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The European Constitution
What can be done / what should be done

PLAN A+

Revival of the European Constitutional Process

The Treaty

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PART I

POLICIES OF THE UNION [...][1]

[1] *AND THE FUNCTIONING OF THE UNION, part II of this Treaty*

TITLE I
PROVISIONS OF GENERAL APPLICATION

ARTICLE I-1

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

ARTICLE I-2

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

ARTICLE I-3

The development of the Union is based on balanced economic growth and price stability, a highly competitive social market economy aiming at full employment and social progress[2].

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

ARTICLE I-4

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

ARTICLE I-5

Environmental protection requirements must be integrated into the definition and

[2] *Article I-3 of the treaty establishing a Constitution for Europe*

implementation of the policies and activities referred to in this Part, in particular with a view to promoting sustainable development.

ARTICLE I-6

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

ARTICLE I-7

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

ARTICLE I-8

Without prejudice to Articles I-5 of the Constitution, I-52, I-53 and I-124 of this *treaty*, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution and the present Treaty, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution and the *european Treaty*, to provide, to commission and to fund such services.

TITLE II
NON-DISCRIMINATION AND CITIZENSHIP

ARTICLE I-9

European laws or framework laws may lay down rules to prohibit discrimination on grounds of nationality as referred to in Article I-4(2) of the Constitution.

ARTICLE I-10

1. Without prejudice to the other provisions of the Constitution and within the limits of the powers assigned by it to the Union, a European law or framework law of the Council may establish the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council shall act unanimously after obtaining the consent of the European Parliament.

2. By way of derogation from paragraph 1, European laws or framework laws may establish basic principles for Union incentive measures and define such measures, to support action taken by Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of their laws and regulations.

ARTICLE I-11

1. If action by the Union should prove necessary to facilitate the exercise of the right, referred to in Article I-10(2)(a) of the Constitution, of every citizen of the Union to move and reside freely and the Constitution has not provided the necessary powers, or the *european Treaty* specific provisions, European laws or framework laws may establish measures for that purpose.

2. For the same purposes as those referred to in paragraph 1 and if the Constitution has not provided the necessary powers, a European law or framework law of the Council may establish measures concerning passports, identity cards, residence permits or any other such document and measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

ARTICLE I-12

A European law or framework law of the Council shall determine the detailed arrangements for exercising the right, referred to in Article I-10(2)(b) of the Constitution, for every citizen of the Union to vote and to stand as a candidate in municipal elections and elections to the European Parliament in his or her Member State of residence without being a national of that State. The Council shall act unanimously after consulting the European Parliament. These arrangements may provide for derogations where warranted by problems specific to a Member State.

The right to vote and to stand as a candidate in elections to the European Parliament shall be exercised without prejudice to Article II-216(1) of the Constitution and the measures adopted for its implementation.

ARTICLE I-13

Member States shall adopt the necessary provisions to secure diplomatic and consular protection of citizens of the Union in third countries, as referred to in Article I-10(2)(c) of the Constitution.

Member States shall commence the international negotiations required to secure this protection.

A European law of the Council may establish the measures necessary to facilitate such protection. The Council shall act after consulting the European Parliament.

ARTICLE I-14

The languages in which every citizen of the Union has the right to address the institutions or bodies under Article I-10(2)(d) of the Constitution, and to have an answer, are those listed in Article III-326(1) of this treaty. In the Constitution, the institutions and bodies referred to in Article I-10(2)(d) are those listed in Articles I-19(1), second subparagraph, I-30, I-31 and I-32 and also the European Ombudsman.

ARTICLE I-15

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 Article I-10 of the Constitution and of this Title. This report shall take account of the development of the Union.

On the basis of this report, and without prejudice to the other provisions of the Constitution, a European law or framework law of the Council may add to the rights laid down in Article I-10 of the Constitution. The Council shall act unanimously after obtaining the consent of the European Parliament. The law or framework law concerned shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

TITLE III
INTERNAL POLICIES AND ACTION

CHAPTER I
INTERNAL MARKET

SECTION 1
ESTABLISHMENT AND FUNCTIONING OF THE INTERNAL MARKET

ARTICLE I-16

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Constitution.

2. The internal market shall comprise an area without internal frontiers where competition is free and undistorted[3] and in which the free movement of persons, services, goods and capital is ensured in accordance with this treaty.

3. The Council, on a proposal from the Commission, shall adopt European regulations and decisions determining the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

4. When drawing up its proposals for achieving the objectives set out in paragraphs 1 and 2, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate measures.

[3] Article I-3 of the treaty establishing a Constitution for Europe

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

ARTICLE I-17

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

ARTICLE I-18

If measures taken in the circumstances referred to in Articles I-17 and II-314 have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the Member State concerned, examine how these measures can be adjusted to the rules laid down in the Constitution.
By way of derogation from the procedure laid down in Articles I-31 of the Constitution and II-242 of this treaty, the Commission or any Member State may bring the matter directly before the Court of Justice if the Commission or Member State considers that another Member State is making improper use of the powers provided for in Articles I-17 and II-314. The Court of Justice shall give its ruling in camera.

SECTION 2
FREE MOVEMENT OF PERSONS AND SERVICES

Subsection 1: Workers

ARTICLE I-19

1. Workers shall have the right to move freely within the Union.

2. Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment shall be prohibited.

3. Workers shall have 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 European regulations adopted by the Commission.

4. This Article shall not apply to employment in the public service.

ARTICLE I-20

European laws or framework laws shall establish the measures needed to bring about freedom of movement for workers, as defined in Article I-19. They shall be adopted after consultation of the Economic and Social Committee.

Such European laws or framework laws shall aim, in particular, to:

(a) ensure close cooperation between national employment services;

(b) abolish 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) abolish all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between

Member States as impose on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;

(d) set 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 I-21

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

ARTICLE I-22

1. In the field of social security, European laws or framework laws shall establish such measures as are necessary to bring about freedom of movement for workers by making arrangements to secure for employed and self-employed migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the different countries;

(b) payment of benefits to persons resident in the territories of Member States.

2. Where a member of the Council considers that a draft European law or framework law referred to in paragraph 1 would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the procedure referred to in Article I-43 of the Constitution shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

(a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article I-43 of the Constitution, or

(b) request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.

Subsection 2 : Freedom of establishment

ARTICLE I-23

Within the framework of this Subsection, 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.

Nationals of a Member State shall have the right, in the territory of another Member State, 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 I-28, under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, subject to Section 4 relating to capital and payments.

ARTICLE I-24

1. European framework laws shall establish measures to attain freedom of establishment as regards a particular activity. They shall be adopted after consultation of the Economic and Social Committee.

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under paragraph 1, 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 Union of the various activities concerned;

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;

(d) by ensuring that workers from 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, insofar as this does not conflict with the principles laid down in Article I-113(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 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 others, are required by Member States of companies or firms within the meaning of the second paragraph of Article I-28(2) with a view to making such safeguards equivalent throughout the Union;

(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

ARTICLE I-25

This Subsection 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.
European laws or framework laws may exclude certain activities from application of this Subsection.

ARTICLE I-26

1. This Subsection and measures adopted in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action in Member States providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. European framework laws shall coordinate the national provisions referred to in paragraph 1.

ARTICLE I-27

1. European framework laws shall make it easier for persons to take up and pursue activities as self-employed persons. They shall cover:

(a) the mutual recognition of diplomas, certificates and other evidence of formal qualifications;

(b) the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.

2. 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 the exercise of such professions in the various Member States.

ARTICLE I-28

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 Union shall, for the purposes of this Subsection, be treated in the same way as natural persons who are nationals of Member States.
"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

ARTICLE I-29

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 the second paragraph of Article I-28, without prejudice to the application of the other provisions of the Treaty.

Subsection 3 : Freedom to provide services

ARTICLE I-30

Within the framework of this Subsection, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.
European laws or framework laws may extend this Subsection to service providers who are nationals of a third State and who are established within the Union.

ARTICLE I-31

Services shall be considered to be "services" for the purposes of the Constitution where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for persons, goods and capital.
"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 Subsection 2 relating to freedom of establishment, the person providing a service may, in order to do so, temporarily pursue his or her activity in the Member State where the
service is provided, under the same conditions as are imposed by that State on its own nationals.

ARTICLE I-32

1. Freedom to provide services in the field of transport shall be governed by Section 7 of Chapter III 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 I-33

1. European framework laws shall establish measures to achieve the liberalisation of a specific service. They shall be adopted after consultation of the Economic and Social Committee.

2. European framework laws referred to in paragraph 1 shall as a general rule give priority to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

ARTICLE I-34

The Member States shall endeavour to undertake liberalisation of services beyond the extent required by the European framework laws adopted pursuant to Article I-33(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 I-35

As long as restrictions on freedom to provide services have not been abolished, the Member States shall apply such restrictions without distinction on grounds of nationality or of residence to all persons providing services within the meaning of the first paragraph of Article I-30 al.1.

ARTICLE I-36

Articles I-25 to I-28 shall apply to the matters covered by this Subsection.

SECTION 3
FREE MOVEMENT OF GOODS

Subsection 1 : Customs union

ARTICLE I-37

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

2. Paragraph 4 and Subsection 3 on the prohibition of quantitative restrictions shall apply to products originating in Member States and to products coming from third

countries which are in free circulation in Member States.

3. 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.

4. 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.

5. The Council, on a proposal from the Commission, shall adopt the European regulations and decisions fixing Common Customs Tariff duties.

6. In carrying out the tasks entrusted to it under this Article 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 Union insofar as they lead to an improvement in the competitive capacity of undertakings;

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

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

Subsection 2 : Customs cooperation

ARTICLE I-38

Within the scope of application of the Constitution, European laws or framework laws shall establish measures in order to strengthen customs cooperation between Member States and between them and the Commission.

Subsection 3 : Prohibition of quantitative restrictions

ARTICLE I-39

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

ARTICLE I-40

Article I-39 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 I-41

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.
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. It 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 this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

SECTION 4
CAPITAL AND PAYMENTS

ARTICLE I-42

Within the framework of this Section, restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited.

ARTICLE I-43

1. Article I-42 shall be without prejudice to the application to third countries of any restrictions which existed on 31 December 1993 under national or Union law adopted in respect of 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. With regard to restrictions which exist under national law in Estonia and Hungary, the date in question shall be 31 December 1999.

2. European laws or framework laws shall enact 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.
The European Parliament and the Council shall endeavour to achieve the objective of free movement of capital between Member States and third countries to the greatest extent

possible and without prejudice to other provisions of the Constitution and the european Treaty.

3. Notwithstanding paragraph 2, only a European law or framework law of the Council may enact measures which constitute a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries. The Council shall act unanimously after consulting the European Parliament.

ARTICLE I-44

1. Article I-42 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 provisions laid down by law or regulation, 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. This Section shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Constitution.

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 I-42.

4. In the absence of a European law or framework law provided for in Article I-43(3), the Commission or, in the absence of a European decision of the Commission within three months from the request of the Member State concerned, the Council, may adopt a European decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the *european Treaty* insofar as they are justified by one of the objectives of the Union and compatible

with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

ARTICLE I-45

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the functioning of economic and monetary union, the Council, on a proposal from the Commission, may adopt European regulations or decisions introducing safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary. It shall act after consulting the European Central Bank.

ARTICLE I-46

Where necessary to achieve the objectives set out in Article I-143, as regards preventing and combating terrorism and related activities, European laws shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.
The Council, on a proposal from the Commission, shall adopt European regulations or European decisions in order to implement the European laws referred to in the first paragraph.
The acts referred to in this Article shall include necessary provisions on legal safeguards.

SECTION 5
RULES ON COMPETITION

Subsection 1 : Rules applying to undertakings

ARTICLE I-47

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. 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 I-48

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market insofar 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 I-49

The Council, on a proposal from the Commission, shall adopt the European regulations to give effect to the principles set out in Articles I-47 and I-48. It shall act after consulting the European Parliament.

Such regulations shall be designed in particular:

(a) to ensure compliance with the prohibitions laid down in Article I-47(1) and in Article I-48 by making provision for fines and periodic penalty payments;

(b) to lay down detailed rules for the application of Article I-47(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 Articles I-47 and I-48;

(d) to define the respective functions of the Commission and of the Court of Justice of the European Union in applying the provisions laid down in this paragraph;

(e) to determine the relationship between Member States' laws and this Subsection as well as the European regulations adopted pursuant to this Article.

ARTICLE I-50

Until the entry into force of the European regulations adopted pursuant to Article I-49, 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 internal market in accordance with their national law and Article I-47, in particular paragraph 3, and Article I-48.

ARTICLE I-51

1. Without prejudice to Article I-50, the Commission shall ensure the application of the principles set out in Articles I-47 and I-48. 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 referred to in paragraph 1 is not brought to an end, the Commission shall adopt a reasoned European decision recording the infringement of the principles. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

3. The Commission may adopt European regulations relating to the categories of agreement in respect of which the Council has adopted a European regulation pursuant to Article I-49, second paragraph, (b).

ARTICLE I-52

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 Constitution, in particular Article I-4(2) and Articles I-47 to I-55 of this treaty.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of an income-producing monopoly shall be subject to the provisions of the *european Treaty*, in particular to the rules on competition, insofar as the application of such provisions 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 Union's interests.

3. The Commission shall ensure the application of this Article and shall, where necessary, adopt appropriate European regulations or decisions.

Subsection 2 : Aids granted by Member States

ARTICLE I-53

1. Save as otherwise provided in the *european 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, insofar as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order

to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the *European Treaty* , the Council, acting on a proposal from the Commission, may adopt a European decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article II-302, in view of their structural, economic and social situation;
(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
(e) such other categories of aid as may be specified by European regulations or decisions adopted by the Council on a proposal from the Commission.

ARTICLE I-54

1. The Commission, in cooperation with Member States, shall 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 internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a Member State or through State resources is not compatible with the internal market having regard to Article I-53, or that such aid is being misused, it shall adopt a European decision requiring the Member State concerned to abolish or alter such aid within a period of time to be determined by the Commission.
If the Member State concerned does not comply with this European decision within the prescribed time, the Commission or any other interested Member State may, in derogation

from Articles II-260 and II-261, refer the matter to the Court of Justice of the European Union directly.

On application by a Member State, the Council may adopt unanimously a European decision that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from Article I-53 or from European regulations provided for in Article I-55, 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 Member 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 act.

3. The Commission shall be informed by the Member States, 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 internal market having regard to Article I-53, it shall without delay initiate the procedure provided for in paragraph 2 of this Article. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt European regulations relating to the categories of State aid that the Council has, pursuant to Article I-55, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

ARTICLE I-55

The Council, on a proposal from the Commission, may adopt European regulations for the application of Articles I-53 and I-54 and for determining in particular the conditions in which Article I-54(3) shall apply and the categories of aid exempted from the procedure provided for in Article I-54(3). It shall act after consulting the European Parliament.

SECTION 6
FISCAL PROVISIONS

ARTICLE I-56

1. 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.

