

# EUROPEAN UNION

## CONSOLIDATED VERSIONS

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

#### INTRODUCTORY NOTE

This publication contains the consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community, incorporating the amendments made by the Treaty of Athens, signed on 16 April 2003.

It also reproduces all the Protocols annexed to those Treaties, as amended by the 2003 Act of Accession.

This text has been produced for documentary purposes and does not involve the responsibility of the institutions.

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**CONSOLIDATED VERSION  
OF THE TREATY  
ON EUROPEAN UNION**



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HIS MAJESTY THE KING OF THE BELGIANS, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, 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 <sup>(1)</sup>,

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

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, 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,

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<sup>(1)</sup> 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, 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.

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, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

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,

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*

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union'.

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.

## Article 2

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.

## Article 3

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 4*

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*

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*

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.

#### *Article 7*

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, 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 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 Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), 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 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 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.

## TITLE II

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

#### *Article 8*

(not reproduced)

### TITLE III

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

#### *Article 9*

(not reproduced)

### TITLE IV

## PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY

#### *Article 10*

(not reproduced)

### TITLE V

## PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

#### *Article 11*

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.

2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

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 shall ensure that these principles are complied with.

### *Article 12*

The Union shall pursue the objectives set out in Article 11 by:

- defining the principles of and general guidelines for the common foreign and security policy,
- deciding on common strategies,
- adopting joint actions,
- adopting common positions,
- strengthening systematic cooperation between Member States in the conduct of policy.

### *Article 13*

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.

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.

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 shall ensure the unity, consistency and effectiveness of action by the Union.

### Article 14

1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. 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, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.
3. Joint actions 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. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided 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. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.
7. Should there be any major difficulties in implementing a joint action, 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 or impair its effectiveness.

### Article 15

The Council shall adopt common positions. Common positions 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 positions.

### Article 16

Member States shall inform and consult one another within 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.



## Article 17

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. 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 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, peace-keeping 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.

## Article 18

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, appoint a special representative with a mandate in relation to particular policy issues.

### *Article 19*

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such forums.

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

2. Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter 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 fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

### *Article 20*

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

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

### Article 21

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and 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.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

### Article 22

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 <sup>(1)</sup>

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).

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

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 232 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*

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.

#### *Article 25*

Without prejudice to Article 207 of the Treaty establishing the European Community, 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 on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.

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 26*

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*

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

#### *Article 27a*

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.

#### *Article 27b*

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*

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*

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*

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.

For the purposes of this Article, the Council shall act by a qualified majority. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the members of the Council concerned as those laid down in the third subparagraph of Article 23(2).

### *Article 28*

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. 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 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 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), second subparagraph, shall not be obliged to contribute to the financing thereof.

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.

## TITLE VI

### **PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS**

### *Article 29*

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*

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 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*

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;
  - (c) 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*

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*

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* <sup>(1)</sup>

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.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

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 of the Council shall require at least 232 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*

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*

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*

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*

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

### *Article 39*

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*

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*

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*

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*

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

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

#### Article 43

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

#### *Article 43a*

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*

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*

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 27c. 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*

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*

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

#### FINAL PROVISIONS

#### *Article 46*

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 47*

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 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*

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.

#### *Article 49*

Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

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 50*

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*

This Treaty is concluded for an unlimited period.

#### *Article 52*

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 <sup>(1)</sup>*

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish 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 Treaty of 1994, the Finnish and Swedish versions of this Treaty shall also be authentic. Pursuant to the Accession Treaty of 2003, the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovene versions of this Treaty shall also be authentic.

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<sup>(1)</sup> See Appendix at the end of this publication.

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)*

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**CONSOLIDATED VERSION  
OF THE TREATY  
ESTABLISHING THE EUROPEAN COMMUNITY**



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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 <sup>(1)</sup>,

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 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.

<sup>(1)</sup> The Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, Ireland, 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, 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 Community.

## PART ONE

### PRINCIPLES

#### *Article 1*

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

#### *Article 2*

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.

#### *Article 3*

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;
- (c) 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;
- (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 activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.

#### *Article 4*

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*

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.

#### *Article 6*

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

#### *Article 7*

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*

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*

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*

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*

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*

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*

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.

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

### *Article 13*

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*

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*

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*

Without prejudice to Articles 73, 86 and 87, 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 and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

## PART TWO

### CITIZENSHIP OF THE UNION

#### *Article 17*

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 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.

#### *Article 18*

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 and by the measures adopted to give it effect.

2. If action by the Community should prove necessary to attain this objective and this Treaty has not provided the necessary powers, the Council 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.

### *Article 19*

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

2. Without prejudice to Article 190(4) 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 and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

### *Article 20*

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 the necessary rules among themselves and start the international negotiations required to secure this protection.

### *Article 21*

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

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

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.

#### *Article 22*

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.

On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights laid down in this Part, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

## PART THREE

### COMMUNITY POLICIES

#### TITLE I

#### FREE MOVEMENT OF GOODS

#### *Article 23*

1. The Community shall be based upon 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 and of Chapter 2 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*

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*

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*

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

#### *Article 27*

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 in so far as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the Community 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.

## CHAPTER 2

### PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

#### *Article 28*

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

### *Article 29*

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

### *Article 30*

The provisions of Articles 28 and 29 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.

### *Article 31*

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

### AGRICULTURE

### *Article 32*

1. The common market shall extend to agriculture 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.

2. Save as otherwise provided in Articles 33 to 38, the rules laid down for the establishment of the common market shall apply to agricultural products.
3. The products subject to the provisions of Articles 33 to 38 are listed in Annex I to this Treaty.
4. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy.

### *Article 33*

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*

1. In order to attain the objectives set out in Article 33, 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, 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 and shall exclude any discrimination between producers or consumers within the Community.

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*

To enable the objectives set out in Article 33 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*

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 Council within the framework of Article 37(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33.

The Council 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

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.

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), 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.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organisations by the common organisation provided for in Article 34(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 similar to those existing in a national market.

4. 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.



### Article 38

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

### FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

#### CHAPTER 1

#### WORKERS

### Article 39

1. Freedom of movement for workers shall be secured within the Community.
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*

The Council shall, acting in accordance with the 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, 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*

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

#### *Article 42*

The Council shall, acting in accordance with the 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 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;
- (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.

## CHAPTER 2

### RIGHT OF ESTABLISHMENT

#### *Article 43*

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, 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*

1. In order to attain freedom of establishment as regards a particular activity, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by means of directives.

2. 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 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);
- (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 with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

#### *Article 45*

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 Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities.

### *Article 46*

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 Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the abovementioned provisions.

### *Article 47*

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.
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. 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*

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 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.

## CHAPTER 3

### SERVICES

#### *Article 49*

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

#### *Article 50*

Services shall be considered to be 'services' within the meaning of this Treaty 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 State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

#### *Article 51*

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*

1. In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, 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*

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

### *Article 54*

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.

### *Article 55*

The provisions of Articles 45 to 48 shall apply to the matters covered by this Chapter.

## CHAPTER 4

### CAPITAL AND PAYMENTS

### *Article 56*

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 <sup>(1)</sup>

1. The provisions of Article 56 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community 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 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 Council may, acting by a qualified majority on a proposal from the Commission, adopt 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. 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.

### Article 58

1. The provisions of Article 56 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.

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.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.



### *Article 59*

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 ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

### *Article 60*

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 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

### **VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATED TO FREE MOVEMENT OF PERSONS**

### *Article 61*

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.

### *Article 62*

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.

### *Article 63*

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.

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.

#### *Article 64*

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.

#### *Article 65*

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.

### Article 66

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

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

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 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

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.

## TITLE V

### TRANSPORT

### Article 70

The objectives of this Treaty shall, in matters governed by this title, be pursued by Member States within the framework of a common transport policy.

### Article 71

1. For the purpose of implementing Article 70, and taking into account the distinctive features of transport, the Council shall, acting in accordance with the procedure referred to in Article 251 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.

#### *Article 72*

Until the provisions referred to in Article 71(1) have been laid down, no Member State may, without the unanimous approval of the Council, 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*

Aids shall be compatible with this Treaty 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*

Any measures taken within the framework of this Treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

#### *Article 75*

1. In the case of transport within the Community, 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.

2. Paragraph 1 shall not prevent the Council from adopting other measures pursuant to Article 71(1).

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting 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 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*

1. The imposition by a Member State, in respect of transport operations carried out within the Community, 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.

