be made available to interested parties free of charge.~~

Article 12

Currency denomination

~~The operations of the EMI shall be expressed in ECUs.~~

Article 13

Seat

~~Before the end of 1992, the decision as to where the seat of the EMI will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or Government.~~

Article 14

Legal capacity

~~The EMI, which in accordance with Article 117(1) of this Treaty shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their law; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.~~

Article 15

Legal acts

~~15.1. In the performance of its tasks, and under the conditions laid down in this Statute, the EMI shall:~~

~~— deliver opinions;~~

~~— make recommendations;~~

~~— adopt guidelines, and take decisions, which shall be addressed to the national central banks.~~

~~15.2. Opinions and recommendations of the EMI shall have no binding force.~~

~~15.3. The Council of the EMI may adopt guidelines laying down the methods for the implementation of the conditions necessary for the ESCB to perform its functions in the third stage. EMI guidelines shall have no binding force; they shall be submitted for decision to the ECB.~~

~~15.4. Without prejudice to Article 3.1, a decision of the EMI shall be binding in its entirety upon those to whom it is addressed. Articles 253 and 254 of this Treaty shall apply to these decisions.~~

Article 16

Financial resources

~~16.1. The EMI shall be endowed with its own resources. The size of the resources of the EMI shall be determined by the Council of the EMI with a view to ensuring the income deemed necessary to cover the administrative expenditure incurred in the performance of the tasks and functions of the EMI.~~

~~16.2. The resources of the EMI determined in accordance with Article 16.1 shall be provided out of contributions by the national central banks in accordance with the key referred to in Article 29.1 of the Statute of the ESCB and be paid up at the establishment of the EMI. For this purpose, the statistical data to be used for the determination of the key shall be provided by the Commission, in accordance with the rules adopted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Committee of Governors and the Committee referred to in Article 114 of this Treaty.~~

~~16.3. The Council of the EMI shall determine the form in which contributions shall be paid up.~~

Article 17

Annual accounts and auditing

~~17.1. The financial year of the EMI shall begin on the first day of January and end on the last day of December.~~

~~17.2. The Council of the EMI shall adopt an annual budget before the beginning of each financial year.~~

~~17.3. The annual accounts shall be drawn up in accordance with the principles established by the Council of the EMI. The annual accounts shall be approved by the Council of the EMI and shall thereafter be published.~~

~~17.4. The annual accounts shall be audited by independent external auditors approved by the Council of the EMI. The auditors shall have full power to examine all books and accounts of the EMI and to obtain full information about its transactions.~~

~~The provisions of Article 248 of this Treaty shall only apply to an examination of the operational efficiency of the management of the EMI.~~

~~17.5. Any surplus of the EMI shall be transferred in the following order:~~

~~(a) an amount to be determined by the Council of the EMI shall be transferred to the general reserve fund of the EMI;~~

~~(b) any remaining surplus shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.~~

~~17.6. In the event of a loss incurred by the EMI, the shortfall shall be offset against the general reserve fund of the EMI. Any remaining shortfall shall be made good by contributions from the national central banks, in accordance with the key as referred to in Article 16.2.~~

Article 18

Staff

~~18.1. The Council of the EMI shall lay down the conditions of employment of the staff of the EMI.~~

~~18.2. The Court of Justice shall have jurisdiction in any dispute between the EMI and its servants within the limits and under the conditions laid down in the conditions of employment.~~

Article 19

Judicial control and related matters

~~19.1. The acts or omissions of the EMI shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this Treaty. The EMI may institute proceedings in the cases and under the conditions laid down in this Treaty.~~

~~19.2. Disputes between the EMI, on the one hand, and its creditors, debtors or any other person, on the other, shall fall within the jurisdiction of the competent national courts, save where jurisdiction has been conferred upon the Court of Justice.~~

~~19.3. The EMI shall be subject to the liability regime provided for in Article 288 of this Treaty.~~

~~19.4. The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the EMI, whether that contract be governed by public or private law.~~

~~19.5. A decision of the EMI to bring an action before the Court of Justice shall be taken by the Council of the EMI.~~

Article 20

Professional secrecy

~~20.1. Members of the Council of the EMI and the staff of the EMI shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.~~

~~20.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.~~

Article 21

Privileges and immunities

~~The EMI shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities.~~

Article 22

Signatories

~~The EMI shall be legally committed to third parties by the President or the Vice-President or by the signatures of two members of the staff of the EMI who have been duly authorised by the President to sign on behalf of the EMI.~~

Article 23

Liquidation of the EMI

~~23.1. In accordance with Article 123 of this Treaty, the EMI shall go into liquidation on the establishment of the ECB. All assets and liabilities of the EMI shall then pass automatically to the ECB. The latter shall liquidate the EMI according to the provisions of this Article. The liquidation shall be completed by the beginning of the third stage.~~

~~23.2. The mechanism for the creation of ECUs against gold and US dollars as provided for by Article 17 of the EMS Agreement shall be unwound by the first day of the third stage in accordance with Article 20 of the said Agreement.~~

~~23.3. All claims and liabilities arising from the very short-term financing mechanism and the short-term monetary support mechanism, under the Agreements referred to in Article 6.1, shall be settled by the first day of the third stage.~~

~~23.4. All remaining assets of the EMI shall be disposed of and all remaining liabilities of the EMI shall be settled.~~

~~23.5. The proceeds of the liquidation described in Article 23.4 shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.~~

~~23.6. The Council of the EMI may take the measures necessary for the application of Articles 23.4 and 23.5.~~

~~23.7. Upon the establishment of the ECB, the President of the EMI shall relinquish his office.~~

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~~PROTOCOL (No 23)~~

~~ON PORTUGAL (1992)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~DESIRING to settle certain particular problems relating to Portugal,~~

~~HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:~~

~~1. Portugal is hereby authorised to maintain the facility afforded to the autonomous regions of Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law.~~

~~2. Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible.~~

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~~PROTOCOL (No 24)~~

~~ON THE TRANSITION TO THE THIRD STAGE OF ECONOMIC AND MONETARY UNION (1992)~~

~~THE HIGH CONTRACTING PARTIES~~

~~Declare the irreversible character of the Community's movement to the third stage of economic and monetary union by signing the new Treaty provisions on economic and monetary union.~~

~~Therefore all Member States shall, whether they fulfil the necessary conditions for the adoption of a single currency or not, respect the will for the Community to enter swiftly into the third stage, and therefore no Member State shall prevent the entering into the third stage.~~

~~If by the end of 1997 the date of the beginning of the third stage has not been set, the Member States concerned, the Community institutions and other bodies involved shall expedite all preparatory work during 1998, in order to enable the Community to enter the third stage irrevocably on 1 January 1999 and to enable the ECB and the ESCB to start their full functioning from this date.~~

~~This Protocol shall be annexed to the Treaty establishing the European Community.~~

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~~PROTOCOL (No 33)~~

~~ON PROTECTION AND WELFARE OF ANIMALS (1997)~~

~~THE HIGH CONTRACTING PARTIES,~~

~~DESIRING to ensure improved protection and respect for the welfare of animals as sentient beings;~~

~~HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community,~~

~~In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.~~

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~~PROTOCOL (No 35)~~

~~ON ARTICLE 67 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY (2001)~~

~~THE HIGH CONTRACTING PARTIES~~

~~HAVE AGREED UPON the following provision, which shall be annexed to the Treaty establishing the European Community:~~

~~Sole Article~~

~~From 1 May 2004, the Council shall act by a qualified majority, on a proposal from the Commission and after consulting the European Parliament, in order to adopt the measures referred to in Article 66 of the Treaty establishing the European Community.~~

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