2. Where products are exported by a Member State to the territory of another Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

3. 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 provisions contemplated have been previously approved for a limited period by a European decision adopted by the Council on a proposal from the Commission.

ARTICLE I-57

A European law or framework law of the Council shall establish measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition. The Council shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

SECTION 7
COMMON PROVISIONS

ARTICLE I-58

1. Save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in Article I-16. European laws or framework laws shall establish 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. Such laws shall be adopted after consultation of the Economic and Social Committee.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and consumer protection, shall 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 shall also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by means of a European law or framework law or by means of a European regulation of the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article I-40, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law or framework law or by means of a European regulation of the Commission, 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 and the reasons for them.

6. The Commission shall, within six months of the notifications referred to in paragraphs 4 and 5, adopt a European decision approving or rejecting 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 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 to human health, the Commission may notify the Member State concerned that the period referred to in this paragraph will 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.

9. By way of derogation from the procedure laid down in Articles I-31 of the Constitution and II-242 of this treaty, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article 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 I-40, provisional measures subject to a Union control procedure.

ARTICLE I-59

Without prejudice to Article I-58, a European framework law of the Council shall establish measures for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market. The Council shall act unanimously after consulting the European Parliament and the Economic and Social Committee.

ARTICLE I-60

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 internal market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.
If such consultation does not result in agreement, European framework laws shall establish the measures necessary to eliminate the distortion in question. Any other appropriate measures provided for in the Constitution may be adopted.

ARTICLE I-61

1. Where there is reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action of a Member State may cause distortion within the meaning of Article I-60, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall address to the Member States concerned a recommendation on such measures as may be appropriate to avoid the distortion in question.

2. If a Member 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 III-174, 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, Article III-174 shall not apply.

ARTICLE I-62

In the context of the establishment and functioning of the internal market, European laws or framework laws shall establish measures for the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

A European law of the Council shall establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament.

CHAPTER II
ECONOMIC AND MONETARY POLICY

ARTICLE I-63

For the purposes set out in Article I-3 of the Constitution, the activities of the Member States and the Union shall include, as provided in the *european Treaty*, 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.

Concurrently with the foregoing, and as provided in the Constitution and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy,

the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support general economic policies in the Union, in accordance with the principle of an open market economy with free competition.
These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a stable balance of payments.

SECTION 1
ECONOMIC POLICY

ARTICLE I-64

Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article I-3 of the Constitution, and in the context of the broad guidelines referred to in Article I-65(2) of the *european Treaty*. The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article I-63 of this treaty.

ARTICLE I-65

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with Article I-64 of the *european Treaty*.

2. The Council, on a recommendation from the Commission, shall formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council.
The European Council, on the basis of the report from the Council, shall discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union. On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines. It 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, on the basis of reports submitted by the Commission, shall monitor economic developments in each of the Member States and in the Union, as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and shall regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission on important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council, on a proposal from the Commission, may decide to make its recommendations public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority shall be defined as at least 55% of the other members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these other Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

6. European laws may lay down detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4.

ARTICLE I-66

1. Without prejudice to any other procedures provided for in the *european Treaty*, the Council, on a proposal from the Commission, may adopt a European decision laying down 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, on a proposal from the Commission, may adopt a European decision granting, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision adopted.

ARTICLE I-67

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

ARTICLE I-68

Any measure or provision, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions shall be prohibited.

ARTICLE I-69

1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. The Council, on a proposal from the Commission, may adopt European regulations or decisions specifying definitions for the application of the prohibitions laid down in Articles I-67 and I-68 of the *european Treaty* and in this Article. It shall act after consulting the European Parliament.

ARTICLE I-70

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 in order to identify 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:

(i) either the ratio has declined substantially and continuously and reached a level that comes close to the reference value, or

(ii) 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 diminishing sufficiently and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The Commission's report shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.
The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Economic and Financial Committee set up under Article I-78 shall formulate an opinion on the Commission's report.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly.

6. The Council shall, on a proposal from the Commission, having considered any observations which the Member State concerned may wish to make and after an overall assessment, decide whether an excessive deficit exists. In that case it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to paragraph 8, those recommendations shall not be made public.
Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.
A qualified majority shall be defined as at least 55% of the other members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these other Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

7. The Council, on a recommendation from the Commission, shall adopt the European decisions and recommendations referred to in paragraphs 8 to 11.
It shall act without taking into account the vote of the member of the Council representing the Member State concerned.
A qualified majority shall be defined as at least 55% of the other members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.
A blocking minority must include at least the minimum number of these other Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

8. Where it adopts a European decision establishing 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 the Council's recommendations into practice, the Council may adopt a European decision giving notice to the Member State to take, within a specified time-limit, measures for the deficit reduction which the Council judges necessary 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. As long as a Member State fails to comply with a European decision adopted 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:

(a) require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities;
(b) invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;

(c) require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the Council considers that the excessive deficit has been corrected;

(d) impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the measures adopted.

11. The Council shall repeal some or all of the measures referred to in paragraph 6 and paragraphs 8, 9 and 10 if it considers the excessive deficit in the Member State concerned to have been corrected. If the Council has previously made public recommendations, it shall state publicly, as soon as the European decision referred to in paragraph 8 has been repealed, that there is no longer an excessive deficit in the Member State concerned.

12. The rights to bring actions provided for in Articles I-31 of the Constitution and II-242 of this treaty shall not be exercised within the framework of paragraphs 1 to 6 or paragraphs 8 and 9.

13. Further provisions relating to the implementation of the procedure laid down in this Article are set out in the Protocol on the excessive deficit procedure.

A European law of the Council shall lay down the appropriate measures to replace the said Protocol. The Council shall act unanimously after consulting the European Parliament and the European Central Bank.

Subject to the other provisions of this paragraph, the Council, on a proposal from the Commission, shall adopt European regulations or decisions laying down detailed rules and definitions for the application of the said Protocol. It shall act after consulting the European Parliament.

SECTION 2
MONETARY POLICY

ARTICLE I-71

1. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to this objective, the European System of Central Banks shall support the general economic policies in the Union in order to contribute to the achievement of its objectives as laid down in Article I-3 of the Constitution. The European System of Central Banks 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 I-63 of the *european Treaty*.

2. The basic tasks to be carried out through the European System of Central Banks shall be:

(a) to define and implement the Union's monetary policy;

(b) to conduct foreign-exchange operations consistent with Article I-212 of this treaty;

(c) to hold and manage the official foreign reserves of the Member States;

(d) to promote the smooth operation of payment systems.

3. Paragraph 2(c) shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

4. The European Central Bank shall be consulted:

(a) on any proposed Union act in areas within its powers;

(b) by national authorities regarding any draft legislative provision in areas within its powers, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article I-73(4) of the *european Treaty*.

The European Central Bank may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters within its powers.

5. The European System of Central Banks 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. A European law of the Council may confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. The Council shall act unanimously after consulting the European Parliament and the European Central Bank.

ARTICLE I-72

1. The European Central Bank shall have the exclusive right to authorise the issue of euro bank notes in the Union. The European Central Bank and the national central banks may issue such notes. Only the bank notes issued by the European Central Bank and the national central banks shall have the status of legal tender within the Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue.
The Council, on a proposal from the Commission, may adopt European regulations laying down measures to harmonise the denominations and technical specifications of coins intended for circulation to the extent necessary to permit their smooth circulation within the Union. The Council shall act after consulting the European Parliament and the European Central Bank.

ARTICLE I-73

1. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank, which shall be the Governing Council and the Executive Board.

2. The Statute of the European System of Central Banks is laid down in the Protocol on the Statute of the European System of Central Banks and of the European Central Bank.

3. Article 5(1), (2) and (3), Articles 17 and 18, Article 19(1), Articles 22, 23, 24 and 26, Article 32(2), (3), (4) and (6), Article 33(1)(a) and Article 36 of the Statute of the European System of Central Banks and of the European Central Bank may be amended by European laws:

(a) either on a proposal from the Commission and after consultation of the European Central Bank;

(b) or on a recommendation from the European Central Bank and after consultation of the Commission.

4. The Council shall adopt the European regulations and decisions laying down the measures referred to in Article 4, Article 5(4), Article 19(2), Article 20, Article 28(1), Article 29(2), Article 30(4) and Article 34(3) of the Statute of the European System of Central Banks and of the European Central Bank. It shall act after consulting the European Parliament:

(a) either on a proposal from the Commission and after consulting the European Central Bank;

(b) or on a recommendation from the European Central Bank and after consulting the Commission.

ARTICLE I-74

When exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and the Statute of the European System of Central Banks and of the European Central Bank, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

ARTICLE I-75

Each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Constitution and the Statute of the European System of Central Banks and of the European Central Bank.

ARTICLE I-76

1. In order to carry out the tasks entrusted to the European System of Central Banks, the European Central Bank shall, in accordance with the Constitution and under the conditions laid down in the Statute of the European System of Central Banks and of the European Central Bank, adopt:

(a) European regulations to the extent necessary to implement the tasks defined in Article 3(1)(a), Article 19(1), Article 22 and Article 25(2) of the Statute of the European System of Central Banks and of the European Central Bank and in cases which shall be laid down in European regulations and decisions as referred to in Article I-73(4) of the *european Treaty*;

(b) European decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and the Statute of the European System of Central Banks and of the European Central Bank;

(c) recommendations and opinions.

2. The European Central Bank may decide to publish its European decisions, recommendations and opinions.

3. The Council shall, under the procedure laid down in Article I-73(4) of the *european Treaty*, adopt the European regulations establishing the limits and conditions under which the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its European regulations and decisions.

ARTICLE I-77

Without prejudice to the powers of the European Central Bank, European laws or framework laws shall lay down the measures necessary for use of the euro as the single currency. Such laws or framework laws shall be adopted after consultation of the European Central Bank.

SECTION 3
INSTITUTIONAL PROVISIONS

ARTICLE I-78

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, an Economic and Financial Committee is hereby set up.

2. The Committee shall have the following tasks:

(a) to deliver opinions at the request of the Council or of the Commission, or on its own initiative, for submission to those institutions;

(b) to keep under review the economic and financial situation of the Member States and of the Union and to report on it regularly to the Council and to the Commission, in particular with regard to financial relations with third countries and international institutions;

without prejudice to Article II-227 of the treaty, to contribute to the preparation of the work of the Council referred to in Article I-45, Article I-65(2), (3), (4) and (6), Articles I-66, I-69 and I-70, Article I-71(6), Article I-72(2), Article I-73(3) and (4), Articles I-77 and I-82, Article I-84(2) and (3), Article I-87, Article I-88(2) and (3) and Articles 108 and 112 of this treaty, and to carry out other advisory and preparatory tasks assigned to it by the Council;

(d) 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 the Constitution and of Union acts; the examination shall cover all measures relating to

capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the European Central Bank shall each appoint no more than two members of the Committee.

3. The Council, on a proposal from the Commission, shall adopt a European decision laying down detailed provisions concerning the composition of the Economic and Financial Committee. It shall act after consulting the European Central Bank and the Committee. The President of the Council shall inform the European Parliament of that decision.

4. In addition to the tasks referred to in paragraph 2, if and as long as there are Member States with a derogation as referred to in Article I-83 of the *european Treaty*, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly to the Council and to the Commission on the matter.

ARTICLE I-79

For matters within the scope of Article I-65(4), Article I-70 with the exception of paragraph 13, Articles I-77, I-82, Article I-84(3) and Article I-212 of this treaty, 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.

SECTION 4
PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO

ARTICLE I-80

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Constitution, the Council shall, in accordance with the relevant procedure from among those referred in the *european Treaty* in Articles I-65 and I-70, with the exception of the procedure set out in Article I-70 (13), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;

(b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority shall be defined as at least 55% of these members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

ARTICLE I-81

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.

ARTICLE I-82

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a European decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority shall be defined as at least 55% of these members of the Council,

representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

SECTION 5
TRANSITIONAL PROVISIONS

ARTICLE I-83

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as "Member States with a derogation".

2. The following provisions of the Constitution shall not apply to Member States with a derogation:

(a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article I-65(2) of the *european Treaty*);

(b) coercive means of remedying excessive deficits (Article I-70(9) and (10) of the *european Treaty*);

(c) the objectives and tasks of the European System of Central Banks (Article I-71 (1), (2), (3) and (5) of the *european Treaty*);

(d) issue of the euro (Article I-72 of *the european Treaty*);

(e) acts of the European Central Bank (Article I-76 of the *european Treaty*);

(f) measures governing the use of the euro (Article I-77 of the *european Treaty*);

(g) monetary agreements and other measures relating to exchange-rate policy (Article I-212 of the *european Treaty*);

(h) appointment of members of the Executive Board of the European Central Bank (Article I-36(2) of the Constitution);

(i) European decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article I-82(1) of the *european Treaty*);

(j) measures to ensure unified representation within the international financial institutions and conferences (Article I-82(2) of the *european Treaty*).

In the Articles referred to in points (a) to (j), "Member States" shall therefore mean Member States whose currency is the euro.

3. Under Chapter IX of the Statute of the European System of Central Banks and of the European Central Bank, Member States with a derogation and their national central banks are excluded from rights and obligations within the European System of Central Banks.

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, and in the following instances:

(a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article I-65(4) of the *european Treaty*);

(b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article I-70(6), (7), (8) and (11) of the *european Treaty*).

A qualified majority shall be defined as at least 55% of the other members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these other Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

ARTICLE I-84

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between the national legislation of each of these Member States, including the statutes of its national central bank, and Articles I-74 and I-75 of the *european Treaty* and the Statute of the European System of Central Banks and of the European Central Bank. The reports shall also examine whether a high degree of sustainable convergence has been achieved, by analysing how far each of these Member States has fulfilled the following criteria:

(a) the achievement of a high degree of price stability; this is 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;

(b) the sustainability of the government financial position; this is apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article I-70(6) of the *european Treaty*;

(c) 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 euro;

(d) the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism, being reflected in the long-term interest-rate levels.

The four criteria laid down in this paragraph and the relevant periods over which they are to be respected are developed further in the Protocol on the convergence criteria. The reports from the Commission and the European Central Bank shall also take account of 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. After consulting the European Parliament and after discussion in the European Council, the Council, on a proposal from the Commission, shall adopt a European decision establishing which Member States with a derogation fulfil the necessary

conditions on the basis of the criteria laid down in paragraph 1, and shall abrogate the derogations of the Member States concerned.

The Council shall act having received a recommendation of a qualified majority of those among its members representing Member States whose currency is the euro. These members shall act within six months of the Council receiving the Commission's proposal.

The qualified majority referred to in the second subparagraph shall be defined as at least 55% of these members of the Council, representing Member States comprising at least 65% of the population of the participating Member States. A blocking minority must include at least the minimum number of these Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

3. If it is decided, in accordance with the procedure set out in paragraph 2, to abrogate a derogation, the Council shall, on a proposal from the Commission, adopt the European regulations or decisions irrevocably fixing the rate at which the euro is to be substituted for the currency of the Member State concerned, and laying down the other measures necessary for the introduction of the euro as the single currency in that Member State. The Council shall act with the unanimous agreement of the members representing Member States whose currency is the euro and the Member State concerned, after consulting the European Central Bank.