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*

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*

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.

### *Article 79*

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*

1. The provisions of this title shall apply to transport by rail, road and inland waterway.
2. The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

The procedural provisions of Article 71 shall apply.

## TITLE VI

### **COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS**

#### CHAPTER 1

#### **RULES ON COMPETITION**

#### SECTION 1

#### **RULES APPLYING TO UNDERTAKINGS**

### *Article 81*

1. The following shall be prohibited as incompatible with the common 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 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,
- 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*

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common 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*

1. The appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82 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) and in Article 82 by making provision for fines and periodic penalty payments;
  - (b) to lay down detailed rules for the application of Article 81(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 and 82;
  - (d) to define the respective functions of the Commission and of the Court of Justice 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*

Until the entry into force of the provisions adopted in pursuance of Article 83, 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 market in accordance with the law of their country and with the provisions of Article 81, in particular paragraph 3, and of Article 82.

### *Article 85*

1. Without prejudice to Article 84, the Commission shall ensure the application of the principles laid down in Articles 81 and 82. 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.

### *Article 86*

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, in particular to those rules provided for in Article 12 and Articles 81 to 89.

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, 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.

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

### *Article 87*

1. Save as otherwise provided in this Treaty, 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 market.

2. The following shall be compatible with the common 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.
3. The following may be considered to be compatible with the common market:
- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (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 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*

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 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 market having regard to Article 87, or that such aid is being misused, it shall decide 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 and 227, refer the matter to the Court of Justice 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 market, in derogation from the provisions of Article 87 or from the regulations provided for in Article 89, 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 market having regard to Article 87, 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.

#### *Article 89*

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 and 88 and may in particular determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure.

### CHAPTER 2

#### **TAX PROVISIONS**

#### *Article 90*

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*

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*

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*

The Council shall, acting unanimously on a proposal from the Commission 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.

## CHAPTER 3

### **APPROXIMATION OF LAWS**

### *Article 94*

The Council shall, acting unanimously on a proposal from the Commission 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 market.

### *Article 95*

1. By way of derogation from Article 94 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 14. The Council shall, acting in accordance with the 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 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, 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 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 and 227, the Commission and 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 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, provisional measures subject to a Community control procedure.

#### *Article 96*

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 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 Council shall, on a proposal from the Commission, acting by a qualified majority, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.

#### *Article 97*

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, 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, 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 shall not apply.

## TITLE VII

### ECONOMIC AND MONETARY POLICY

#### CHAPTER 1

#### ECONOMIC POLICY

##### *Article 98*

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Article 2, and in the context of the broad guidelines referred to in Article 99(2). The Member States and the Community 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.

##### *Article 99*

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.

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, 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.

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.

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 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 Council may, acting by a qualified majority on a recommendation from the Commission, make 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.

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. The Council, acting in accordance with the 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*

1. Without prejudice to any other procedures provided for in this Treaty, the Council, acting by a qualified majority on a proposal from the Commission, may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.

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 financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

#### *Article 101*

1. Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States (hereinafter referred to as 'national central banks') in favour of Community institutions or bodies, 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.

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 ECB as private credit institutions.

#### *Article 102*

1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, 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*

1. The Community 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, may specify definitions for the application of the prohibition referred to in Article 101 and in this Article.

#### *Article 104*

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,

— 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.

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 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 shall address an opinion to the Council.

6. The Council shall, acting by a qualified majority on a recommendation 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 shall make recommendations 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 and 227 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 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 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 referred to in paragraphs 7 to 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.

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 Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB, 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*

1. The primary objective of the 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 with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2. 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.

2. The basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Community,
- to conduct foreign-exchange operations consistent with the provisions of Article 111,
- 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 ECB shall be consulted:

- on any proposed Community 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).

The ECB may submit opinions to the appropriate Community institutions or bodies 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 unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

### *Article 106*

1. The ECB shall have the exclusive right to authorise the issue of banknotes within the Community. 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.

2. Member States may issue coins subject to approval by the ECB of the volume of the issue. The Council may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

### *Article 107*

1. The ESCB shall be composed of the ECB and of the national central banks.

2. The ECB shall have legal personality.

3. The ESCB shall be governed by the decision-making bodies of the ECB which shall be the Governing Council and the Executive Board.

4. The Statute of the ESCB is laid down in a Protocol annexed to this Treaty.

5. 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 may be amended by the Council, acting 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.

6. 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 the Statute of the ESCB.

### *Article 108*

When exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies 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 109*

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 and the Statute of the ESCB.

### *Article 110*

1. In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:

- 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 in cases which shall be laid down in the acts of the Council referred to in Article 107(6),
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB,
- 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 ECB 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), 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 111*

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.

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.

## CHAPTER 3

### INSTITUTIONAL PROVISIONS

#### *Article 112*

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.

### *Article 113*

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*

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 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 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, 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, 105(6), 106(2), 107 (5) and (6), 111, 119, 120(2) and (3), 122(2), 123(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council,
- 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, the Commission and the ECB 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 ECB 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, 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*

For matters within the scope of Articles 99(4), 104 with the exception of paragraph 14, 111, 121, 122 and 123(4) and (5), 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 4

#### TRANSITIONAL PROVISIONS

#### *Article 116*

1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.
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 117*

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 118*

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 119*

1. Where a Member State 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 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 Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State 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 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 may have recourse;
- (b) measures needed to avoid deflection of trade where the State 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 State 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*

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) is not immediately taken, the Member State concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the common 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.

3. After the Commission has delivered an opinion and the Committee referred to in Article 114 has been consulted, the Council may, acting by a qualified majority, decide that the 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*

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,
- 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*

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.

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*

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.

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*

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

#### EMPLOYMENT

#### *Article 125*

Member States and the Community 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 of the Treaty on European Union and in Article 2 of this Treaty.

### *Article 126*

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 125 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community adopted pursuant to Article 99(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.

### *Article 127*

1. The Community 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 policies and activities.

### *Article 128*

1. The European Council shall each year consider the employment situation in the Community 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, 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).
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 and on the implementation of the guidelines for employment.

#### *Article 129*

The Council, acting in accordance with the 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*

The Council, 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,
- without prejudice to Article 207, 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.

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

#### *Article 131*

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*

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*

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*

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**

#### *Article 135*

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

### **SOCIAL POLICY, EDUCATION, VOCATIONAL TRAINING AND YOUTH**

#### CHAPTER 1

#### **SOCIAL PROVISIONS**

#### *Article 136*

The Community 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 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 economy.

They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action.

### *Article 137*

1. With a view to achieving the objectives of Article 136, the Community 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 co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Community territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150;
- (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 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 Council shall act in accordance with the 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, 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 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.

In this case, it shall ensure that, no later than the date on which a directive must be transposed 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.

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.

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*

1. The Commission shall have the task of promoting the consultation of management and labour at Community 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 action.

3. If, after such consultation, the Commission considers Community 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 consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

#### *Article 139*

1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

2. Agreements concluded at Community 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, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall act by qualified majority, except 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). In that case, it shall act unanimously.

#### *Article 140*

With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Chapter, 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.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

#### *Article 141*

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 Council, acting in accordance with the 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*

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

#### *Article 143*

The Commission shall draw up a report each year on progress in achieving the objectives of Article 136, including the demographic situation in the Community. 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.

### *Article 144*

The Council, 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,
- to promote exchanges of information, experience and good practice between Member States and with the Commission,
- without prejudice to Article 207, 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*

The Commission shall include a separate chapter on social developments within the Community 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

### *Article 146*

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, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

### *Article 147*

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

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing decisions relating to the European Social Fund.

### CHAPTER 3

#### EDUCATION, VOCATIONAL TRAINING AND YOUTH

#### Article 149

1. The Community 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.

2. Community 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,
- 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,
- encouraging the development of distance education.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- acting in accordance with the 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,



- acting by a qualified majority on a proposal from the Commission, shall adopt recommendations.

### *Article 150*

1. The Community 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 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 and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

4. The Council, acting in accordance with the 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.

## TITLE XII

### **CULTURE**

### *Article 151*

1. The Community 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 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 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 shall take cultural aspects into account in its action under other provisions of this Treaty, 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:

- acting in accordance with the 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,
- acting unanimously on a proposal from the Commission, shall adopt recommendations.

## TITLE XIII

### PUBLIC HEALTH

#### *Article 152*

1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human 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.