ARTICLE I-85

1. If and as long as there are Member States with a derogation, and without prejudice to Article I-73(1) of the *european Treaty*, the General Council of the European Central Bank referred to in Article 45 of the Statute of the European System of Central Banks and of the European Central Bank shall be constituted as a third decision-making body of the European Central Bank.

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

(a) strengthen cooperation between the national central banks;

(b) strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability;

(c) monitor the functioning of the exchange-rate mechanism;

(d) hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;

(e) carry out the former tasks of the European Monetary Cooperation Fund which had subsequently been taken over by the European Monetary Institute.

ARTICLE I-86

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, it shall take account of the experience acquired in cooperation within the framework of the exchange-rate mechanism.

ARTICLE I-87

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the 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 Constitution. The Commission shall state what measures it recommends the Member State concerned to adopt.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Economic and Financial Committee, recommend to the Council the granting of mutual assistance and appropriate methods.

The Commission shall keep the Council regularly informed of the situation and of how it evolves.

2. The Council shall adopt European regulations or decisions granting such mutual assistance and laying down the conditions and details of such assistance, which may take such forms as:

(a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;
(b) measures needed to avoid deflection of trade where the Member State with a derogation, which is in difficulties, maintains or reintroduces quantitative restrictions against third countries;
(c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation, which is in difficulties, to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council.

ARTICLE I-88

1. Where a sudden crisis in the balance of payments occurs and a European decision as referred to in Article I-87(2) of the present treaty is not immediately adopted, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of the protective measures referred to in paragraph 1 not later than when they enter into force. The

Commission may recommend to the Council the granting of mutual assistance under mentioned Article I-87.

3. The Council, acting on a recommendation from the Commission and after consulting the Economic and Financial Committee may adopt a European decision stipulating that the Member State concerned shall amend, suspend or abolish the protective measures referred to in paragraph 1.

CHAPTER III
POLICIES IN OTHER AREAS

SECTION 1
EMPLOYMENT

ARTICLE I-89

The Union and the Member States shall, in accordance with this Section, 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 referred to in Article I-3 of the Constitution.

ARTICLE I-90

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article I-89 of the *european Treaty* in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article I-65(2) of aforesaid.

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 Article I-92 of this treaty.

ARTICLE I-91

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

ARTICLE I-92

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee.

These guidelines shall be consistent with the broad guidelines adopted pursuant to Article I-65(2) of the *european Treaty*.

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, on a recommendation from the Commission, may adopt recommendations which it shall address 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 Union and on the implementation of the guidelines for employment.

ARTICLE I-93

European laws or framework laws may establish 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. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall not include harmonisation of the laws and regulations of the Member States.

ARTICLE I-94

The Council shall, by a simple majority, adopt a European decision establishing an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. It shall act after consulting the European Parliament.
The tasks of the Committee shall be:

(a) to monitor the employment situation and employment policies in the Union and the Member States;

(b) without prejudice to Article II-227 of the *european Treaty*, 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 I-92 of aforesaid treaty.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

SECTION 2
SOCIAL POLICY

ARTICLE I-95

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall act taking 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 Union economy.

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

ARTICLE I-96

1. With a view to achieving the objectives of Article I-95 of the *european Treaty*, the Union shall support and complement the activities of the Member States in the following fields:

(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;

(g) conditions of employment for third-country nationals legally residing in Union territory;

(h) the integration of persons excluded from the labour market, without prejudice to Article I-169 of the *european Treaty*;

(i) equality between women and men 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. For the purposes of paragraph 1:

(a) European laws or framework laws may establish 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) in the fields referred to in paragraph 1(a) to (i), European framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework laws 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.

In all cases, such European laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), (d), (f) and (g), European laws or framework laws shall be adopted by the Council acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

The Council may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act unanimously after consulting the European Parliament.

4. A Member State may entrust management and labour, at their joint request, with the implementation of European framework laws adopted pursuant to paragraphs 2 and 3 or, where appropriate, with the implementation of European regulations or decisions adopted in accordance with Article I-98 of the *european Treaty*.

In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, or a European regulation or decision implemented, 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 framework law, regulation or decision.

5. The European laws and framework laws adopted pursuant to this Article:

(a) 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 of such systems;

(b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

6. This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

ARTICLE I-97

1. The Commission shall promote the consultation of management and labour at Union level and shall adopt any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. For the purposes of paragraph 1, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.

3. If, after the consultation referred to in paragraph 2, the Commission considers Union action desirable, 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 the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article I-98(1) of the *european Treaty*. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

ARTICLE I-98

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

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article I-96 of the *european Treaty*, at the joint request of the signatory parties, by European regulations or decisions adopted by the Council on a

proposal from the Commission. The European Parliament shall be informed.

Where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article I-96(3) above mentioned, the Council shall act unanimously.

ARTICLE I-99

With a view to achieving the objectives of Article I-95 of the *european Treaty* and without prejudice to the other provisions of the Constitution, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Section, particularly in matters relating to:

(a) employment;
(b) labour law and working conditions;
(c) basic and advanced vocational training;
(d) social security;
(e) prevention of occupational accidents and diseases;
(f) occupational hygiene;
(g) the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

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

ARTICLE I-100

1. Each Member State shall ensure that the principle of equal pay for female and male 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. European laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of women and men in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. They shall be adopted after consultation of the Economic and Social Committee.

4. With a view to ensuring full equality in practice between women and men 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 under-represented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers.

ARTICLE I-101

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

ARTICLE I-102

The Commission shall draw up a report each year on progress in achieving the objectives of Article I-95 of the *european Treaty*, including the demographic situation within the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

ARTICLE I-103

The Council shall, by a simple majority, adopt a European decision establishing a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The Council shall act after consulting the European Parliament.
The tasks of the Committee shall be:

(a) to monitor the social situation and the development of social protection policies in the Member States and within the Union;
(b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
(c) without prejudice to Article II-227 of the *european Treaty*, to prepare reports, formulate opinions or undertake other work within the scope of its powers, 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 I-104

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

ARTICLE I-105

1. 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; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

2. The Commission shall administer the Fund. It shall be assisted in this task by a Committee presided over by a member of the Commission and composed of representatives of Member States, trade unions and employers' organisations.

3. European laws shall establish implementing measures relating to the Fund. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

SECTION 3
ECONOMIC, SOCIAL AND TERRITORIAL COHESION

ARTICLE I-106

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

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

ARTICLE I-107

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 I-106 of the *european Treaty*. The formulation and implementation of the Union's policies and action and the implementation of the internal market shall take into account those objectives and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments

The Commission shall submit a report to the European Parliament, the Council, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

European laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

ARTICLE I-108

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural

adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

ARTICLE I-109

1. Without prejudice to Article I-110 of the *european Treaty*, European laws shall define the tasks, the priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds, 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 a European law shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

In all cases, such European laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

2. The first provisions on the Structural Funds and the Cohesion Fund to be adopted following those in force on the date on which the *european Treaty* is signed shall be established by a European law of the Council. The Council shall act unanimously after obtaining the consent of the European Parliament.

ARTICLE I-110

European laws shall establish implementing measures relating to the European Regional Development Fund. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles I-117 and I-105(3) of the *european Treaty* respectively shall apply.

SECTION 4
AGRICULTURE AND FISHERIES

ARTICLE I-111

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

"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

ARTICLE I-112

1. The internal market shall extend to agriculture and trade in agricultural products.

2. Save as otherwise provided in Articles I-113 to I-118, of the *european Treaty* the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products.

3. The products listed in Annex I shall be subject to Articles I-113 to I-118 above mentioned.

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

ARTICLE I-113

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 I-114

1. In order to attain the objectives set out in Article I-113 of the *european Treaty*, 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 I-113 above mentioned, 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 I-113 and shall exclude any discrimination between producers or consumers within the Union.

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

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

ARTICLE I-115

To enable the objectives set out in Article I-113 of the *european Treaty* 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 I-116

1. The Section relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by European laws or framework laws in accordance with Article I-117(2), having regard to the objectives set out in Article I-113 of this treaty.

2. The Council, on a proposal from the Commission, may adopt a European regulation

or decision authorising 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 I-117

1. 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 I-114(1), and for implementing the measures referred to in this Section.

These proposals shall take account of the interdependence of the agricultural matters referred to in this Section.

2. European laws or framework laws shall establish the common organisation of the market provided for in Article I-114(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy. They shall be adopted after consultation of the Economic and Social Committee.

3. The Council, on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

4. In accordance with paragraph 2, the national market organisations may be replaced by the common organisation provided for in Article I-114(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, and
(b) such an organisation ensures conditions for trade within the Union similar to those existing in a national market.

5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

ARTICLE I-118

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 adopt European regulations or decisions fixing 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.

SECTION 5
ENVIRONMENT

ARTICLE I-119

1. Union policy on the environment shall contribute to the pursuit of the following objectives:

(a) preserving, protecting and improving the quality of the environment;
(b) protecting human health;
(c) prudent and rational utilisation of natural resources;
(d) promoting measures at international level to deal with regional or worldwide environmental problems.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

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

(a) available scientific and technical data;
(b) environmental conditions in the various regions of the Union;
(c) the potential benefits and costs of action or lack of action;
(d) the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned.

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

ARTICLE I-120

1. European laws or framework laws shall establish what action is to be taken in order to achieve the objectives referred to in Article I-119 of this treaty. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

2. By way of derogation from paragraph 1 and without prejudice to Article I-58, the Council shall unanimously adopt European laws or framework laws establishing:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

(i) town and country planning;

(ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;

(iii) 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, on a proposal from the Commission, may unanimously adopt a European decision making the ordinary legislative procedure applicable to the matters referred to in the first subparagraph .

In all cases, the Council shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

3. European laws shall establish general action programmes which set out priority objectives to be attained. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall provide in appropriate form for:

(a) temporary derogations, and/or

(b) financial support from the Cohesion Fund.

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

SECTION 6
CONSUMER PROTECTION

ARTICLE I-121

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

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article I-58 of this treaty in the context of the establishment and functioning of the internal market;

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

3. European laws or framework laws shall establish the measures referred to in paragraph 2(b). Such laws shall be adopted after consultation of the Economic and Social Committee.

4. Acts adopted pursuant to paragraph 3 shall not prevent any Member State from

maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

SECTION 7
TRANSPORT

ARTICLE I-122

1. The objectives of the Constitution shall, in matters governed by this Section, be pursued within the framework of a common transport policy.

2. European laws or framework laws shall implement paragraph 1, taking into account the distinctive features of transport. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall establish:

(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 measure.

3. When the European laws or framework laws referred to in paragraph 2 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

ARTICLE I-123

Until the European laws or framework laws referred to in Article I-122(2) have been adopted, no Member State may, unless the Council has unanimously adopted a European decision granting a derogation, make the various provisions governing the subject on

1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

ARTICLE I-124

Aids shall be compatible with the Constitution 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 I-125

Any measures adopted within the framework of the Constitution in respect of transport rates
and conditions shall take account of the economic circumstances of carriers.

ARTICLE I-126

1. In the case of transport within the Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the Member State of origin or of destination of the goods in question shall be prohibited.

2. Paragraph 1 shall not prevent the adoption of other European laws or framework laws pursuant to Article I-122(2).

3. The Council, on a proposal from the Commission, shall adopt European regulations or decisions for implementing paragraph 1. It shall act after consulting the European Parliament and the Economic and Social Committee.

The Council may in particular adopt the European regulations and decisions needed to enable the institutions 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, acting on its own initiative or on application by a Member State, shall investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, adopt the necessary European decisions within the framework of the European regulations and decisions referred to in paragraph 3.

ARTICLE I-127

1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by a European decision of the Commission.

2. The Commission, acting on its own initiative or on application by a Member State, shall 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 adopt the necessary European decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

ARTICLE I-128

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.

The Commission may make recommendations to Member States for the application of this Article.

ARTICLE I-129

The provisions of this Section shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division. Five years after the entry into force of the Constitution and the *european Treaty*, the Council, acting on a proposal from the Commission, may adopt a European decision repealing this Article.

ARTICLE I-130

An Advisory Committee consisting of experts designated by the governments of the Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters.

ARTICLE I-131

1. This Section shall apply to transport by rail, road and inland waterway.
2. European laws or framework laws may lay down appropriate measures for sea and air transport. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

SECTION 8
TRANS-EUROPEAN NETWORKS

ARTICLE I-132

1. To help achieve the objectives referred to in Articles I-16 and I-106 of the *european Treaty* 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 Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

ARTICLE I-133

1. In order to achieve the objectives referred to in Article I-132, the Union:

(a) 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;
(b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
(c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in point (a), particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. European laws or framework laws shall establish the guidelines and other measures referred to in paragraph 1. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the agreement of that Member State.

3. 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 I-132. The Commission may, in close cooperation with the Member States, take any useful initiative to promote such coordination.

4. The Union may cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

SECTION 9

RESEARCH AND TECHNOLOGICAL DEVELOPMENT AND SPACE

ARTICLE I-134

1. The Union shall aim to strengthen its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encourage it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.

2. For the purposes referred to in paragraph 1 the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality. It shall support their efforts to cooperate with one another, aiming, notably, at permitting researchers to cooperate freely across borders and at enabling undertakings to exploit the internal market potential, 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 the Union's activities in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with this Section.

ARTICLE I-135

In pursuing the objectives referred to in Article I-134, the Union shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
(b) promotion of cooperation in the field of the Union's research, technological development and demonstration with third countries and international organisations;
(c) dissemination and optimisation of the results of activities in the Union's research, technological development and demonstration;
(d) stimulation of the training and mobility of researchers in the Union.

ARTICLE I-136

1. The Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and the Union's policy are mutually consistent.

2. In close cooperation with the Member States, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

ARTICLE I-137

1. European laws shall establish a multiannual framework programme, setting out all the activities financed by the Union. Such laws shall be adopted after consultation of the Economic and Social Committee.

The framework programme shall:

(a) establish the scientific and technological objectives to be achieved by the activities provided for in Article I-135 and lay down the relevant priorities;
(b) indicate the broad lines of such activities;
(c) lay down the maximum overall amount and the detailed rules for the Union's financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The multiannual framework programme shall be adapted or supplemented as the situation changes.

3. A European law of the Council shall establish specific programmes to implement the multiannual framework programme 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, shall not exceed the overall maximum amount fixed for the framework programme and each activity. Such a law shall be adopted after consulting the European Parliament and the Economic and Social Committee.

4. As a complement to the activities planned in the multiannual framework programme, European laws shall establish the measures necessary for the implementation of the European research area. Such laws shall be adopted after consulting the Economic and Social Committee.

ARTICLE I-138

1. For the implementation of the multiannual framework programme, European laws or framework laws shall establish:

(a) the rules for the participation of undertakings, research centres and universities;
(b) the rules governing the dissemination of research results.

Such European laws or framework laws shall be adopted after consultation of the Economic and Social Committee.

2. In implementing the multiannual framework programme, European laws may establish supplementary programmes involving the participation of certain Member States only, which shall finance them subject to possible participation by the Union.
Such European laws shall determine the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge as well as access by other Member States. They shall be adopted after consultation of the Economic and Social Committee and with the agreement of the Member States concerned.

3. In implementing the multiannual framework programme, European laws 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.

Such European laws shall be adopted after consultation of the Economic and Social Committee.

4. In implementing the multiannual framework programme the Union may make provision for cooperation in the Union's 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 Union and the third parties concerned.

ARTICLE I-139

The Council, on a proposal from the Commission, may adopt European regulations or decisions to set up joint undertakings or any other structure necessary for the efficient

execution of the Union's research, technological development and demonstration programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

ARTICLE I-140

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, European laws or framework laws shall establish the necessary measures, which may take the form of a European space programme.

3. The Union shall establish any appropriate relations with the European Space Agency.

ARTICLE I-141

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on activities relating to research, technological development and the dissemination of results during the previous year, and the work programme for the current year.

SECTION 10
ENERGY

ARTICLE I-142

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim to:

(a) ensure the functioning of the energy market;
(b) ensure security of energy supply in the Union, and
(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy.

2. Without prejudice to the application of other provisions of the Constitution, the objectives in paragraph 1 shall be achieved by measures enacted in European laws or framework laws. Such laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article I-120(2)(c).

3. By way of derogation from paragraph 2, a European law or framework law of the Council shall establish the measures referred to therein when they are primarily of a fiscal nature. The Council shall act unanimously after consulting the European Parliament.

CHAPTER IV
AREA OF FREEDOM, SECURITY AND JUSTICE

SECTION 1
GENERAL PROVISIONS

ARTICLE I-143

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Chapter, stateless persons shall be treated as third-country nationals.

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

ARTICLE I-144

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

ARTICLE I-145

National Parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4 and 5 of this Chapter comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

ARTICLE I-146

Without prejudice to Articles I-31 of the Constitution and II-242 and II-243 of this treaty, the Council may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

ARTICLE I-147

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article II-227, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

ARTICLE I-148

This Chapter 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 I-149

The Council shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a

Commission proposal, subject to Article I-150, and after consulting the European Parliament.

ARTICLE I-150

The acts referred to in Sections 4 and 5, together with the European regulations referred to in Article II-244 which ensure administrative cooperation in the areas covered by these Sections, shall be adopted:

(a) on a proposal from the Commission, or

(b) on the initiative of a quarter of the Member States.

SECTION 2
POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

ARTICLE I-151

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;

(c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, European laws or framework laws shall establish measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;

(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;

(d) any measure necessary for the gradual establishment of an integrated management system for external borders;

(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

ARTICLE I-152

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, European laws or framework laws shall lay down measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt European regulations or decisions comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

ARTICLE I-153

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, European laws or framework laws shall establish measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

ARTICLE I-154

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Section shall contain appropriate measures to give effect to this principle.

SECTION 3
JUDICIAL COOPERATION IN CIVIL MATTERS

ARTICLE I-155

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, European laws or framework laws shall establish measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

(a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;

(b) the cross-border service of judicial and extrajudicial documents;

(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;

(d) cooperation in the taking of evidence;

(e) effective access to justice;

(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;

(g) the development of alternative methods of dispute settlement;

(h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, a European law or framework law of the Council shall establish measures concerning family law with cross-border implications. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

SECTION 4
JUDICIAL COOPERATION IN CRIMINAL MATTERS

ARTICLE I-156

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article I-157.

European laws or framework laws shall establish measures to:

(a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;

(b) prevent and settle conflicts of jurisdiction between Member States;

(c) support the training of the judiciary and judicial staff;

(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

3. Where a member of the Council considers that a draft European framework law as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law be referred to the European Council. In that case, the procedure referred to in Article I-43 of the Constitution shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

(a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article I-43 of the Constitution, or

(b) request the Commission or the group of Member States from which the draft originates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.

4. If, by the end of the period referred to in paragraph 3, either no action has been

taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3(b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-53(2) of the Constitution and II-297(1) of this treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

ARTICLE I-157

1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, European framework laws may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article I-150.

3. Where a member of the Council considers that a draft European framework law as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law be referred to the European Council. In that case, where the procedure referred to in Article I-43 of the Constitution is applicable, it shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

(a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article I-43 of the Constitution where it is applicable, or

(b) request the Commission or the group of Member States from which the draft originates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.

4. If, by the end of the period referred to in paragraph 3, either no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3(b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-53(2) of the Constitution and II-297(1) of this treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

ARTICLE I-158

European laws or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

ARTICLE I-159

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, European laws shall determine Eurojust's structure, operation, field of action and tasks. Those tasks may include:

(a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions, conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;

(b) the coordination of investigations and prosecutions referred to in point (a);

(c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

European laws shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to Article I-160, formal acts of judicial procedure shall be carried out by the competent national officials.

ARTICLE I-160

1. In order to combat crimes affecting the financial interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may, at the same time or subsequently, adopt a European decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

SECTION 5
POLICE COOPERATION

ARTICLE I-161

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, European laws or framework laws may establish measures concerning:

(a) the collection, storage, processing, analysis and exchange of relevant information;

(b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;

(c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. A European law or framework law of the Council may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

ARTICLE I-162

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. European laws shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

European laws shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The

application of coercive measures shall be the exclusive responsibility of the competent national authorities.

ARTICLE I-163

A European law or framework law of the Council shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles I-156 and I-161 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

CHAPTER V
AREAS WHERE THE UNION MAY TAKE COORDINATING, COMPLEMENTARY OR SUPPORTING ACTION

SECTION 1
PUBLIC HEALTH

ARTICLE I-164

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

Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover:

(a) 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;

(b) monitoring, early warning of and combating serious cross-border threats to health.

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

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

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

4. By way of derogation from Article I-12(5) and Article I-17(a) and in accordance with Article I-14(2)(k), European laws or framework laws shall contribute to the achievement of the objectives referred to in this Article by establishing the following measures in order to meet common safety concerns:

(a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

(b) measures in the veterinary and phytosanitary fields which have as their direct

objective the protection of public health;

(c) measures setting high standards of quality and safety for medicinal products and devices for medical use;

(d) measures concerning monitoring, early warning of and combating serious cross-border threats to health.

Such European laws or framework laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

5. European laws or framework laws may also establish incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, as well as measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

6. For the purposes of this Article, the Council, on a proposal from the Commission, may also adopt recommendations.

7. Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. The measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

SECTION 2
INDUSTRY

ARTICLE I-165

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

(a) speeding up the adjustment of industry to structural changes;

(b) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings;

(c) encouraging an environment favourable to cooperation between undertakings;

(d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Constitution. European laws or framework laws may establish specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Economic and Social Committee.

This Section shall not provide a basis for the introduction by the Union of any measure which could lead to distortion of competition or contains tax provisions or provisions

relating to the rights and interests of employed persons.

SECTION 3
CULTURE

ARTICLE I-166

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and complementing their action in the following areas:

(a) improvement of the knowledge and dissemination of the culture and history of the European peoples;

(b) conservation and safeguarding of cultural heritage of European significance;

(c) non-commercial cultural exchanges;

(d) artistic and literary creation, including in the audiovisual sector.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Union shall take cultural aspects into account in its action under other provisions of the Constitution, 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:

(a) European laws or framework laws shall establish incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions;

(b) the Council, on a proposal from the Commission, shall adopt recommendations.

SECTION 4
TOURISM

ARTICLE I-167

1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector.

To that end, Union action shall be aimed at:

(a) encouraging the creation of a favourable environment for the development of undertakings in this sector;

(b) promoting cooperation between the Member States, particularly by the exchange of good practice;

2. European laws or framework laws shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.

SECTION 5
EDUCATION, YOUTH, SPORT AND VOCATIONAL TRAINING

ARTICLE I-168

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and complementing their action. It shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

Union action shall be aimed at:

(a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;

(b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;

(c) promoting cooperation between educational establishments;

(d) developing exchanges of information and experience on issues common to the education systems of the Member States;

(e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors and encouraging the participation of young people in democratic life in Europe;

(f) encouraging the development of distance education;

(g) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.

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

3. In order to contribute to the achievement of the objectives referred to in this Article:

(a) European laws or framework laws shall establish incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee;

(b) the Council, on a proposal from the Commission, shall adopt recommendations.

ARTICLE I-169

1. The Union shall implement a vocational training policy which shall support and complement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

Union action shall aim to:

(a) facilitate adaptation to industrial change, in particular through vocational training and retraining;

(b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;

(c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;

(d) stimulate cooperation on training between educational or training establishments and firms;

(e) develop exchanges of information and experience on issues common to the training systems of the Member States.

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

3. In order to contribute to the achievement of the objectives referred to in this Article:

(a) European laws or framework laws shall establish the necessary measures, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee;

(b) the Council, on a proposal from the Commission, shall adopt recommendations.

SECTION 6
CIVIL PROTECTION

ARTICLE I-170

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

(a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

(b) promote swift, effective operational cooperation within the Union between national civil-protection services;

(c) promote consistency in international civil-protection work.

2. European laws or framework laws shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

SECTION 7
ADMINISTRATIVE COOPERATION

ARTICLE I-171

1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. European laws shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Constitution providing for administrative cooperation among the Member States and between them and the Union.

TITLE IV
ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

ARTICLE I-172

1. The non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom shall be associated with the Union. These countries and territories, hereinafter called the "countries and territories", are listed in Annex II.

This title shall apply to Greenland, subject to the specific provisions of the Protocol on special arrangements for Greenland.

2. 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 Union.

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 I-173

Association shall have the following objectives:

(a) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Constitution;

(b) 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;

(c) Member States shall contribute to the investments required for the progressive development of these countries and territories;

(d) for investments financed by the Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories;

(e) 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 of Subsection 2 of Section 2 of Chapter I of Title III relating to the freedom of establishment and under the procedures laid down in that Subsection, and on a non-discriminatory basis, subject to any acts adopted pursuant to Article I-177.

ARTICLE I-174

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 provided for in the Constitution.

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 Article I-37(4) of this treaty.

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 first subparagraph shall 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 I-175

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when Article I-174(1) has 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 that they take the necessary measures to remedy the situation.

ARTICLE I-176

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 regulated by acts adopted in accordance with Article I-177.

ARTICLE I-177

The Council, on a proposal from the Commission, shall adopt unanimously, on the basis of the experience acquired under the association of the countries and territories with the Union, European laws, framework laws, regulations and decisions as regards the detailed rules and the procedure for the association of the countries and territories with the Union. These laws and framework laws shall be adopted after consultation of the European Parliament.

TITLE V
THE UNION'S EXTERNAL ACTION

CHAPTER I
PROVISIONS HAVING GENERAL APPLICATION

ARTICLE I-178

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I-179

1. On the basis of the principles and objectives set out in Article I-178, the European Council shall identify the strategic interests and objectives of the Union.

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

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

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

CHAPTER II
COMMON FOREIGN AND SECURITY POLICY

SECTION 1
COMMON PROVISIONS

ARTICLE I-180

1. In the context of the principles and objectives of its external action, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy.

2. The Member States shall support the common foreign 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 and the Union Minister for Foreign Affairs shall ensure that these principles are complied with.

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

(a) defining the general guidelines;

(b) adopting European decisions defining:

(i) actions to be undertaken by the Union;

(ii) positions to be taken by the Union;

(iii) arrangements for the implementation of the European decisions referred to in points (i) and (ii);

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

ARTICLE I-181

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

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

2. The Council shall adopt the European decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines and strategic lines defined by the European Council.

ARTICLE I-182

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

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

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

ARTICLE I-183

1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary European decisions. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action.

If there is a change in circumstances having a substantial effect on a question subject to such a European decision, the Council shall review the principles and objectives of that decision and adopt the necessary European decisions.

2. The European decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

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

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

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

ARTICLE I-184

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

ARTICLE I-185

1. Any Member State, the Union Minister for Foreign Affairs, or that Minister with the

Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it initiatives or proposals as appropriate.

2. In cases requiring a rapid decision, the Union Minister for Foreign Affairs, of the Minister's own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council within forty-eight hours or, in an emergency, within a shorter period.

ARTICLE I-186

1. The European decisions referred to in this Chapter shall be adopted by the Council acting unanimously.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter 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 at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

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

(a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article I-179(1);

(b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister;

(c) when adopting a European decision implementing a European decision defining a

Union action or position;

(d) when adopting a European decision concerning the appointment of a special representative in accordance with Article I-188.

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

3. In accordance with Article I-49(7) of the Constitution the European Council may unanimously adopt a European decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.

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

ARTICLE I-187

1. When the European Council or the Council has defined a common approach of the Union within the meaning of Article I-49(5) of the Constitution, the Union Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

2. The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach referred to in paragraph 1.

ARTICLE I-188

The Council may appoint, on a proposal from the Union Minister for Foreign Affairs, a

special representative with a mandate in relation to particular policy issues. The special representative shall carry out his or her mandate under the Minister's authority.

ARTICLE I-189

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

ARTICLE I-190

1. The Union Minister for Foreign Affairs shall consult and inform the European Parliament in accordance with Article I-49(8) and Article I-50(8) of the Constitution. He or she shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

2. The European Parliament may ask questions of the Council and of the Union Minister for Foreign Affairs or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

ARTICLE I-191

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union Minister for Foreign Affairs shall organise this coordination.

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

2. In accordance with Article I-16(2), Member States represented in international organisations or international conferences where not all the Member States participate

shall keep the latter, as well as the Union Minister for Foreign Affairs, informed of any matter of common interest.

Member States which are also members of the United Nations Security Council shall concert and keep the other Member States and the Union Minister for Foreign Affairs fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position.

ARTICLE I-192

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the European decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the right of European citizens to protection in the territory of third countries as referred to in Article I-10(2)(c) and the measures adopted pursuant to Article I-13 of the *european Treaty*.

ARTICLE I-193

1. Without prejudice to Article II-227, 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 latter, or of the Union Minister for Foreign Affairs, or on its own initiative. It

shall also monitor the implementation of agreed policies, without prejudice to the powers of the Union Minister for Foreign Affairs.

2. Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the Union Minister for Foreign Affairs, the political control and strategic direction of the crisis management operations referred to in Article I-195.

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 measures concerning the political control and strategic direction of the operation.

ARTICLE I-194

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union competences referred to in Articles I-13 to I-15 and I-17.