The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Community shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

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.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. The Council, acting in accordance with the 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:

- (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) incentive measures designed to protect and improve human health, 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, may also adopt recommendations for the purposes set out in this Article.

5. Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

## TITLE XIV

### CONSUMER PROTECTION

#### *Article 153*

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 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.

## TITLE XV

### TRANS-EUROPEAN NETWORKS

#### *Article 154*

1. To help achieve the objectives referred to in Articles 14 and 158 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 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 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.

#### *Article 155*

1. In order to achieve the objectives referred to in Article 154, the Community:
  - 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 may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

The Community'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. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

#### *Article 156*

The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the 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

### INDUSTRY

#### *Article 157*

1. The Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community'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, 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.

3. The Community 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 Council, acting in accordance with the 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.

This title shall not provide a basis for the introduction by the Community 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.

## TITLE XVII

### ECONOMIC AND SOCIAL COHESION

#### *Article 158*

In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the Community 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.

#### *Article 159*

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. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community 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 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 policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

#### *Article 160*

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

#### *Article 161*

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and 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.

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 multi-annual 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

Implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting in accordance with the 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 and 148 respectively shall continue to apply.

## TITLE XVIII

### RESEARCH AND TECHNOLOGICAL DEVELOPMENT

## Article 163

1. The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty.

2. For this purpose the Community shall, throughout the Community, 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 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 activities under this Treaty 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

In pursuing these objectives, the Community 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 research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community.

#### *Article 165*

1. The Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community 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.

#### *Article 166*

1. A multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee.

The framework programme shall:

- establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 and fix the relevant priorities,
- indicate the broad lines of such activities,
- fix the maximum overall amount and the detailed rules for Community 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 and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

#### *Article 167*

For the implementation of the multiannual framework programme the Council 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*

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 participation.

The Council shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

#### *Article 169*

In implementing the multiannual framework programme, the Community 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*

In implementing the multiannual framework programme the Community may make provision for cooperation in Community 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 and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

#### *Article 171*

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

### *Article 172*

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.

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

### *Article 173*

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 activities and the dissemination of results during the previous year, and the work programme for the current year.

## TITLE XIX

### ENVIRONMENT

### *Article 174*

1. Community 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.

2. Community 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. 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.

3. In preparing its policy on the environment, the Community shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Community,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Community as a whole and the balanced development of its regions.

4. 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 subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

#### *Article 175*

1. The Council, acting in accordance with the 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 in order to achieve the objectives referred to in Article 174.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, 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, 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 may, under the conditions laid down 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 Council, acting in accordance with the 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.

4. Without prejudice to certain measures of a Community nature, 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 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.

#### *Article 176*

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

## TITLE XX

### **DEVELOPMENT COOPERATION**

#### *Article 177*

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.

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*

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*

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*

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

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.

## TITLE XXI

### **ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES**

#### *Article 181a*

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*

The Member States agree to associate with the Community 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.

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 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*

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.
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, 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.



### *Article 184*

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.

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.

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*

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) 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*

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.

### *Article 187*

The Council, acting unanimously, shall, on the basis of the experience acquired under the association of the countries and territories with the Community and of the principles set out in this Treaty, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Community.

### *Article 188*

The provisions of Articles 182 to 187 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.

## PART FIVE

### INSTITUTIONS OF THE COMMUNITY

#### TITLE I

#### PROVISIONS GOVERNING THE INSTITUTIONS

##### CHAPTER 1

##### THE INSTITUTIONS

##### SECTION 1

##### THE EUROPEAN PARLIAMENT

### *Article 189*

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 732.

### *Article 190* <sup>(1)</sup>

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.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

2. The number of representatives elected in each Member State shall be as follows:

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Netherlands	27
Austria	18
Poland	54
Portugal	24
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78

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. The European Parliament shall draw up a proposal for elections 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 after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. The European Parliament, 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*

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 Council, acting in accordance with the procedure referred to in Article 251, shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding.

#### *Article 192*

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 Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.

### *Article 193*

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community 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, the Council and the Commission.

### *Article 194*

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 fields of activity and which affects him, her or it directly.

### *Article 195*

1. The European Parliament shall appoint an Ombudsman 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 institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

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 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 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 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.

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 body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament 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*

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 session at the request of a majority of its Members or at the request of the Council or of the Commission.

#### *Article 197*

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 Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

#### *Article 198*

Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast.

The Rules of Procedure shall determine the quorum.

### *Article 199*

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

### *Article 200*

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

### *Article 201*

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 Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 214. 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 2

### THE COUNCIL

### *Article 202*

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

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

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 <sup>(1)</sup>

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
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4

<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.



Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29

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.

3. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

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*

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

#### *Article 207*

1. A committee consisting of the Permanent Representatives 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. 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, 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 by a qualified majority.

The Council shall decide on the organisation of the General Secretariat.

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.

#### *Article 208*

The Council 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.

#### *Article 209*

The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.

#### *Article 210*

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the Court of First Instance. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

### SECTION 3

### THE COMMISSION

#### *Article 211*

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 212*

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 <sup>(1)</sup>*

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. 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 respect this principle and not to seek to influence the Members of the Commission 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 or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.

#### *Article 214*

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.

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<sup>(1)</sup> Article amended by the Protocol on the enlargement of the European Union.

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*

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 appointed by the Council, acting by a qualified majority. The Council may, acting unanimously, decide that such a vacancy need not be filled.

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) shall be applicable for the replacement of the President.

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.

#### *Article 216*

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 or the Commission, compulsorily retire him.

#### *Article 217*

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. 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*

1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.

2. 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.

#### *Article 219*

The Commission shall act by a majority of the number of 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.

### SECTION 4

#### THE COURT OF JUSTICE

#### *Article 220*

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*

The Court of Justice shall consist of one judge per Member State.

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.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

### *Article 222*

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, require his involvement.

### *Article 223*

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.

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.

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*

The Court of First Instance shall comprise at least one judge per Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court of First Instance to be assisted by Advocates-General.

The members of the Court of First Instance 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. 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 from among their number for a term of three years. He may be re-elected.

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service.

The Court of First Instance 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 provides otherwise, the provisions of this Treaty relating to the Court of Justice shall apply to the Court of First Instance.

#### *Article 225*

1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance 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 shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.

Decisions given by the Court of First Instance 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 law being affected.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance 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 law being affected.

#### *Article 225a*

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 decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

The members of the judicial panels 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 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 establishing the judicial panel provides otherwise, the provisions of this Treaty relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

#### *Article 226*

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, 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.



### *Article 227*

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, 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*

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, 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.

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.

### *Article 229*

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of this Treaty, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in such regulations.

### *Article 229a*

Without prejudice to the other provisions of this Treaty, the Council, acting unanimously 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 property rights. The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements.

### *Article 230*

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament 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 or of any rule of law relating to its 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 ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision 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.

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 day on which it came to the knowledge of the latter, as the case may be.

### *Article 231*

If the action is well founded, the Court of Justice 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 which it has declared void shall be considered as definitive.

### *Article 232*

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution 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 of the Community 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*

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 288.

This Article shall also apply to the ECB.

### *Article 234*

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community 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.

#### *Article 235*

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288.

#### *Article 236*

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of employment.

#### *Article 237*

The Court of Justice 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;
- (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;
- (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, 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 and the Statute of the ESCB. In this connection the powers of the Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 226. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Treaty, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

### *Article 238*

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 Community, whether that contract be governed by public or private law.

### *Article 239*

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

### *Article 240*

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

### *Article 241*

Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 230, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 230 in order to invoke before the Court of Justice the inapplicability of that regulation.

### *Article 242*

Actions brought before the Court of Justice 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*

The Court of Justice may in any cases before it prescribe any necessary interim measures.

### *Article 244*

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 256.

## Article 245

The Statute of the Court of Justice 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.

## SECTION 5

### THE COURT OF AUDITORS

#### Article 246

The Court of Auditors shall carry out the audit.

#### Article 247

1. The Court of Auditors shall consist of one national from each Member State.
2. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.
3. 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. 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 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. 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. 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.

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. 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.

8. 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. The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors.

#### Article 248

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community 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 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.

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, on the premises of any body which manages revenue or expenditure on behalf of the Community 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, any bodies managing revenue or expenditure on behalf of the Community, 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 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 Community 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 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.

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

#### *Article 249*

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.

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.

Recommendations and opinions shall have no binding force.

#### *Article 250*

1. Where, in pursuance of this Treaty, 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).

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 act.

#### *Article 251*

1. Where reference is made in this Treaty to this Article 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,
- 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.

### *Article 252*

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 253

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.

#### Article 254

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.

#### Article 255

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*

Decisions of the Council or of the Commission 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 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.

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 ECONOMIC AND SOCIAL COMMITTEE

#### *Article 257*

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* <sup>(1)</sup>

The number of members of the Economic and Social Committee shall not exceed 350.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

The number of members of the Committee shall be as follows:

Belgium	12
Czech Republic	12
Denmark	9
Germany	24
Estonia	7
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Cyprus	6
Latvia	7
Lithuania	9
Luxembourg	6
Hungary	12
Malta	5
Netherlands	12
Austria	12
Poland	21
Portugal	12
Slovenia	7
Slovakia	9
Finland	9
Sweden	12
United Kingdom	24

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 by a qualified majority, shall determine the allowances of members of the Committee.

#### *Article 259*

1. The members of the Committee shall be appointed for four 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 consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

#### *Article 260*

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

#### *Article 261*

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*

The Committee must be consulted by the Council or by the Commission where this Treaty 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 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 Council and to the Commission.

The Committee may be consulted by the European Parliament.

## CHAPTER 4

### THE COMMITTEE OF THE REGIONS

#### *Article 263* <sup>(1)</sup>

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
Czech Republic	12
Denmark	9
Germany	24
Estonia	7
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Cyprus	6
Latvia	7

<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.



Lithuania	9
Luxembourg	6
Hungary	12
Malta	5
Netherlands	12
Austria	12
Poland	21
Portugal	12
Slovenia	7
Slovakia	9
Finland	9
Sweden	12
United Kingdom	24

The members of the Committee and an equal number of alternate members shall be appointed for four 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 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*

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

### *Article 265*

The Committee of the Regions shall be consulted by the Council or by the Commission where this Treaty 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 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, the Committee of the Regions shall be informed by 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 Council and to the Commission.

## CHAPTER 5

### THE EUROPEAN INVESTMENT BANK

### *Article 266*

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 Council acting unanimously, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or at the request of 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*

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 market in the interest of the Community. 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 of the common 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 Financial Instruments.

## TITLE II

### FINANCIAL PROVISIONS

#### *Article 268*

All items of revenue and expenditure of the Community, 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 revenue and expenditure shown in the budget shall be in balance.

#### *Article 269*

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.

### *Article 270*

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.

### *Article 271*

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*

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 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.

### *Article 273*

If, at the beginning of a financial year, the budget has not yet been voted, 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; 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.

The Council 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.

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.

#### *Article 274*

The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, 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.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

#### *Article 275*

The Commission shall submit annually 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.

#### *Article 276*

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 referred to in Article 275, 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), 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.

#### *Article 277*

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.

#### *Article 278*

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 come within the scope of this Treaty. 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*

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.

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 own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

### *Article 280*

1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community 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.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of this Treaty, the Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The Council, acting in accordance with the 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 with a view to affording effective and equivalent protection in the Member States. 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.

## **PART SIX**

### **GENERAL AND FINAL PROVISIONS**

#### *Article 281*

The Community shall have legal personality.

### *Article 282*

In each of the Member States, the Community 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 shall be represented by the Commission.

### *Article 283*

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of those Communities.

### *Article 284*

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

### *Article 285*

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 Council, acting in accordance with the 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.

2. The production of Community 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*

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*

The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community 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.

### *Article 288*

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community 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.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.

### *Article 289*

The seat of the institutions of the Community shall be determined by common accord of the governments of the Member States.

### *Article 290*

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.

### *Article 291*

The Community 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. The same shall apply to the European Central Bank, the European Monetary Institute, and the European Investment Bank.

### *Article 292*

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

### *Article 293*

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*

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*

This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

### *Article 296*

1. The provisions of this Treaty 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 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*

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common 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*

If measures taken in the circumstances referred to in Articles 296 and 297 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaty.

By way of derogation from the procedure laid down in Articles 226 and 227, 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 and 297. The Court of Justice shall give its ruling *in camera*.

### *Article 299* <sup>(1)</sup>

1. This Treaty shall apply to the Kingdom of Belgium, 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, 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, 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 to those regions, including common policies.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such 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 programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community 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

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*

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*

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.

### *Article 305*

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*

The provisions of this Treaty 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.

### *Article 307*

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.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the 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 by each Member State form an integral part of the establishment of the Community 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*

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.

### *Article 309*

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.

### *Article 310*

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*

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.

### *Article 312*

This Treaty is concluded for an unlimited period.

## **FINAL PROVISIONS**

### *Article 313*

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 314* <sup>(1)</sup>

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 Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, 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 fifty-seven.

*(List of signatories not reproduced)*

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<sup>(1)</sup> See Appendix at the end of this publication.

## ANNEXES



## ANNEX I

### LIST

#### referred to in Article 32 of the Treaty

(1) No in the Brussels nomenclature	(2) Description of products
Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish, crustaceans and molluscs
Chapter 4	Dairy produce; birds' eggs; natural honey
Chapter 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of melons or citrus fruit
Chapter 9	Coffee, tea and spices, excluding maté (heading No 0903)
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt and starches; gluten; inulin
Chapter 12	Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
Chapter 13	
ex 13.03	Pectin
Chapter 15	
15.01	Lard and other rendered pig fat; rendered poultry fat

(1) No in the Brussels nomenclature	(2) Description of products
15.02	Unrendered fats of bovine cattle, sheep or goats; tallow (including 'premier jus') produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oil, of fish and marine mammals, whether or not refined
15.07	Fixed vegetable oils, fluid or solid, crude, refined or purified
15.12	Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fats
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
Chapter 16	Preparations of meat, of fish, of crustaceans or molluscs
Chapter 17	
17.01	Beet sugar and cane sugar, solid
17.02	Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
17.03	Molasses, whether or not decolourised
17.05	Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion
Chapter 18	
18.01	Cocoa beans, whole or broken, raw or roasted
18.02	Cocoa shells, husks, skins and waste



(1) No in the Brussels nomenclature	(2) Description of products
Chapter 20	Preparations of vegetables, fruit or other parts of plants
Chapter 22	
22.04	Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol
22.05	Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol
22.07	Other fermented beverages (for example, cider, perry and mead)
ex 22.08 ex 22.09	Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in Annex I to the Treaty, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as 'concentrated extracts') for the manufacture of beverages
ex 22.10	Vinegar and substitutes for vinegar
Chapter 23	Residues and waste from the food industries; prepared animal fodder
Chapter 24	
24.01	Unmanufactured tobacco, tobacco refuse
Chapter 45	
45.01	Natural cork, unworked, crushed, granulated or ground; waste cork
Chapter 54	
54.01	Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)
Chapter 57	
57.01	True hemp ( <i>Cannabis sativa</i> ), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

## ANNEX II

### OVERSEAS COUNTRIES AND TERRITORIES

#### to which the provisions of Part Four of the Treaty apply

- Greenland
- New Caledonia and Dependencies
- French Polynesia
- French Southern and Antarctic Territories
- Wallis and Futuna Islands
- Mayotte
- Saint Pierre and Miquelon
- Aruba
- Netherlands Antilles:
  - Bonaire
  - Curaçao
  - Saba
  - Sint Eustatius
  - Sint Maarten
- Anguilla
- Cayman Islands
- Falkland Islands
- South Georgia and the South Sandwich Islands
- Montserrat
- Pitcairn
- Saint Helena and Dependencies
- British Antarctic Territory
- British Indian Ocean Territory
- Turks and Caicos Islands
- British Virgin Islands
- Bermuda

## PROTOCOLS

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### A. Protocol Annexed to the Treaty on European Union

- Protocol (No 1) on Article 17 of the Treaty on European Union (1997)

### B. Protocols annexed to the Treaty on European Union and the Treaty establishing the European Community

- Protocol (No 2) integrating the Schengen *acquis* into the framework of the European Union (1997)
- Protocol (No 3) on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland (1997)
- Protocol (No 4) on the position of the United Kingdom and Ireland (1997)
- Protocol (No 5) on the position of Denmark (1997)

### C. Protocols annexed to the Treaty on European Union, to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community