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

SECTION 2
THE COMMON SECURITY AND DEFENCE POLICY

ARTICLE I-195

1. The tasks referred to in Article I-50(1) of the Constitution, in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including

peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

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

3. The policy of the Union in accordance with Article I-50 of the Constitution shall not prejudice the specific character of the security and defence policy of certain Member States, it shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.[4]

Commitments and cooperation in the area of common security and defence policy shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.[5]

ARTICLE I-196

1. Within the framework of the European decisions adopted in accordance with Article I-195, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the Union Minister for Foreign Affairs, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those

[4] Article I-42(2)al.2 of the treaty establishing a Constitution for Europe
[5] Article I-41(7)al.2 of the treaty establishing a Constitution for Europe

States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the European decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary European decisions.

ARTICLE I-197

1. Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.[6]

2. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), established by paragraph 1 and subject to the authority of the Council, shall have as its task to:

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

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

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

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

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[6] Article I-41(3)al.2 of the treaty establishing a Constitution for Europe

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

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

ARTICLE I-198

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article I-50(6) of the Constitution, which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation shall notify their intention to the Council and to the Union Minister for Foreign Affairs.

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

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs.

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

the vote.

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

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

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

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

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

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

SECTION 3
FINANCIAL PROVISIONS

ARTICLE I-199

1. Administrative expenditure which the implementation of this Chapter entails for the institutions shall be charged to the Union budget.

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

In cases where expenditure is not charged to the Union budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council 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 I-186(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article I-50(1) of the Constitution and Article I-195 of this treaty. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article I-41(1) and Article III-309 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the Union Minister for Foreign Affairs, European decisions establishing:

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

amounts allocated to the fund;

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

(c) the financial control procedures.

When the task planned in accordance with Article I-50 of the Constitution(1) and Article I-195 of this treaty cannot be charged to the Union budget, the Council shall authorise the Union Minister for Foreign Affairs to use the fund. The Union Minister for Foreign Affairs shall report to the Council on the implementation of this remit.

CHAPTER III
COMMON COMMERCIAL POLICY

ARTICLE I-200

By establishing a customs union in accordance with Article I-37, the Union shall contribute, in the common interest, to the harmonious development of world trade, free and fair trade[7], the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

ARTICLE I-201

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

[7] Article I-3(2) of the treaty establishing a Constitution for Europe

2. European laws shall establish the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article I-211 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union 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 and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements:

(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;

(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Section 7 of Chapter III of Title III and to Article I-211.

6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States insofar as the Constitution excludes such harmonisation.

CHAPTER IV
COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

SECTION 1
DEVELOPMENT COOPERATION

ARTICLE I-202

1. Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States shall complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

ARTICLE I-203

1. European laws or framework laws shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Articles I-178 and I-202.

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

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

ARTICLE I-204

1. In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

SECTION 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

ARTICLE I-205

1. Without prejudice to the other provisions of the Constitution, and in particular Articles I-202 to I-204, the Union shall carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's measures and those of the Member States shall complement and reinforce each other.

2. European laws or framework laws shall establish the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

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

ARTICLE I-206

When the situation in a third country requires urgent financial assistance from the Union, the Council shall adopt the necessary European decisions on a proposal from the Commission.

SECTION 3
HUMANITARIAN AID

ARTICLE I-207

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's operations and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.

3. European laws or framework laws shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in Article I-178.

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

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. European laws shall determine the rules and procedures for the operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian aid operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

CHAPTER V
RESTRICTIVE MEASURES

ARTICLE I-208

1. Where a European decision, adopted in accordance with Chapter II, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Union Minister for Foreign Affairs and the Commission, shall adopt the necessary European regulations or decisions. It shall inform the European Parliament thereof.

2. Where a European decision adopted in accordance with Chapter II so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.

CHAPTER VI
INTERNATIONAL AGREEMENTS

ARTICLE I-209

1. The Union may conclude an agreement with one or more third countries or

international organisations where the Constitution so provides or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Constitution, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

2. Agreements concluded by the Union are binding on the institutions of the Union and on its Member States.

ARTICLE I-210

The Union may conclude an association agreement with one or more third countries or international organisations in order to establish an association involving reciprocal rights and obligations, common actions and special procedures.

ARTICLE I-211

1. Without prejudice to the specific provisions laid down in Article I-201 agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the Union Minister for Foreign Affairs where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a European decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a European decision

authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a European decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the European decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf

modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article I-205 with the States which are candidates for accession.

9. The Council, on a proposal from the Commission or the Union Minister for Foreign Affairs, shall adopt a European decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Constitution. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless it is amended or the Constitution is revised.

ARTICLE I-212

1. By way of derogation from Article I-211, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the

procedure provided for in paragraph 3.

The Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.

2. In the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, acting either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.

3. By way of derogation from Article I-211, where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more third States or international organisations, the Council, acting on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude agreements.

CHAPTER VII

THE UNION'S RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

ARTICLE I-213

1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

The Union shall also maintain such relations as are appropriate with other international organisations.

2. The Union Minister for Foreign Affairs and the Commission shall be instructed to implement this Article.

ARTICLE I-214

1. Union delegations in third countries and at international organisations shall represent the Union.

2. Union delegations shall be placed under the authority of the Union Minister for Foreign Affairs. They shall act in close cooperation with Member States' diplomatic and consular missions.

CHAPTER VIII
IMPLEMENTATION OF THE SOLIDARITY CLAUSE

ARTICLE I-215

1. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political

authorities. To that end, the Member States shall coordinate between themselves in the Council.

2. The arrangements for the implementation by the Union of the solidarity clause referred to in Article I-52 of the Constitution shall be defined by a European decision adopted by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. The Council shall act in accordance with Article I-186(1) of the *european Treaty* where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article II-227, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article I-147; the two committees shall, if necessary, submit joint opinions.

3. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

PART II

THE FUNCTIONING OF THE UNION

TITLE I
PROCEDURES OF THE UNION

CHAPTER I
PROVISIONS GOVERNING THE INSTITUTIONS

SECTION 1
THE INSTITUTIONS

Subsection 1
The European Parliament

ARTICLE II-216

1.[...][8] When an European law or framework law of the Council shall establish the necessary measures for the election of the Members of the European Parliament referred to in Article I-20(3) of the Constitution, the Council shall act unanimously on initiative from the European Parliament, and after obtaining the consent of it, which shall act by a majority of its component members. This law or framework law shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

2. A European law of the European Parliament shall lay down the regulations and general conditions governing the performance of the duties of its Members. The European Parliament shall act on its own initiative after seeking an opinion from the

[8] Article I-20(3)Al.2 of the Constitution

Commission and after obtaining the consent of the Council. The Council shall act unanimously on all rules or conditions relating to the taxation of Members or former Members.

ARTICLE II-217

European laws shall lay down the regulations governing the political parties at European level referred to in Article I-55(4) of the Constitution, and in particular the rules regarding their funding.
[...][9]

ARTICLE II-218

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Constitution on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on submission of its report.

A European law of the European Parliament shall lay down the detailed provisions governing the exercise of the right of inquiry. The European Parliament shall act on its own initiative after obtaining the consent of the Council and of the Commission.

ARTICLE II-219

In accordance with Article I-10(2)(d) of the Constitution, 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 persons, a petition to the

[9] Article I-23 of the Constitution

European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly

ARTICLE II-220

1. The European Parliament shall elect a European Ombudsman. In accordance with Articles I-10(2)(d) and I-58 of the Constitution, he or she shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union's institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.

In accordance with his or her duties, the Ombudsman shall conduct inquiries for which he or she finds grounds, either on his or her own initiative or on the basis of complaints submitted to him or her 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 or she shall refer the matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him or her of its views. The European Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his or her inquiries.

2. The Ombudsman shall be elected after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his or her

duties. In the performance of those duties he or she shall neither seek nor take instructions from any institution, body, office or agency. The Ombudsman shall not, during his or her term of office, engage in any other occupation, whether gainful or not.

4. A European law of the European Parliament shall lay down the regulations and general conditions governing the performance of the Ombudsman's duties. The European Parliament shall act on its own initiative after seeking an opinion from the Commission and after obtaining the consent of the Council.
[...][10]
[...][11]

ARTICLE II-221

Save as otherwise provided in the Constitution or in the *european Treaty*, the European Parliament shall act by a majority of the votes cast. Its Rules of Procedure shall determine the quorum.

ARTICLE II-222

The European Parliament shall adopt its Rules of Procedure, by a majority of its component members.

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

ARTICLE II-223

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 shall do so only by open vote.

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[10] Article I-21 of the Constitution
[11] Article I-22 of the Constitution

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component members of the European Parliament, the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Articles I-30 and I-32 of the Constitution. 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.

Subsection 2
The European Council

ARTICLE II-224

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

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

2. The President of the European Parliament may be invited to be heard by the European Council.

3. The European Council shall act by a simple majority for procedural questions and for the adoption of its Rules of Procedure.

4. The European Council shall be assisted by the General Secretariat of the Council.

Subsection 3
The Council of Ministers

ARTICLE II-225

The Council shall meet when convened by its President on his or her own initiative, or at the request of one of its members or of the Commission.

ARTICLE II-226

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

2. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.

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

ARTICLE II-227

1. A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council .

The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

[...][12]

ARTICLE II-228

The Council shall adopt European decisions laying down the rules governing the committees provided for in the Constitution. It shall act by a simple majority after consulting the Commission.

Subsection 4
The European Commission

ARTICLE II-229

The members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The members of the Commission shall not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council, acting by a simple majority, or the Commission, rule that the person concerned be, according to the circumstances, either compulsorily retired in accordance with Article II-231 or deprived of his or her right to a pension or other benefits in its stead.

ARTICLE II-230

1. Apart from normal replacement, or death, the duties of a member of the Commission shall end when he or she resigns or is compulsorily retired.

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[12] Article I-27 of the Constitution

2. A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the member's term of office by a new member of the same nationality appointed by the Council, by common accord with the President of the Commission, after consulting the European Parliament and in accordance with the criteria set out in Article I-30(4) of the Constitution.

The Council may, acting unanimously on a proposal from the President of the Commission, decide that such a vacancy need not be filled, in particular when the remainder of the member's term of office is short.

3. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his or her term of office in accordance with Article I-32(1) of the Constitution.

4. In the event of resignation, compulsory retirement or death, the Union Minister for Foreign Affairs shall be replaced, for the remainder of his or her term of office, in accordance with Article I-33(1) of the Constitution.

5. In the case of the resignation of all the members of the Commission, they shall remain in office and continue to deal with current business until they have been replaced, for the remainder of their term of office, in accordance with Articles I-30 and I-32 of the Constitution.

ARTICLE II-231

If any member of the Commission no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct, the Court of Justice may, on application by the Council, acting by a simple majority, or by the Commission, compulsorily retire him or her.

ARTICLE II-232

Without prejudice to Article I-33(4) of the Constitution, the responsibilities incumbent upon

the Commission shall be structured and allocated among its members by its President, in accordance with Article I-32(3) of the Constitution. 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 or her authority.

ARTICLE II-233

The Commission shall act by a majority of its members. Its Rules of Procedure shall determine the quorum.

ARTICLE II-234

1. The Commission shall adopt its Rules of Procedure so as to ensure both its own operation and that of its departments. It shall ensure that these rules are published.

2. The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

Subsection 5
The Court of Justice of the European Union

ARTICLE II-235

The Court of Justice shall sit in chambers, as a Grand Chamber or as a full Court, in accordance with the Statute of the Court of Justice of the European Union.

ARTICLE II-236

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of

Justice so request, the Council may, acting unanimously, adopt a European decision to increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement.

ARTICLE II-237

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 after consultation of the panel provided for in Article II-239.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He or she may be re-elected.

The Court of Justice shall adopt its Rules of Procedure. Those Rules shall require the consent of the Council.

ARTICLE II-238

The number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the General Court to be assisted by Advocates-General.

The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States after consultation of the panel provided for in Article II-239.

The membership of the General Court shall be partially renewed every three years.

The Judges shall elect the President of the General Court from among their number for a term of three years. He or she may be re-elected.

The General Court shall establish its Rules of Procedure in agreement with the Court of Justice. The Rules shall be subject to the consent of the Council.

Unless the Statute provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the General Court.

ARTICLE II-239

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles II-237 and II-238.

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a European decision establishing the panel's operating rules and a European decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

ARTICLE II-240

1. The General Court shall have jurisdiction to hear and determine at first instance

actions or proceedings referred to in Articles II-246, II-248, II-251, II-253 and II-255, with the exception of those assigned to a specialised court set up under Article II-241 and those reserved in the Statute of the Court of Justice of the European Union for the Court of Justice. The Statute may provide for the General Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the General Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts.

Decisions given by the General Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute of the Court of Justice of the European Union, where there is a serious risk of the unity or consistency of Union law being affected.

3. The General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article II-250, in specific areas laid down by the Statute of the Court of Justice of the European Union.

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

Decisions given by the General Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

ARTICLE II-241

1. European laws may establish specialised courts attached to the General Court to

hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall be adopted either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.

[...][13]

3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the General Court.

4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the consent of the Council.

6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.

ARTICLE II-242

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

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[13] Article I-31 of the Constitution

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, 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.

ARTICLE II-243

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Constitution, that State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment referred to in paragraph 1, it may bring the case before the Court of Justice of the European Union after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court 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 II-242.

3. When the Commission brings a case before the Court of Justice of the European Union pursuant to Article I-31 of the Constitution on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a European framework law, it may, when it deems appropriate, specify the amount of the lump sum or

penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

ARTICLE II-244

European laws and regulations of the Council may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in them.

ARTICLE II-245

Without prejudice to the other provisions of the Constitution, a European law may confer on the Court of Justice of the European Union, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create European intellectual property rights.

ARTICLE II-246

1. The Court of Justice of the European Union shall review the legality of European laws and framework laws, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

2. For the purposes of paragraph 1, the Court of Justice of the European Union shall 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 the Constitution or of any rule of law relating to its application, or misuse of powers.

3. The Court of Justice of the European Union shall have jurisdiction under the conditions laid down in paragraphs 1 and 2 in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

4. Any natural or legal person may, under the conditions laid down in paragraphs 1 and 2, institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

5. Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

6. The proceedings provided for in this Article shall be instituted within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the plaintiff's knowledge, as the case may be.

ARTICLE II-247

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

ARTICLE II-248

Should the European Parliament, the European Council, the Council, the Commission or

the European Central Bank, in infringement of the Constitution, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

ARTICLE II-249

The institution, body, office or agency whose act has been declared void, or whose failure to act has been declared contrary to the Constitution, shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article II-309.

ARTICLE II-250

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

(a) the interpretation of the Constitution;

(b) the validity and interpretation of acts of the institutions, bodies, offices and agencies

of the Union.

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 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.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court shall act with the minimum of delay.

ARTICLE II-251

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article II-309.