- Protocol (No 6) on the Statute of the Court of Justice (2001)
- Protocol (No 7) annexed to the Treaty on European Union and to the Treaties establishing the European Communities (1992)
- Protocol (No 8) on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol (1997)
- Protocol (No 9) on the role of national parliaments in the European Union (1997)
- Protocol (No 10) on the enlargement of the European Union (2001)

### D. Protocols annexed to the Treaty establishing the European Community

- Protocol (No 11) on the Statute of the European Investment Bank (1957)
- Protocol (No 12) on Italy (1957)
- Protocol (No 13) on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State (1957)
- Protocol (No 14) concerning imports into the European Economic Community of petroleum products refined in the Netherlands Antilles (1962)
- Protocol (No 15) on special arrangements for Greenland (1985)
- Protocol (No 16) on the acquisition of property in Denmark (1992)

- Protocol (No 17) concerning Article 141 of the Treaty establishing the European Community (1992)
- Protocol (No 18) on the Statute of the European System of Central Banks and of the European Central Bank (1992)
- Protocol (No 19) on the Statute of the European Monetary Institute (1992)
- Protocol (No 20) on the excessive deficit procedure (1992)
- Protocol (No 21) on the convergence criteria referred to in Article 121 of the Treaty establishing the European Community (1992)
- Protocol (No 22) on Denmark (1992)
- Protocol (No 23) on Portugal (1992)
- Protocol (No 24) on the transition to the third stage of economic and monetary union (1992)
- Protocol (No 25) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (1992)
- Protocol (No 26) on certain provisions relating to Denmark (1992)
- Protocol (No 27) on France (1992)
- Protocol (No 28) on economic and social cohesion (1992)
- Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)
- Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997)
- Protocol (No 31) on external relations of the Member States with regard to the crossing of external borders (1997)
- Protocol (No 32) on the system of public broadcasting in the Member States (1997)
- Protocol (No 33) on protection and welfare of animals (1997)
- Protocol (No 34) on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel (2001)
- Protocol (No 35) on Article 67 of the Treaty establishing the European Community (2001)

**E. Protocol annexed to the Treaties establishing the European Community and the European Atomic Energy Community**

- Protocol (No 36) on the privileges and immunities of the European Communities (1965)

## A. PROTOCOL ANNEXED TO THE TREATY ON EUROPEAN UNION

### Protocol (No 1)

#### **on Article 17 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) of the Treaty on European Union,

BEARING IN MIND that the policy of the Union in accordance with Article 17 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,

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.

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## B. PROTOCOLS ANNEXED TO THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

### Protocol (No 2)

### **integrating the Schengen *acquis* 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,

DESIRING to incorporate the abovementioned agreements and rules into the framework of the European Union,

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; that provision should, however, be made to allow those Member States to accept some or all of the provisions thereof,

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,

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

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are 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.

### 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.

### 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.

### 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 not notified the President of the Council in writing within a reasonable period that they wish to take part, the authorisation referred to in Article 11 of the Treaty establishing the European Community 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.

#### 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

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.

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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 of the  
Treaty establishing the European Community 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 establishing the European Community and to the Treaty on European Union,

*Article 1*

The United Kingdom shall be entitled, notwithstanding Article 14 of the Treaty establishing the European Community, 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 or by the Community 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 and of their dependants exercising rights conferred by Community 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 of the Treaty establishing the European Community 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 of the Treaty establishing the European Community, 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 of the Treaty establishing the European Community 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.

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Protocol (No 4)  
**on the position of the United Kingdom and Ireland (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 of the Treaty establishing the European Community to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community 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 of the Treaty establishing the European Community. 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.

*Article 2*

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice 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 *acquis communautaire* nor form part of Community 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 of the Treaty establishing the European Community, 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.

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 of the Treaty establishing the European Community 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) of the Treaty establishing the European Community shall apply *mutatis mutandis*.

#### Article 5

A Member State which is not bound by a measure adopted pursuant to Title IV of the Treaty establishing the European Community shall bear no financial consequences of that measure other than administrative costs entailed for the institutions.

#### 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 of the Treaty establishing the European Community, the relevant provisions of that Treaty, including Article 68, shall apply to that State in relation to that measure.

#### Article 7

Articles 3 and 4 shall be without prejudice to the Protocol integrating the Schengen *acquis* 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.

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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,

BEARING IN MIND Article 3 of the Protocol integrating the Schengen *acquis* into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing the European Community 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 of the Treaty establishing the European Community. 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.

*Article 2*

None of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice 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 *acquis communautaire* nor form part of Community law as they apply to Denmark.

### 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

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

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, whether it will implement this decision in its national law. If it decides to do so, this decision 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.

2. If Denmark decides not to implement a decision 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 will consider appropriate measures to be taken.

## PART II

### Article 6

With regard to measures adopted by the Council in the field of Articles 13(1) and 17 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 shall not be obliged to contribute to the financing of operational expenditure arising from such measures.

## PART III

### 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.

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C. PROTOCOLS ANNEXED TO THE TREATY ON  
EUROPEAN UNION, TO THE TREATY  
ESTABLISHING THE EUROPEAN COMMUNITY  
AND TO THE TREATY ESTABLISHING THE  
EUROPEAN ATOMIC ENERGY COMMUNITY

Protocol (No 6)

**on the Statute of the Court of Justice (2001)**

THE HIGH CONTRACTING PARTIES

DESIRING to lay down the Statute of the Court of Justice provided for in Article 245 of the Treaty establishing the European Community and in Article 160 of the Treaty establishing the European Atomic Energy Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community:

*Article 1*

The Court of Justice 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 (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, 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, sitting as a full Court, may waive the immunity.

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 shall apply to the Judges, Advocates-General, Registrar and Assistant Rapporteurs of the Court, 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.

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.

### *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 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, 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.

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**

### *Article 9<sup>(1)</sup>*

When, every three years, the Judges are partially replaced, 13 and 12 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 to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

### *Article 11*

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

### *Article 12*

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

### *Article 13*

On a proposal from the Court, the Council may, acting unanimously, 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. 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 has its seat.

### *Article 15*

The Court 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 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 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), Article 213(2), Article 216 or Article 247(7) of the EC Treaty 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 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.

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

#### *Article 19*

The Member States and the institutions of the Communities shall be represented before the Court 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 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 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 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 of the EC Treaty and Article 148 of the EAEC Treaty, by documentary evidence of the date on which an institution was, in accordance with those 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 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 of the EC Treaty 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 shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court 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 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, shall be entitled to submit statements of case or written observations to the Court.

In the cases governed by Article 234 of the EC Treaty, 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 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 not being parties to the case to supply all information which the Court considers necessary for the proceedings.

#### *Article 25*

The Court 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 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 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, 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 its own motion or on application by the parties, decides otherwise for serious reasons.

### *Article 32*

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court 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 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 shall adjudicate upon costs.

### *Article 39*

The President of the Court 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 of the EC Treaty and Article 157 of the EAEC Treaty, or to prescribe interim measures pursuant to Article 243 of the EC Treaty or Article 158 of the EAEC Treaty, or to suspend enforcement in accordance with the fourth paragraph of Article 256 of the EC Treaty 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 may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Communities or between Member States and institutions of the Communities.

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 of the Communities 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 establishing an interest therein.

#### *Article 44*

An application for revision of a judgment may be made to the Court 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 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 or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Communities. In the latter event the proceedings must be instituted within the period of two months provided for in Article 230 of the EC Treaty and Article 146 of the EAEC Treaty; the provisions of the second paragraph of Article 232 of the EC Treaty and the second paragraph of Article 148 of the EAEC Treaty, respectively, shall apply where appropriate.

## TITLE IV

### THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

## 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 fourth paragraph of Article 3 and Articles 10, 11 and 14 shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

## Article 48 <sup>(1)</sup>

The Court of First Instance shall consist of 25 Judges.

## Article 49

The Members of the Court of First Instance 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 in order to assist the Court of First Instance 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.

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

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 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 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 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) of the EC Treaty 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 and 232 of the EC Treaty 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) of the EC Treaty;
  - acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 133 of the EC Treaty;
  - acts of the Council by which the Council exercises implementing powers in accordance with the third indent of Article 202 of the EC Treaty;
- (b) against an act of or failure to act by the Commission under Article 11a of the EC Treaty.

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 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 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 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 to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

### *Article 53*

The procedure before the Court of First Instance 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 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; 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, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance 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, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance 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 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 of the EC Treaty 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 shall continue.



Where a Member State and an institution of the Communities are challenging the same act, the Court of First Instance shall decline jurisdiction so that the Court of Justice may rule on those applications.

#### *Article 55*

Final decisions of the Court of First Instance, 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 to all parties as well as all Member States and the institutions of the Communities even if they did not intervene in the case before the Court of First Instance.

#### *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 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 may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Communities and their servants, an appeal may also be brought by Member States and institutions of the Communities which did not intervene in the proceedings before the Court of First Instance. 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 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 made pursuant to Article 242 or Article 243 or the fourth paragraph of Article 256 of the EC Treaty 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, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

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, 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 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 244 of the EC Treaty and Article 159 of the EAEC Treaty, decisions of the Court of First Instance 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 and 243 of the EC Treaty 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. 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 for judgment.

Where a case is referred back to the Court of First Instance, 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, which did not intervene in the proceedings before the Court of First Instance, 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 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) of the EC Treaty 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 law being affected, he may propose that the Court of Justice review the decision of the Court of First Instance.

The proposal must be made within one month of delivery of the decision by the Court of First Instance. 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.

Those referred to in Article 23 of this Statute and, in the cases provided for in Article 225(2) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, the parties to the proceedings before the Court of First Instance 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) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, without prejudice to Articles 242 and 243 of the EC Treaty, 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 affects the unity or consistency of Community law, it shall refer the case back to the Court of First Instance 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 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 was based, the Court of Justice shall give final judgment.

In the cases provided for in Article 225(3) of the EC Treaty 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 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 affects the unity or consistency of Community 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.

## TITLE IVa

### JUDICIAL PANELS

#### *Article 62c*

The provisions relating to the jurisdiction, composition, organisation and procedure of the judicial panels established under Articles 225a of the EC Treaty 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 shall contain any provisions necessary for applying and, where required, supplementing this Statute.

#### *Article 64*

Until the 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 governing language arrangements shall continue to apply. Those provisions may only be amended or repealed in accordance with the procedure laid down for amending this Statute.

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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 and their servants referred to in Article 236 of the EC Treaty 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.

*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 of the EC Treaty 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 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 of the EC Treaty 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, 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 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 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. The President of the Court of Justice or, in appropriate cases, the President of the Court of First Instance, 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 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 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, 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 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, 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 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.

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 has jurisdiction, it shall refer that action to the Court of Justice or to the Court of First Instance. Likewise, where the Court of Justice or the Court of First Instance 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 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 has been delivered.

Where the Civil Service Tribunal and the Court of First Instance 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 may act on those cases.

### Article 9

An appeal may be brought before the Court of First Instance, 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 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 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 against any decision of the Civil Service Tribunal made pursuant to Article 242 or Article 243 or the fourth paragraph of Article 256 of the EC Treaty 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 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, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

#### *Article 11*

1. An appeal to the Court of First Instance 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 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 and 243 of the EC Treaty or Articles 157 and 158 of the Treaty, an appeal before the Court of First Instance 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 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, having heard the parties, may dispense with the oral procedure.

#### *Article 13*

1. If the appeal is well founded, the Court of First Instance 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 on points of law.

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Protocol (No 7)  
**annexed to the Treaty on European Union and to the Treaties  
establishing the European Communities (1992)**

THE HIGH CONTRACTING PARTIES

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaties establishing the European Communities:

Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, 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.

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Protocol (No 8)  
**on the location of the seats of the institutions and of certain  
bodies and departments of the European Communities and of  
Europol (1997)**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

HAVING REGARD to Article 289 of the Treaty establishing the European Community, 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 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,

*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 and the Court of First Instance shall have their seats 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 seat in Frankfurt.
- (j) The European Police Office (Europol) shall have its seat in The Hague.

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.
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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. 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 <sup>(1)</sup>. (Repealed)

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<sup>(1)</sup> Paragraph repealed by the 2003 Act of Accession.

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<sup>(1)</sup>. 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. 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.’.

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,

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<sup>(1)</sup> Paragraph amended by the 2003 Act of Accession.

- 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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## D. PROTOCOLS ANNEXED TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

### 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 this Treaty:

#### *Article 1*

The European Investment Bank established by Article 266 of the Treaty (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 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 of the Treaty.

#### Article 3 <sup>(1)</sup>

In accordance with Article 266 of the Treaty, the following shall be members of the Bank:

- the Kingdom of Belgium,
- the Czech Republic,
- the Kingdom of Denmark,
- the Federal Republic of Germany,
- the Republic of Estonia,
- the Hellenic Republic,

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<sup>(1)</sup> Article amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.

- 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,
- 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. <sup>(1)</sup> The capital of the Bank shall be EUR 163 727 670 000, subscribed by the Member States as follows (\*):

Germany	26 649 532 500
France	26 649 532 500

<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.

(\*) The figures quoted for the new Member States are indicative and based on the 2002 forecast data published by Eurostat (New Cronos).

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
Finland	2 106 816 000
Greece	2 003 725 500
Portugal	1 291 287 000
Czech Republic	1 212 590 000
Hungary	1 121 583 000
Ireland	935 070 000
Slovakia	408 489 500
Slovenia	379 429 000
Lithuania	250 852 000
Luxembourg	187 015 500
Cyprus	180 747 000
Latvia	156 192 500
Estonia	115 172 000
Malta	73 849 000

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.

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*

The Bank shall be directed and managed by a Board of Governors, a Board of Directors and a Management Committee.

### Article 9

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.

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;
  - (c) exercise the powers provided in Articles 11 and 13 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);
  - (d) authorise the derogation provided for in Article 18(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 powers and functions provided in Articles 4, 7, 14, 17, 26 and 27;
  - (h) approve the Rules of Procedure of the Bank.
4. Within the framework of this Treaty 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

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.

## Article 11

1. The Board of Directors shall have sole power to take decisions in respect of granting loans and guarantees and raising loans; it shall fix the interest rates on loans granted and the commission on guarantees; it shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of this Treaty 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. <sup>(1)</sup> The Board of Directors shall consist of twenty-six directors and sixteen 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,
- one alternate nominated by common accord of the Kingdom of Denmark, the Hellenic Republic and Ireland,
- one alternate nominated by common accord of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,
- three alternates nominated by common accord 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,

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(<sup>1</sup>) Paragraph amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.

— 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 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

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. <sup>(1)</sup> 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.

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<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession.



### Article 13

1. <sup>(1)</sup> 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 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 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 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.

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

1. A Committee consisting of three members, appointed on the grounds of their competence by the Board of Governors, shall annually verify that the operations of the Bank have been conducted and its books kept in a proper manner.

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<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession.

2. The Committee 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.

#### *Article 15*

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 of the Member State concerned or to other financial institutions approved by that State.

#### *Article 16*

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*

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 of this Statute.

#### *Article 18*

1. Within the framework of the task set out in Article 267 of this Treaty, the Bank shall grant loans to its members or to private or public undertakings for investment 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 the Board of Governors, acting unanimously on a proposal from the Board of Directors, the Bank may grant loans 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 will be carried out or on other adequate guarantees.

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 of this Treaty.

5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital.

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*

1. Interest rates on loans to be granted by the Bank and commission on guarantees 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 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 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 of this Treaty.

#### *Article 20*

In its loan and guarantee 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.

It may grant loans or guarantees only:

- (a) where, in the case of projects carried out by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in other cases, either by a commitment entered into by the State in which the project is carried out or by some other means; and
- (b) where the execution of the project contributes to an increase in economic productivity in general and promotes the attainment of the common 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.

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 opposed by the Member State in whose territory it is to be carried out.

### *Article 21*

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.

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the project 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 in question.

3. The Board of Directors shall rule on applications for loans or guarantees submitted to it by the Management Committee.

4. The Management Committee shall examine whether applications for loans or guarantees submitted to it comply with the provisions of this Statute, in particular with Article 20. Where the Management Committee is in favour of granting the loan or guarantee, it shall submit the draft contract 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, 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 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 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.

#### *Article 22*

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 market of a Member State 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.

The competent authorities in the Member State concerned may refuse to give their assent only if there is reason to fear serious disturbances on the capital market of that State.

#### *Article 23*

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), 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, 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 of the Member State concerned.

#### *Article 24*

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*

1. The Bank shall at all times be entitled to transfer its assets in the currency of one Member State into the currency of another Member State in order to carry out financial operations corresponding to the task set out in Article 267 of this Treaty, taking into account the provisions of Article 23 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 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.