ARTICLE II-252

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article I-68 of the Constitution solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

ARTICLE II-253

The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

ARTICLE II-254

The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

(a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article I-31 of the Constitution;

(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 II-246;

(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 I-31 of the Constitution, and solely on the grounds of non-compliance with the procedure provided for in Article 19(2), (5), (6) and (7) of the Statute of the Bank;

(d) the fulfilment by national central banks of obligations under the Constitution and the Statute of the European System of Central Banks and of the European Central Bank. In this connection, the powers of the Governing Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article III-360. If the Court of Justice of the European Union finds that a national central bank has failed to fulfil an obligation under the Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court.

ARTICLE II-255

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

ARTICLE II-256

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

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

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

ARTICLE II-257

The Court of Justice of the European Union shall not have jurisdiction with respect to Articles I-49 and I-50 of the Constitution and the provisions of Chapter II of Title V concerning the common foreign and security policy and Article I-179 of the *european Treaty* insofar as it concerns the common foreign and security policy.

However, the Court shall have jurisdiction to monitor compliance with Article I-194 and to rule on proceedings, brought in accordance with the conditions laid down in Article II-246 (4), reviewing the legality of European decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter II of Title V.

ARTICLE II-258

In exercising its powers regarding the provisions of Sections 4 and 5 of Chapter IV of Title III relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

ARTICLE II-259

Notwithstanding the expiry of the period laid down in Article II-246(6), any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in Article II-246(2) in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

ARTICLE II-260

1. Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

2. The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

ARTICLE II-261

The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article II-279.

ARTICLE II-262

The Statute of the Court of Justice of the European Union shall be laid down in a Protocol.

A European law may amend the provisions of the Statute, with the exception of Title I and Article 64. It shall be adopted either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.

[...][14]

ARTICLE II-263

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in meetings of the Council when it is discussing matters relating to the objectives and tasks of the European System of Central Banks.

3. The European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the European Council, the Council and the Commission. The President of the European Central Bank shall present this report to the European Parliament, which may hold a general debate on that basis, and to the Council.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent bodies of the European Parliament.

Subsection 7

The Court of Auditors

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[14] Article I-36 of the Constitution

ARTICLE II-264

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of any body, office or agency set up by the Union insofar as the instrument establishing that body, office or agency 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 Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions, or on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall

inform the Court of Auditors whether they intend to take part in the audit.

The other institutions, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union revenue and expenditure, rights of access by the Court of Auditors to information held by the Bank shall be governed by an agreement between the Court of Auditors, the Bank and the Commission. In the absence of an agreement, the Court of Auditors shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions 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.

It shall adopt its annual reports, special reports or opinions by a majority of its component 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.

It shall adopt its Rules of Procedure. Those rules shall require the consent of the Council .

ARTICLE I-265

[...][15]

1. In the performance of their duties, members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

2. Members of the Court of Auditors shall 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.

3. Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he or she resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 6.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement, members of the Court of Auditors shall remain in office until they have been replaced.

4. A member of the Court of Auditors may be deprived of his or her office or of his or her 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 or she no longer fulfils the requisite conditions or meets the obligations arising from his or her office.

SECTION 2
THE UNION'S ADVISORY BODIES

[15] Article I-38 of the Constitution

Subsection 1
The Committee of the Regions

ARTICLE II-266

The number of members of the Committee of the Regions shall not exceed 350. The Council, acting unanimously on a proposal from the Commission, shall adopt a European decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. No member of the Committee shall at the same time be a member of the European Parliament.

The Council shall adopt the European decision establishing 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 Article I-39(2) of the Constitution 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.

ARTICLE II-267

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

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

It shall adopt its Rules of Procedure.

ARTICLE II-268

The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where the Constitution so provides and in all other cases in which one of these institutions considers it appropriate, in particular those which concern cross-border cooperation.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which shall 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, the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter. It may also issue an opinion on its own initiative.

The opinion of the Committee, together with a record of its proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

Subsection 2
The Economic and Social Committee

ARTICLE II-269

The number of members of the Economic and Social Committee shall not exceed 350. The Council, acting unanimously on a proposal from the Commission, shall adopt a European decision determining the Committee's composition.

ARTICLE II-270

The members of the Economic and Social Committee shall be appointed for five years. Their term of office shall be renewable.

The Council shall adopt the European decision establishing the list of members drawn up in accordance with the proposals made by each Member State.

The Council shall act after consulting the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors and of civil society to which the Union's activities are of concern.

ARTICLE II-271

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

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

It shall adopt its Rules of Procedure.

ARTICLE II-272

The Economic and Social Committee shall be consulted by the European Parliament, by the Council or by the Commission where the Constitution so provides. It may be consulted by these institutions in all cases in which they consider it appropriate. It may also issue an opinion on its own initiative.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which shall 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, together with a record of its proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

SECTION 3
THE EUROPEAN INVESTMENT BANK

ARTICLE II-273

The European Investment Bank shall have legal personality.

Its members shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol.

A European law of the Council may amend the Statute of the European Investment Bank. The Council shall act unanimously, either at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank.

ARTICLE II-274

The task of the European Investment Bank shall be to contribute, by having recourse to the capital markets and utilising its own resources, to the balanced and steady development of the internal market in the Union's interest. For this purpose the European Investment Bank shall, operating on a non-profit-making basis, in particular 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 establishment or functioning of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;

(c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the European Investment Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union financial instruments.

[...][16]
[...][17]

ARTICLE II-275

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Constitution, conclude interinstitutional agreements which may be of a binding nature.

ARTICLE II-276

1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted

[16] Article I-42 of the Constitution
[17] Article I-43 of the Constitution

on the basis of Article II-305, European laws shall establish provisions to that end.

ARTICLE II-277

1. The institutions, bodies, offices and agencies of the Union shall ensure transparency in their work and shall, pursuant to Article I-59 of the Constitution, determine in their rules of procedure specific provisions for public access to their documents. The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to the provisions of Article I-59(3) of the Constitution and to this Article only when exercising their administrative tasks.

2. The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the European law referred to in Article I-59(3) of the Constitution.

ARTICLE II-278

1. The Council shall adopt European regulations and decisions determining:

(a) the salaries, allowances and pensions of the President of the European Council, the President of the Commission, the Union Minister for Foreign Affairs, the members of the Commission, the Presidents, members and Registrars of the Court of Justice of the European Union, and the Secretary-General of the Council;

(b) the conditions of employment, in particular the salaries, allowances and pensions, of the President and members of the Court of Auditors;

(c) any payment to be made instead of remuneration to the persons referred to in points (a) and (b).

2. The Council shall adopt European regulations and decisions determining the allowances of the members of the Economic and Social Committee.

ARTICLE II-279

Acts of the Council, of the Commission or of the European Central Bank which impose a pecuniary obligation on persons other than Member States shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member 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 the Court of Justice of the European Union.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement by bringing the matter directly before the competent authority, in accordance with the national law.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER II
FINANCIAL PROVISIONS

SECTION 1
THE MULTIANNUAL FINANCIAL FRAMEWORK

ARTICLE II-280

1. The multiannual financial framework shall be established for a period of at least five

years in accordance with Article I-64 of the Constitution.

2. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity.

3. The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.

4. Where no European law of the Council determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.

5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate the successful completion of the procedure.

SECTION 2
THE UNION'S ANNUAL BUDGET

ARTICLE II-281

The financial year shall run from 1 January to 31 December.

ARTICLE II-282

European laws shall establish the Union's annual budget in accordance with the following provisions:

1. Each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.

4. If, within forty-two days of such communication, the European Parliament:

(a) approves the position of the Council, the European law establishing the budget shall be adopted;

(b) has not taken a decision, the European law establishing the budget shall be deemed to have been adopted;

(c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the

European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.

7. If, within the period of fourteen days referred to in paragraph 6:

(a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the European law establishing the budget shall be deemed to be definitively adopted in accordance with the joint text, or

(b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission, or

(c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission, or

(d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation committee on the budget heading which is the subject of

the amendment shall be retained. The European law establishing the budget shall be deemed to be definitively adopted on this basis.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the European law establishing the budget has been definitively adopted.

10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Constitution and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

ARTICLE II-283

1. If at the beginning of a financial year no European law establishing the budget has been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations entered in the chapter in question of the budget for the preceding financial year may be spent each month in respect of any chapter in accordance with the European law referred to in Article II-290; that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

2. The Council, on a proposal by the Commission and in compliance with the other conditions laid down in paragraph 1, may adopt a European decision authorising expenditure in excess of one twelfth, in accordance with the European law referred to in Article II-290. The Council shall forward the decision immediately to the European Parliament.

The European decision shall lay down the necessary measures relating to resources to ensure application of this Article, in accordance with the European laws referred to in Article I-63(3) and (4) of the Constitution.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

ARTICLE II-284

In accordance with the conditions laid down by the European law referred to in Article II-290, 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 in accordance with the European law referred to in Article II-290.

The expenditure of

– the European Parliament,

– the European Council and the Council,

– the Commission, and

– the Court of Justice of the European Union

shall be set out in separate sections of the budget, without prejudice to special arrangements for certain common items of expenditure.

SECTION 3

IMPLEMENTATION OF THE BUDGET AND DISCHARGE

ARTICLE II-285

The Commission shall implement the budget in cooperation with the Member States, in accordance with the European law referred to in Article II-290, on its own responsibility and within the limits of the appropriations allocated, 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 those principles.

The European law referred to in Article II-290 shall establish the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. It shall establish the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget the Commission may, subject to the limits and conditions laid down by the European law referred to in Article II-290, transfer appropriations from one chapter to another or from one subdivision to another.

ARTICLE II-286

The Commission shall submit annually to the European Parliament and to the Council 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 Union's assets and liabilities.

The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article II-287.

ARTICLE II-287

1. The European Parliament, on a recommendation from the Council, 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, the financial statement and the evaluation report referred to in Article II-286, 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 the second subparagraph of Article II-264(1) 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.

4. 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.

SECTION 4
COMMON PROVISIONS

ARTICLE II-288

1. The multiannual financial framework and the annual budget shall be drawn up in euro.
2. The revenue and expenditure shown in the budget shall be in balance. [18]

[18] Article 53-2 of the treaty establishing a Constitution for Europe

3. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework referred to in Article I-64.[19]

ARTICLE II-289

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 the Constitution. 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 concerned through the authority designated by that State. 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 II-290

1. European laws shall establish:

(a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;

(b) rules providing for checks on the responsibility of financial actors, in particular authorising officers and accounting officers.

Such European laws shall be adopted after consultation of the Court of Auditors.

2. The Council shall, on a proposal from the Commission, adopt a European regulation

[19] Article 53-5 of the treaty establishing a Constitution for Europe

laying down the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements. The Council shall act after consulting the European Parliament and the Court of Auditors.

3. The Council shall act unanimously until 31 December 2006 in all the cases referred to by this Article.

ARTICLE II-291

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

ARTICLE II-292

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened, on the initiative of the Commission, under the budgetary procedures referred to in this Chapter. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the positions of the institutions over which they preside in order to facilitate the implementation of this Chapter.

SECTION 5
COMBATING FRAUD

ARTICLE II-293

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the Union's financial interests through measures taken in accordance with this

Article. These measures shall act as a deterrent and be such as to afford effective protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the Union's financial interests as they take to counter fraud affecting their own financial interests.

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

4. European laws or framework laws shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies. They shall be adopted after consultation of the Court of Auditors.

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.

CHAPTER III
ENHANCED COOPERATION

ARTICLE II-294

Any enhanced cooperation shall comply with the Constitution and the law of the Union.

Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

ARTICLE II-295

Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

ARTICLE II-296

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the European authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to any such conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible.

2. The Commission and, where appropriate, the Union Minister for Foreign Affairs shall keep the European Parliament and the Council regularly informed regarding developments in enhanced cooperation.

ARTICLE II-297

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a European decision of the Council, which shall act on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the Union Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a European decision of the Council acting unanimously.

ARTICLE II-298

1. Any Member State which wishes to participate in enhanced cooperation in progress in one of the areas referred to in Article II-297(1) shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which

shall decide on the request. The Council shall act in accordance with Article I-53(3) of the Constitution. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the Union Minister for Foreign Affairs and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the Union Minister for Foreign Affairs and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the Union Minister for Foreign Affairs, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act unanimously and in accordance with Article I-53(3) of the Constitution.

ARTICLE II-299

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 II-300

1. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article I-53(3) of the

Constitution, may adopt a European decision stipulating that it will act by a qualified majority.

2. Where a provision of the Constitution which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt European laws or framework laws under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article I-53(3) of the Constitution, may adopt a European decision stipulating that it will act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.

3. Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.

ARTICLE II-301

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

TITLE II
COMMON PROVISIONS

ARTICLE II-302

Taking account of the structural economic and social situation of Guadeloupe, French Guiana, Martinique, Réunion, 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, on a proposal from the Commission, shall adopt European laws, framework laws, regulations and decisions aimed, in particular, at laying down the conditions of application of the Constitution and of the *european Treaty* to those regions, including common policies. It shall act after consulting the European Parliament.

The acts referred to in the first paragraph concern in particular 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 Union programmes.

The Council shall adopt the acts referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

ARTICLE II-303

The Constitution and the *european Treaty* shall in no way prejudice the rules in Member States governing the system of property ownership.

ARTICLE II-304

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

ARTICLE II-305

The Staff Regulations of officials and the Conditions of Employment of other servants of the Union shall be laid down by a European law. It shall be adopted after consultation of the institutions concerned.

ARTICLE II-306

The Commission may, within the limits and under conditions laid down by a European regulation or decision adopted by a simple majority by the Council, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

ARTICLE II-307

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, measures for the production of statistics shall be laid down by a European law or framework law where necessary for the performance of the Union's activities.

2. The production of statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality. It shall not entail excessive burdens on economic operators.

ARTICLE II-308

The members of the Union's institutions, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

ARTICLE II-309

The Union's contractual liability shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

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

ARTICLE II-310

The seat of the Union's institutions shall be determined by common accord of the governments of the Member States.

ARTICLE II-311

The Council shall adopt unanimously a European regulation laying down the rules governing the languages of the Union's institutions, without prejudice to the Statute of the Court of Justice of the European Union.

ARTICLE II-312

The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union.

ARTICLE II-313

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 Constitution or the *european Treaty.*

To the extent that such agreements are not compatible with the Constitution or the european 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 the Constitution and the *european Treaty* by each Member State form an integral part of the Union and are thereby inseparably linked with the creation of institutions on which powers have been conferred by the Constitution and the granting of identical advantages by all the other Member States.

ARTICLE II-314

1. The Constitution and 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 internal market regarding products which are not intended for specifically military purposes.

2. The Council, on a proposal from the Commission, may unanimously adopt a European decision making changes to the list of 15 April 1958 of the products to which the provisions of paragraph 1(b) apply.

PART III

GENERAL AND FINAL PROVISIONS

ARTICLE III-315

Repeal of earlier Treaties

1. The Constitution and this treaty shall repeal the Treaty establishing the European Community, the Treaty on European Union and, under the conditions laid down in the Protocol on the acts and treaties having supplemented or amended the Treaty establishing the European Community and the Treaty on European Union, the acts and treaties which have supplemented or amended them, subject to paragraph 2 of this Article.