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 to be carried out in their territory.

#### *Article 26*

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*

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.

### Article 28

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.

*[See also Article 9(4) of the Treaty of Amsterdam, which reads as follows:*

The European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks under the conditions set out in the Protocol referred to in paragraph 5.

The position shall be the same as regards the European Central Bank, the European Monetary Institute and the European Investment Bank.]

2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

### Article 29

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.

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

1. The Board of Governors may, acting unanimously, decide to establish a European Investment Fund, 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 Statute of the European Investment Fund by unanimous decision. The Statute shall define, in particular, its objectives, structure, capital, membership, financial resources, means of intervention and auditing arrangements, as well as the relationship between 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 and contribute to its 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. The Protocol on the privileges and immunities of the European Communities shall apply to the Fund, to the members of its organs in the performance of their duties as such and to its staff.

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 to which the members, other than the European Community and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

6. The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of the Fund. Proceedings against such measures may be instituted by any member of the Fund in its capacity as such or by Member States under the conditions laid down in Article 230 of this Treaty.

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 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.

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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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(\*) The provisions of Part Four of the Treaty were applied to Surinam, by virtue of a Supplementary Act of the Kingdom of the Netherlands to complete its instrument of ratification, from 1 September 1962 to 16 July 1976.

(\*\*) In accordance with Article 1 of the Convention of 13 November 1962 amending the Treaty establishing the European Economic Community (OJ L 150, 1.10.1964, p. 2414), the Protocol no longer applies to the Netherlands Antilles.

Protocol (No 14)  
**concerning imports into the European Economic Community  
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 of petroleum products refined in the Netherlands Antilles,

HAVE AGREED on the following provisions to be appended to that Treaty:

*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, 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 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 of petroleum products refined in the Netherlands Antilles reach two million metric tons a year.

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(\*) Added by Article 2 of the Convention of 13 November 1962 amending the Treaty establishing the European Economic Community (OJ 150, 1.10.1964).

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 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 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 2½ million metric tons of petroleum products.

3. The Community'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.

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#### *Annex to the Protocol*

For the implementation of Article 4(2) of the Protocol concerning imports into the European Economic Community 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

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Protocol (\*) (No 15)  
**on special arrangements for Greenland (1985)**

*Article 1*

1. The treatment on import into the Community 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 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 pursuant to an agreement between the Community and the authority responsible for Greenland are satisfactory to the Community.

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 of the Treaty establishing the European Economic Community.

*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.

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(\*) Article 3 of the Greenland Treaty provides that this Protocol, attached to that Treaty, shall be annexed to the Treaty establishing the European Economic Community (OJ L 29, 1.2.1985).

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 establishing the European Community:

Notwithstanding the provisions of this Treaty, Denmark may maintain the existing legislation on the acquisition of second homes.

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Protocol (No 17)

**on Article 141 of the Treaty establishing the European Community (1992)**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty establishing the European Community:

For the purposes of Article 141 of this Treaty, 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 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 of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*CHAPTER I*

**CONSTITUTION OF THE ESCB**

*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; they shall perform their tasks and carry on their activities in accordance with the provisions of this Treaty 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) of this Treaty, 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 with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of this Treaty. 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 of this Treaty.



## Article 3

### Tasks

3.1. In accordance with Article 105(2) of this Treaty, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Community;
- to conduct foreign-exchange operations consistent with the provisions of Article 111 of this 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) of this Treaty, 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) of this Treaty, 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) of this Treaty:

- (a) the ECB shall be consulted:
- on any proposed Community 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;
- (b) the ECB may submit opinions to the appropriate Community institutions or bodies 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 institutions or bodies 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, 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) of this Treaty.

## CHAPTER III

### ORGANISATION OF THE ESCB

## Article 7

### Independence

In accordance with Article 108 of this Treaty, when exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty 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 institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies 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) 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 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) of this Treaty 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) of this Treaty, 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) of this Treaty, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks.

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 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 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.

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, 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) of this Treaty, 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) of this Treaty, 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 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 and this Statute. The Governing Council shall formulate the monetary policy of the Community 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, the President or his nominee shall represent the ECB externally.

### *Article 14*

## **National central banks**

14.1. In accordance with Article 109 of this Treaty, 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 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) of this Treaty, 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) of this Treaty, the Governing Council shall have the exclusive right to authorise the issue of banknotes within the Community. 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.

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 or in non-Community 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 non-compliance 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, 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 non-compliance.

## *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, 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 of this Treaty, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Community institutions or bodies, 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 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 legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any decision of the Council under Article 105(6) of this Treaty, 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 of this Treaty 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. 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.

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 shall be established. 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 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 as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up to the nearest multiple of 0.05 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.

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, IMF reserve positions and SDRs, up to an amount equivalent to ECU 50 000 million. 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.

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 Member 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.

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, 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 of this Treaty, 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;
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty 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, 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 in the cases and under the conditions laid down in this Treaty. The ECB may institute proceedings in the cases and under the conditions laid down in this Treaty.

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.

35.3. The ECB shall be subject to the liability regime provided for in Article 288 of this Treaty. The national central banks shall be liable according to their respective national laws.

35.4. 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 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 shall be taken by the Governing Council.

35.6. The Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under 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.

## *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 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*

### **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 legislation imposing an obligation of secrecy shall be subject to such legislation.

## *Article 39*

### **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

### **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.

## CHAPTER VIII

### **AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION**

## Article 41

### **Simplified amendment procedure**

41.1. In accordance with Article 107(5) of this Treaty, 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 Council, acting 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.

41.2. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

## Article 42

### **Complementary legislation**

In accordance with Article 107(6) of this Treaty, 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

### **General provisions**

43.1. A derogation as referred to in Article 122(1) of this Treaty 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.

43.2. The central banks of Member States with a derogation as specified in Article 122(1) of this Treaty shall retain their powers in the field of monetary policy according to national law.

43.3. In accordance with Article 122(4) of this Treaty, 'Member States' shall be read as 'Member States without a derogation' in the following Articles of this Statute: 3, 11.2, 19, 34.2 and 50.

43.4. 'National central banks' shall be read as 'central banks of Member States without a derogation' in the following Articles of this Statute: 9.2, 10.1, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 52.

43.5. 'Shareholders' shall be read as 'central banks of Member States without a derogation' in Articles 10.3 and 33.1.

43.6. 'Subscribed capital of the ECB' shall be read as 'capital of the ECB subscribed by the central banks of Member States without a derogation' in Articles 10.3 and 30.2.

#### *Article 44*

### **Transitional tasks of the ECB**

The ECB shall take over those tasks of the EMI which, because of the derogations of one or more Member States, still have to be performed in the third stage.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 122 of this Treaty.

#### *Article 45*

### **The General Council of the ECB**

45.1. Without prejudice to Article 107(3) of this Treaty, the General Council shall be constituted as a third decision-making body of the ECB.

45.2. 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. The responsibilities of the General Council are listed in full in Article 47 of this Statute.

## Article 46

### Rules of Procedure of the General Council

- 46.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.
- 46.2. 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. The President shall prepare the meetings of the General Council.
- 46.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.
- 46.5. The Secretariat of the General Council shall be provided by the ECB.

## Article 47

### Responsibilities of the General Council

- 47.1. The General Council shall:
- perform the tasks referred to in Article 44;
  - contribute to the advisory functions referred to in Articles 4 and 25.1.
- 47.2. 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. 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, as referred to in Article 123(5) of this Treaty.

47.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

#### *Article 48*

### **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*

### **Deferred payment of capital, reserves and provisions of the ECB**

49.1. 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, 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 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. In addition to the payment to be made in accordance with Article 49.1, 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. <sup>(1)</sup> 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.

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<sup>(1)</sup> Paragraph added by the 2003 Act of Accession

*Article 52*

**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*

**Applicability of the transitional provisions**

If and as long as there are Member States with a derogation Articles 43 to 48 shall be applicable.

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aProtocol (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 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 of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*Article 1*

The reference values referred to in Article 104(2) of this Treaty 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 of this Treaty 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 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.

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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, referred to in Article 121(1) of this Treaty,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*Article 1*

The criterion on price stability referred to in the first indent of Article 121(1) of this Treaty 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 ½ 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 (1) of this Treaty shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 104(6) of this Treaty 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(1) of this Treaty 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 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(1) of this Treaty 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 Committee referred to in Article 114, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 121 of this Treaty, which shall then replace this Protocol.