2. The Treaties on the Accession:

(a) of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland;

(b) of the Hellenic Republic;

(c) of the Kingdom of Spain and the Portuguese Republic;

(d) of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, and

(e) 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,

shall be repealed.

Nevertheless:

– the provisions of the Treaties referred to in points (a) to (d) and set out or referred to in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic

of Austria, the Republic of Finland and the Kingdom of Sweden shall remain in force and their legal effects shall be preserved in accordance with that Protocol,

– the provisions of the Treaty referred to in point (e) and which are set out or referred to in the Protocol on the Treaty and Act 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 shall remain in force and their legal effects shall be preserved in accordance with that Protocol.

ARTICLE III-316

Succession and legal continuity

1. The European Union established by the Constitution shall be the successor to the European Union established by the Treaty on European Union and to the European Community.

2. Until new provisions have been adopted in implementation of the Constitution or until the end of their term of office, the institutions, bodies, offices and agencies existing on the date of the entry into force of this Treaty shall, subject to Article III-317, exercise their powers within the meaning of this Treaty in their composition on that date.

3. The acts of the institutions, bodies, offices and agencies adopted on the basis of the treaties and acts repealed by Article III-315 shall remain in force. Their legal effects shall be preserved until those acts are repealed, annulled or amended in implementation of the Constitution. The same shall apply to agreements concluded between Member States on the basis of the treaties and acts repealed by Article III-315.

The other components of the *acquis* of the Community and of the Union existing at the time of the entry into force of this Treaty, in particular the interinstitutional agreements, decisions and agreements arrived at by the Representatives of the Governments of the Member States, meeting within the Council, the agreements concluded by the Member States on the functioning of the Union or of the Community or linked to action by the

Union or by the Community, the declarations, including those made in the context of intergovernmental conferences, as well as the resolutions or other positions adopted by the European Council or the Council and those relating to the Union or to the Community adopted by common accord by the Member States, shall also be preserved until they have been deleted or amended.

4. The case law of the Court of Justice of the European Communities and of the Court of First Instance on the interpretation and application of the treaties and acts repealed by Article III-315, as well as of the acts and conventions adopted for their application, shall remain, mutatis mutandis, the source of interpretation of Union law and in particular of the comparable provisions of the Constitution and the *european Treaty.*

5. Continuity in administrative and legal procedures commenced prior to the date of entry into force of this Treaty shall be ensured in compliance with its provisions and those of the Constitution. The institutions, bodies, offices and agencies responsible for those procedures shall take all appropriate measures to that effect.

ARTICLE III-317

Transitional provisions relating to certain institutions

The transitional provisions relating to the composition of the European Parliament, to the definition of a qualified majority in the European Council and in the Council, including those cases where not all members of the European Council or Council vote, and to the composition of the Commission, including the Union Minister for Foreign Affairs, shall be laid down in the Protocol on the transitional provisions relating to the institutions and bodies of the Union.

ARTICLE III-318

Scope

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. This Treaty shall apply to Guadeloupe, French Guiana, Martinique, Réunion, the Azores, Madeira and the Canary Islands in accordance with Article III-424.

3. The special arrangements for association set out in Title IV of Part I shall apply to the overseas countries and territories listed in Annex II.

This Treaty shall not apply to overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in that list.

4. This Treaty shall apply to the European territories for whose external relations a Member State is responsible.

5. This Treaty shall apply to the Åland Islands with the derogations which originally appeared in the Treaty referred to in Article III-315(2)(d) and which have been incorporated in Section 5 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding paragraphs 1 to 5:

(a) this Treaty shall not apply to the Faeroe Islands;

(b) this Treaty shall apply to Akrotiri and Dhekelia, the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, only to the extent necessary to ensure the implementation of the arrangements originally provided for

in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, annexed to the Act of Accession which is an integral part of the Treaty referred to in Article III-315(2)(e), and which have been incorporated in Title III of Part II of the Protocol on the Treaty and Act 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;

(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 originally set out in the Treaty referred to in Article III-315(2)(a), and which have been incorporated in Section 3 of Title II of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

7. The European Council may, on the initiative of the Member State concerned, adopt a European decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 2 and 3. The European Council shall act unanimously after consulting the Commission.

ARTICLE III-319

Regional unions

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 the said Treaty.

ARTICLE III-320

Protocols and Annexes

The Protocols and Annexes to this Treaty shall form an integral part thereof.

ARTICLE III-321

Ordinary revision procedure

1. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of this Treaty. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

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

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

3. A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining ~~by common accord~~ **by a majority of four fifths of the Member States** the amendments to be made to this Treaty.

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

4. ~~If, two years after the signature of the treaty amending this Treaty, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.~~ **The amendments shall enter into force after being approved by the European Parliament and ratified by at least four fifths of the national Parliaments, in accordance with their respective constitutional requirements.**

ARTICLE III-322

Simplified revision procedure

1. Where *the European Treaty* provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case. This paragraph shall not apply to decisions with military implications or those in the area of defence.

2. Where *the European Treaty* provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.

3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision. For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

ARTICLE III-323

Simplified revision procedure concerning internal Union policies and action

1. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Title III or Part III *of this Treaty* on the internal policies and action of the Union.

2. The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III *of this Treaty*. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. Such a European decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.

3. The European decision referred to in paragraph 2 shall not increase the competences conferred on the Union *in the Constitution*.

ARTICLE III-324

Duration

This Treaty is concluded for an unlimited period.

ARTICLE III-325

Ratification and entry into force

1. This Treaty shall be ratified by **the national Parliaments of the Member States** ~~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 November 2006, provided that all the~~

~~instruments of ratification have been deposited, or, failing that,~~ on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step. **The entry into force shall not take effect until after the ratification of the European Constitution.**

ARTICLE III-326

Authentic texts and translations

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

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

IN WITNESS WHEREOF, the undersigned plenipotentiaries have signed this Treaty.

Done at … this …

Protocols and Annexes I and II annexed to the Treaty establishing a Constitution for Europe

A. PROTOCOLS

ANNEXED TO THE EUROPEAN TREATY

1. PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State;

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft European legislative acts as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty* and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

ARTICLE 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

ARTICLE 2

Draft European legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft European legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act.

Draft European legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft European legislative acts originating from the European Parliament shall be

forwarded to national Parliaments directly by the European Parliament.

Draft European legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

ARTICLE 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft European legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.
If the draft European legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.
If the draft European legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

ARTICLE 4

A six-week period shall elapse between a draft European legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft European legislative act during those six weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft European legislative act on the provisional agenda for the Council and the adoption of a position.

ARTICLE 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft European legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

ARTICLE 6

When the European Council intends to make use of Article **!Unexpected End of Formula**III-127(1) or (2) of the Constitution, national Parliaments shall be informed of the initiative of the European Council at least six months before any European decision is adopted.

ARTICLE 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

ARTICLE 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II
INTERPARLIAMENTARY COOPERATION

ARTICLE 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

ARTICLE 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

2. PROTOCOL
ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article I-11 of the Constitution, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty* :

ARTICLE 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-11 of the Constitution.

ARTICLE 2

Before proposing European legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the
action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

ARTICLE 3

For the purposes of this Protocol, "draft European legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act.

ARTICLE 4

The Commission shall forward its draft European legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft European legislative acts and its amended

drafts to national Parliaments.

The Council shall forward draft European legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

ARTICLE 5

Draft European legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft European legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a European framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft European legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

ARTICLE 6

Any national Parliament or any chamber of a national Parliament may, within six weeks from the date of transmission of a draft European legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft European legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft European legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

ARTICLE 7

The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

Where reasoned opinions on a draft European legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second paragraph, the draft must be reviewed. This threshold shall be a quarter in the case of a draft European legislative act submitted on the basis of Article I-150 of the *european Treaty* on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft European legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

ARTICLE 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a European legislative act, brought in accordance with the rules laid down in Article II-246 of the *european Treaty* by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against European legislative acts for the adoption of which the Constitution provides that it be consulted.

ARTICLE 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article I-11 of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

3. PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES

DESIRING to lay down the Statute of the Court of Justice of the European Union provided for in Article II-262 of the *european Treaty*,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty* establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community:

ARTICLE 1

The Court of Justice of the European Union shall be constituted and shall function in accordance with the Constitution, with the Treaty establishing the European Atomic Energy Community (EAEC Treaty) and with this Statute.

TITLE I
JUDGES AND ADVOCATES-GENERAL

ARTICLE 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

ARTICLE 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.
The Court of Justice, sitting as a full Court, may waive the immunity. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Articles 11 to 14 and Article 17 of the Protocol on the privileges and immunities of the Union shall apply to the Judges, Advocates-General, Registrars and Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the first, second and third paragraphs of this Article.

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 a European decision of the Council, acting by a simple majority.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

ARTICLE 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.
Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court of Justice for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.
Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

ARTICLE 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court of Justice, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations. If the person concerned is a member of the General

Court or of a specialised court, the Court shall decide after consulting the court concerned. The Registrar of the Court of Justice shall communicate the decision of the Court of Justice 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 of Justice whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

ARTICLE 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

TITLE II
ORGANISATION OF THE COURT OF JUSTICE

ARTICLE 9

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

When, every three years, the Advocates-General are partially replaced, four Advocates-General shall be replaced on each occasion.

ARTICLE 10

The Registrar shall take an oath before the Court of Justice to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

ARTICLE 11

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

ARTICLE 12

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

ARTICLE 13

A European law may provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. It shall be adopted at the request of the Court of Justice. 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 of Justice 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 a European decision of the Council, acting by a simple majority. They shall take an oath before the Court of Justice to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

ARTICLE 14

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court of Justice has its seat.

ARTICLE 15

The Court of Justice shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court of Justice with due regard to the needs of its business.

ARTICLE 16

The Court of Justice shall form chambers consisting of three and five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The Grand Chamber shall consist of thirteen Judges. It shall be presided over by the President of the Court of Justice. 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 of Justice shall sit in a Grand Chamber when a Member State or an institution of the Union that is party to the proceedings so requests.

The Court of Justice shall sit as a full Court where cases are brought before it pursuant to Article II-220(2), the second paragraph of Article II-229, Article II-231 or Article II-265(6) of the *european Treaty*.

Moreover, where it considers that a case before it is of exceptional importance, the Court of Justice may decide, after hearing the Advocate-General, to refer the case to the full Court.

ARTICLE 17

Decisions of the Court of Justice shall be valid only when an uneven number of its members is sitting in the deliberations.
Decisions of the chambers consisting of either three or five Judges shall be valid only if they are taken by three Judges.
Decisions of the Grand Chamber shall be valid only if nine Judges are sitting.
Decisions of the full Court shall be valid only if fifteen Judges are sitting.
In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

ARTICLE 18

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or

Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court of Justice.

A party may not apply for a change in the composition of the Court of Justice or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

TITLE III
PROCEDURE BEFORE THE COURT OF JUSTICE

ARTICLE 19

The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case. The agent may be assisted by an adviser or by a lawyer.
The States, other than the Member States, which are parties to the Agreement on the European Economic Area and also the European Free Trade Association (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 of Justice.

Such agents, advisers and lawyers shall, when they appear before the Court of Justice, 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 of Justice 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 of Justice as are accorded by this Article to lawyers.

ARTICLE 20

The procedure before the Court of Justice shall consist of two parts: written and oral.
The written procedure shall consist of the communication to the parties and to the institutions, bodies, offices or agencies of the Union whose acts 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 Justice 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 of Justice may decide, after hearing the Advocate-General, that the case shall be determined without a submission from the Advocate-General.

ARTICLE 21

A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article II-248 of the *european Treaty*, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in

that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

ARTICLE 22

A case governed by Article 18 of the EAEC Treaty shall be brought before the Court of Justice by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

If the Court annuls the decision of the Arbitration Committee, the matter may be re-opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

ARTICLE 23

In the cases governed by Article II-250 of the *european Treaty*, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court of Justice by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court of Justice to the parties, to the Member States and to the Commission, and to the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute.
Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the institution, body, office or agency which adopted the act the

validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court of Justice.

The decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court of Justice 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 of Justice. This paragraph shall not apply to questions falling within the scope of the EAEC Treaty.

Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member countries, provides that those countries 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 on 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 countries concerned. Within two months from such notification, those countries may lodge at the Court of Justice statements of case or written observations.

ARTICLE 24

The Court of Justice may require the parties to produce all documents and to supply all information which the Court of Justice considers desirable. Formal note shall be taken of any refusal.
The Court of Justice may also require the Member States and institutions, bodies, offices and agencies of the Union not being parties to the case to supply all information which the Court of Justice considers necessary for the proceedings.

ARTICLE 25

The Court of Justice may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

ARTICLE 26

Witnesses may be heard under conditions laid down in the Rules of Procedure.

ARTICLE 27

With respect to defaulting witnesses the Court of Justice shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

ARTICLE 28

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

ARTICLE 29

The Court of Justice may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court of Justice under the same conditions.

The Court of Justice shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

ARTICLE 30

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court of Justice, the Member State concerned shall prosecute the offender before its competent court.

ARTICLE 31

The hearing in court shall be public, unless the Court of Justice, of its own motion or on application by the parties, decides otherwise for serious reasons.

ARTICLE 32

During the hearings the Court of Justice may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court of Justice only through their representatives.

ARTICLE 33

Minutes shall be made of each hearing and signed by the President and the Registrar.

ARTICLE 34

The case list shall be established by the President.

ARTICLE 35

The deliberations of the Court of Justice shall be and shall remain secret.

ARTICLE 36

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

ARTICLE 37

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

ARTICLE 38

The Court of Justice shall adjudicate upon costs.

ARTICLE 39

The President of the Court of Justice may, by way of summary procedure, which may, insofar 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 II-260(1) of the *european Treaty* and Article 157 of the EAEC Treaty, or to prescribe interim measures in pursuance of Article II-260(2) of the *european Treaty*, or to suspend enforcement in accordance with the fourth paragraph of Article II-279(4) of the *european 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 of Justice on the substance of the case.

ARTICLE 40

Member States and institutions of the Union may intervene in cases before the Court of Justice.

The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest in the result of a case submitted to the Court of Justice. Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union.

Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court of Justice where one of the fields of application of 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 of Justice decides otherwise.

ARTICLE 42

Member States, institutions, bodies, offices and agencies of the Union and any other natural or legal persons may, in cases and under conditions laid down in 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 of Justice shall construe it on application by any party or any institution of the Union establishing an interest therein.

ARTICLE 44

An application for revision of a judgment may be made to the Court of Justice only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of ten years from the date of the judgment.

ARTICLE 45

Periods of grace based on considerations of distance shall be laid down in 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 Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article II-246 of the *european Treaty*. The

second paragraph of Article II-248 of the *european Treaty* shall apply.

This Article shall also apply to proceedings against the European Central Bank regarding non-contractual liability.