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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 establishing the European Community:

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.

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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 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 without a separate decision to do so by its government and parliament,

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 establishing the European Community:

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, 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.

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. The United Kingdom shall retain its powers in the field of monetary policy according to national law.

5. Articles 4(2), 104(1), (9) and (11), 105(1) to (5), 106, 108, 109, 110, 111, 112(1) and (2) (b) and 123(4) and (5) of this Treaty shall not apply to the United Kingdom. In these provisions references to the Community or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

6. Articles 116(4) and 119 and 120 of this Treaty shall continue to apply to the United Kingdom. Articles 114(4) and 124 shall apply to the United Kingdom as if it had a derogation.

7. 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. 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.

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) of this Treaty.

8. 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 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 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. Article 123(3) of this Treaty and Articles 44 to 48 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 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to move to that stage.

- (b) In addition to the tasks referred to in Article 47 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) and 10(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. 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. In that event:
- (a) The United Kingdom shall have the right to move to the third stage 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) of this Treaty, shall decide whether it fulfils 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) of this Treaty, shall take all other necessary decisions to enable the United Kingdom to move to the third stage.

If the United Kingdom moves to the third stage pursuant to the provisions of this Protocol, paragraphs 3 to 9 shall cease to have effect.

11. Notwithstanding Articles 101 and 116(3) of this Treaty 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.

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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,

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing the European Community:

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. In the event of a notification that Denmark will not participate in the third stage, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of this Treaty and the Statute of the ESCB 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. As for the abrogation of the exemption, the procedure referred to in Article 122(2) shall only be initiated at the request of Denmark.
  5. In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.
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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 establishing the European Community:

France will keep the privilege of monetary emission in its overseas territories under the terms established by its national laws, and will be solely entitled to determine the parity of the CFP franc.

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Protocol (No 28)  
**on economic and social 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 of the Treaty establishing the European Community includes the task of promoting economic and social cohesion and solidarity between Member States and that the strengthening of economic and social cohesion figures among the activities of the Community listed in Article 3,

RECALLING that the provisions of Part Three, Title XVII, on economic and social cohesion as a whole provide the legal basis for consolidating and further developing the Community'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,

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 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, 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 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 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 average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104;

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 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 establishing the European Community.

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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 the Court of Justice of the European Communities has jurisdiction to ensure that in the interpretation and application of Article 6(2) of the Treaty on European Union the law is observed by the European Community;

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 set out in Article 6(1) of the Treaty on European Union,

BEARING IN MIND that Article 309 of the Treaty establishing the European Community 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;

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;

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 establishing the European Community,

*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 takes a decision in respect thereof;
  - (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);
  - (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.
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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.

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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 establishing the European Community,

The provisions on the measures on the crossing of external borders included in Article 62(2)(a) of Title IV of the Treaty shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Community law and other relevant international agreements.

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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 establishing the European Community,

The provisions of the Treaty establishing the European Community 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 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.

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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 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,

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 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. 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. 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*

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall adopt all the necessary provisions for the implementation of this Protocol, including essential principles and proper decision-making procedures, in particular for the adoption of 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 shall apply.

### *Article 4*

This Protocol shall apply from 24 July 2002.

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Protocol (No 35)  
**on Article 67 of the Treaty establishing the European Commu-  
nity (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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**E. PROTOCOL ANNEXED TO THE TREATIES  
ESTABLISHING THE EUROPEAN COMMUNITY  
AND THE EUROPEAN ATOMIC ENERGY  
COMMUNITY**

Protocol (No 36)

**on the privileges and immunities of the European Communities  
(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, these Communities and the European Investment Bank 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 Treaty.

*CHAPTER I*

**PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN COMMUNITIES**

*Article 1*

The premises and buildings of the Communities shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Communities 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 shall be inviolable.

*Article 3*

The Communities, 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 make, for their 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.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

#### Article 4

The Communities shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for their 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 shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of their 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

For their official communications and the transmission of all their documents, the institutions of the Communities 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 shall not be subject to censorship.

#### Article 7

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 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.

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*

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*

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*

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

#### Article 11

Representatives of Member States taking part in the work of the institutions of the Communities, 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.

#### CHAPTER V

### OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

#### Article 12

In the territory of each Member State and whatever their nationality, officials and other servants of the Communities 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 and, on the other hand, to the jurisdiction of the Court in disputes between the Communities 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 organizations;
- (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*

Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.

### *Article 14*

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, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, 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, 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. 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*

The Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities.

### *Article 16*

The Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13, and Article 14 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**

### *Article 17*

The Member State in whose territory the Communities have their seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Communities.

## CHAPTER VII

### **GENERAL PROVISIONS**

### *Article 18*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Communities solely in the interests of the Communities.

Each institution of the Communities 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.

### *Article 19*

The institutions of the Communities shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

### *Article 20*

Articles 12 to 15 and Article 18 shall apply to Members of the Commission.

### *Article 21*

Articles 12 to 15 and Article 18 shall apply to the Judges, the Advocates-General, the Registrar and the Assistant Rapporteurs of the Court of Justice 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 relating to immunity from legal proceedings of Judges and Advocates-General.

### *Article 22*

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*

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

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## APPENDIX



## **AMENDMENTS TO PRIMARY LEGISLATION FURTHER TO THE AC- CESSION OF THE REPUBLIC OF BULGARIA AND ROMANIA TO THE EUROPEAN UNION**

Further to the entry in force of the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, the following articles shall be amended as set out below.

### **I. TREATY ON EUROPEAN UNION**

1. In Article 23(2), the second sentence of the third subparagraph shall be replaced by the following:

‘For their adoption decisions shall require at least 255 votes in favour, cast by at least two-thirds of the members.’

2. In Article 34(3), the end of the first sentence shall read:

‘for their adoption acts shall require at least 255 votes in favour, cast by at least two-thirds of the members.’

3. The second paragraph of Article 53 shall be replaced by the following:

‘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.’

### **II. TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

1. The last sentence of Article 57(1) shall be replaced by the following:

‘In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date shall be 31 December 1999.’

2. The second paragraph of Article 189 shall be replaced by the following:

‘The number of Members of the European Parliament shall not exceed 736.’

3. With effect from the start of the 2009-2014 term, in Article 190(2) the first subparagraph shall be replaced by the following:

‘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
Greece	22	Portugal	22
Spain	50	Romania	33
France	72	Slovenia	7
Ireland	12	Slovakia	13
Italy	72	Finland	13
Cyprus	6	Sweden	18
Latvia	8	United Kingdom	72.’

4. In Article 205(2), the following shall be inserted in the first subparagraph:

‘Bulgaria	10
Romania	14’.

5. In Article 205(2), the second and third subparagraphs shall be replaced by the following:

‘Acts of the Council shall require for their adoption at least 255 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 255 votes in favour, cast by at least two-thirds of the members.'

6. In Article 258, the following shall be inserted in the second subparagraph:

'Bulgaria 12

Romania 15'

7. In Article 263, the following shall be inserted in the third subparagraph:

'Bulgaria 12

Romania 15'.

8. In Article 299(1), the Republic of Bulgaria and Romania shall be inserted in the list of Member States.

9. The second paragraph of Article 314 shall be replaced by the following:

'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.'

### III. **PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE**

1. The first paragraph of Article 9 shall be replaced by the following:

'When, every three years, the Judges are partially replaced, fourteen and thirteen Judges shall be replaced alternately.'

2. Article 48 shall be replaced by the following:

'The Court of First Instance shall consist of twenty-seven Judges.'

### IV. **PROTOCOL ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK**

1. In Article 3, entries for the Republic of Bulgaria and Romania shall be inserted.

2. In Article 4(1), first subparagraph:

(a) the introductory sentence shall be replaced by the following:

'1. The capital of the Bank shall be EUR 164 795 737 000, subscribed by the Member States as follows <sup>(1)</sup>:'

(b) the following entries shall be inserted:

'Bulgaria	296 000 000
Romania	846 000 000'

3. In Article 11(2) the first and third subparagraphs shall be replaced respectively by the following:

'2. The Board of Directors shall consist of twenty-eight directors and eighteen alternate directors.

[...]

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, the Hellenic Republic, Ireland and Romania,

<sup>(1)</sup> The figures quoted for Bulgaria and Romania are indicative and based on the 2003 data published by Eurostat.

- 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.'
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