TITLE IV
THE GENERAL COURT

ARTICLE 47

The first paragraph of Article 9, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the General Court and its members.

Articles 10, 11 and 14 shall apply to the Registrar of the General Court *mutatis mutandis*.

ARTICLE 48

The General Court shall consist of twenty-five Judges.

ARTICLE 49

The members of the General Court may be called upon to perform the task of an Advocate-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the General Court in order to assist that Court in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates-General, shall be laid down in the Rules of Procedure of the General Court.
A member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

ARTICLE 50

The General Court shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure, the General Court may sit as a full court or be constituted by a single Judge.

The Rules of Procedure may also provide that the General Court may sit in a Grand Chamber in cases and under the conditions specified therein.

ARTICLE 51

By way of derogation from the rule laid down in Article II-240(1) of the *european Treaty*, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles II-246 and II-248 of the *european 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 both those institutions acting jointly, except for:

– European decisions adopted by the Council under the third subparagraph of Article I-154, paragraph 2 (3) of the *european Treaty*;

– acts of the Council adopted pursuant to a Council act concerning measures to protect trade within the meaning of Article I-201 of the *european Treaty*;

– acts of the Council by which the Council exercises implementing powers in accordance with Article I-46(2) of the Constitution;

(b) against an act of or failure to act by the Commission under Article II-298(1) of the *european 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 Union against an act of or failure to act by the European Parliament or the Council or both of those institutions acting jointly or the Commission, or brought by an institution 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 General Court shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the General Court to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the General Court under the authority of the President of the General Court.

ARTICLE 53

The procedure before the General Court shall be governed by Title III.

Such further and more detailed provisions as may be necessary shall be laid down in its Rules of Procedure. The Rules of Procedure may derogate from the fourth paragraph of Article 40 and from Article 41 in order to take account of the specific features of litigation in the field of intellectual property.

Notwithstanding the fourth paragraph of Article 20, the Advocate-General may make his reasoned submissions in writing.

ARTICLE 54

Where an application or other procedural document addressed to the General Court is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted

immediately by that Registrar to the Registrar of the General Court. Likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice. Likewise, where the Court of Justice finds that an action falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.
Where the Court of Justice and the General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the General Court may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment, or, where the action is one brought pursuant to Article II-246 of the *european 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 General Court shall continue.

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

ARTICLE 55

Final decisions of the General Court, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the General Court to all parties as well as all Member States and the institutions of the Union even if they did not intervene in the case before the General Court.

ARTICLE 56

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the General Court directly affects them.

With the exception of cases relating to disputes between the Union and its servants, an appeal may also be brought by Member States and institutions of the Union which did not intervene in the proceedings before the General Court. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

ARTICLE 57

Any person whose application to intervene has been dismissed by the General Court may appeal to the Court of Justice within two weeks from the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the General Court made pursuant to Article II-260(1) or (2) or the fourth paragraph of Article II-279 of the *european Treaty*, or Article 157 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 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 General Court, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Union law by the General Court.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

ARTICLE 59

Where an appeal is brought against a decision of the General Court, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure, the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

ARTICLE 60

Without prejudice to Article II-260 (1) and (2) of the *european Treaty* or Article 157 of the EAEC Treaty, an appeal shall not have suspensory effect.
By way of derogation from Article II-261 of the *european Treaty*, decisions of the General Court declaring a European law or European regulation binding in its entirety and directly applicable in all Member States 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 Article II-260(1) and (2) of the european Treaty, and Article 157 of the EAEC Treaty for the suspension of the effects of the European law or European 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 General Court. It may itself give final judgment in the matter, where the state of the proceedings

so permits, or refer the case back to the General Court for judgment.

Where a case is referred back to the General Court, that Court shall be bound by the decision of the Court of Justice on points of law.
When an appeal brought by a Member State or an institution of the Union, which did not intervene in the proceedings before the General Court, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the General Court which has been quashed shall be considered as definitive in respect of the parties to the litigation.

ARTICLE 62

In the cases provided for in Article II-240(2) and (3) of the *european Treaty*, where the First Advocate-General considers that there is a serious risk of the unity or consistency of Union law being affected, he may propose that the Court of Justice review the decision of the General Court.

The proposal must be made within one month of delivery of the decision by the General Court. Within one month of receiving the proposal made by the First Advocate-General, the Court of Justice shall decide whether or not the decision should be reviewed.

TITLE V
FINAL PROVISIONS

ARTICLE 63

The Rules of Procedure of the Court of Justice and of the General Court shall contain any provisions necessary for applying and, where required, supplementing this Statute.

ARTICLE 64

The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a European regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament.

Until those rules have been adopted, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the General Court governing language arrangements shall apply. By way of derogation from Articles II-237 and II-238 of the *european Treaty*, those provisions may only be amended or repealed with the unanimous consent of the Council.

ARTICLE 65

1. By way of derogation from Article III-315 of the *european Treaty*, any amendment to the Protocol on the Statute of the Court of Justice, annexed to the Treaty on European Union, to the *european Treaty* and to the EAEC Treaty, which is adopted between the

signing and the entry into force of the Treaty establishing a Constitution for Europe, shall remain in force.

2. In order to incorporate them into the enacting terms of this Statute, the amendments referred to in paragraph 1 shall be subject to official codification by a European law of the Council, adopted at the request of the Court of Justice. When such codifying European law enters into force, this Article shall be repealed.

4. PROTOCOL ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK

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 Articles I-35 and I-73(2) of the *european Treaty*,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty* :

CHAPTER I
THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 1

The European System of Central Banks

1. In accordance with Article I-35 (1) of the Constitution, the European Central Bank and

the national central banks shall constitute the European System of Central Banks. The European Central Bank and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

2. The European System of Central Banks and the European Central Bank shall perform their tasks and carry on their activities in accordance with the Constitution and this Statute.

CHAPTER II
OBJECTIVES AND TASKS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 2

Objectives

In accordance with Articles I-35 (2) of the Constitution and I-71 (1) of the *european Treaty*, the primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives as laid down in Article I-3 of the Constitution. The European System of Central Banks 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 I-63 of the *european Treaty*.

ARTICLE 3

Tasks

1. In accordance with Article I-71 (2) of the *european Treaty*, the basic tasks to be carried out through the European System of Central Banks shall be:

(a) to define and implement the Union's monetary policy;

(b) to conduct foreign-exchange operations consistent with Article I-212 of the *european Treaty*;

(c) to hold and manage the official foreign reserves of the Member States;

(d) to promote the smooth operation of payment systems.

2. In accordance with Article I-71 (3) of the *european Treaty*, paragraph 1(c) of this Article shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3. In accordance with Article I-71(5) of the *european Treaty*, the European System of Central Banks 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 I-71 (4) of the *european Treaty*, the European Central Bank shall be consulted:

(a) on any proposed Union act in areas within its powers;

(b) 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 41;

The European Central Bank may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters within its powers.

ARTICLE 5

Collection of statistical information

1. In order to undertake the tasks of the European System of Central Banks, the European Central Bank, 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 Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.
2. The national central banks shall carry out, to the extent possible, the tasks referred to in paragraph 1.

3. The European Central Bank 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 powers.

4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

ARTICLE 6

International cooperation

1. In the field of international cooperation involving the tasks entrusted to the European System of Central Banks, the European Central Bank shall decide how the European System of Central Banks shall be represented.

2. The European Central Bank and, subject to its approval, the national central banks may participate in international monetary institutions.

3. Paragraphs 1 and 2 shall be without prejudice to Article I-82 of the *european Treaty*.

CHAPTER III
ORGANISATION OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 7
Independence

In accordance with Article I-74 of the *european Treaty*, when exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and this Statute, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices and agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

ARTICLE 8

General principle

The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank.
ARTICLE 9

The European Central Bank

1. The European Central Bank, which, in accordance with Article I-35(3) of the Constitution, has 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.

2. The European Central Bank shall ensure that the tasks conferred upon the European System of Central Banks under Article I-71(2), (3) and (5) of the *european Treaty* are implemented either by itself pursuant to this Statute or through the national central banks pursuant to Article 12(1) and Article 14.

3. In accordance with Article I-73(1) of the *european Treaty*, the decision-making bodies of the European Central Bank shall be the Governing Council and the Executive Board.

ARTICLE 10

The Governing Council

1. In accordance with Article I-36(1) of the Constitution, the Governing Council shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation as referred to in Article I-83 of the *european Treaty*.

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:

(a) as from the date on which the number of governors exceeds 15 and 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 whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group

eleven voting rights;

(b) 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 criteria laid down in (a). 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;

(c) within each group, the governors shall have their voting rights for equal amounts of time;

(d) 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 Union at the time of the calculation;

(e) 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 principles laid down in this subparagraph;

(f) 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 principles laid down in this subparagraph 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 first and second subparagraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under paragraph 3 and Article 40(2) and (3). Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

In order for the Governing Council to vote, there shall be a quorum of two thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 49, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the European Central Bank. The weighting 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 European Central Bank 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.

4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

5. The Governing Council shall meet at least ten times a year.

ARTICLE 11

The Executive Board

1. In accordance with the first subparagraph of Article I-36(2) of the Constitution, 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.

2. In accordance with Article I-36(2) of the Constitution, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council and after consulting 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.

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 European Central Bank 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.

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.

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).

6. The Executive Board shall be responsible for the current business of the European Central Bank.

7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with paragraph 2.

ARTICLE 12

Responsibilities of the decision-making bodies

1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the European System of Central Banks under the Constitution and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the European System of Central Banks, 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 European Central Bank shall have recourse to the national central banks to carry out operations which form part of the tasks of the European System of Central Banks.

2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the European Central Bank and its decision-making bodies.

4. The Governing Council shall exercise the advisory functions referred to in Article 4.

5. The Governing Council shall take the decisions referred to in Article 6.

ARTICLE 13

The President

1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the European Central Bank.

2. Without prejudice to Article 38, the President or his nominee shall represent the European Central Bank externally.

ARTICLE 14

National central banks

1. In accordance with Article I-75 of the *european Treaty*, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Constitution and this Statute.

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 the Constitution 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.

3. The national central banks are an integral part of the European System of Central Banks and shall act in accordance with the guidelines and instructions of the European Central Bank. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the European Central Bank, and shall require that any necessary information be given to it.

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 European System of Central Banks. 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 European System of Central Banks.

ARTICLE 15

Reporting commitments

1. The European Central Bank shall draw up and publish reports on the activities of the European System of Central Banks at least quarterly.

2. A consolidated financial statement of the European System of Central Banks shall be published each week.

3. In accordance with Article II-263(3) of the *european Treaty*, the European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the European Council, the Council and the Commission.

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 I-72 of the *european Treaty*, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The European Central Bank shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV
MONETARY FUNCTIONS AND OPERATIONS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 17

Accounts with the European Central Bank and the national central banks

In order to conduct their operations, the European Central Bank 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

1. In order to achieve the objectives of the European System of Central Banks and to carry out its tasks, the European Central Bank and the national central banks may:

(a) 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 euro or other currencies, as well as precious metals;

(b) conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

2. The European Central Bank 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

1. Subject to Article 2, the European Central Bank may require credit institutions established in Member States to hold minimum reserves on accounts with the European Central Bank and national central banks in pursuance of monetary policy objectives. Detailed rules concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the European Central Bank shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of 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 41, define the scope of such methods if they impose obligations on third parties.

ARTICLE 21

Operations with public entities

1. In accordance with Article I-67 of the *european Treaty*, overdrafts or any other type of credit facility with the European Central Bank or with the national central banks in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. The European Central Bank and national central banks may act as fiscal agents for the entities referred to in paragraph 1.

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 European Central Bank as private credit institutions.

ARTICLE 22

Clearing and payment systems

The European Central Bank and national central banks may provide facilities, and the European Central Bank may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

ARTICLE 23

External operations

The European Central Bank and national central banks may:

(a) establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;

(b) 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;

(c) hold and manage the assets referred to in this Article;

(d) 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 European Central Bank and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V
PRUDENTIAL SUPERVISION

ARTICLE 25

Prudential supervision

1. The European Central Bank 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 legally binding acts of the Union relating to the prudential supervision of credit institutions and to the stability of the financial system.

2. In accordance with any European law adopted under Article I-71(6) of the *european Treaty*, the European Central Bank 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 EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 26

Financial accounts

1. The financial year of the European Central Bank and national central banks shall begin on the first day of January and end on the last day of December.

2. The annual accounts of the European Central Bank 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.

3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the European System of Central Banks, comprising those assets and liabilities of the national central banks that fall within the European System of Central Banks.

4. For the application of this Article, the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

ARTICLE 27

Auditing

1. The accounts of the European Central Bank 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 European Central Bank and national central banks and obtain full information about their transactions.

2. Article II-264 of the *european Treaty* shall only apply to an examination of the operational efficiency of the management of the European Central Bank.

ARTICLE 28

Capital of the European Central Bank

1. The capital of the European Central Bank, shall be 5 000 million euro. The capital may be increased by such amounts as stipulated by a European decision 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 41.

2. The national central banks shall be the sole subscribers to and holders of the capital of the European Central Bank. The subscription of capital shall be according to the key established in accordance with Article 29.

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.

4. Subject to paragraph 5, the shares of the national central banks in the subscribed capital of the European Central Bank may not be transferred, pledged or attached.

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

1. The key for subscription of the European Central Bank's capital, fixed for the first time in 1998 when the European System of Central Banks was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:

– 50% of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the European System of Central Banks;

– 50% of the share of its respective Member State in the Union's gross domestic product at market prices as recorded in the last five years preceding the penultimate year before the establishment of the European System of Central Banks.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules laid down by the Council under the procedure provided for in Article 41.

3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the European System of Central Banks by analogy with paragraph 1. The adjusted key shall apply with effect from the first day of the following year.

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 European Central Bank

1. Without prejudice to Article 28, the European Central Bank shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, International Monetary Fund reserve positions and special drawing rights, up to an amount equivalent to 50 000 million euro. The Governing Council shall decide upon the proportion to be called up by the European Central Bank. The European Central Bank 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.

2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the European Central Bank.

3. Each national central bank shall be credited by the European Central Bank with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

4. Further calls of foreign reserve assets beyond the limit set in paragraph 1 may be effected by the European Central Bank, in accordance with paragraph 2, within the limits and under the
conditions laid down by the Council in accordance with the procedure laid down in Article 41.

5. The European Central Bank may hold and manage International Monetary Fund reserve positions and special drawing rights and provide for the pooling of such assets.

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

1. The national central banks shall be allowed to perform transactions in fulfilment of

their obligations towards international organisations in accordance with Article 23.

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 paragraph 3, be subject to approval by the European Central Bank in order to ensure consistency with the exchange rate and monetary policies of the Union.

3. The Governing Council shall issue guidelines with a view to facilitating such operations.

ARTICLE 32

Allocation of monetary income
of national central banks

1. The income accruing to the national central banks in the performance of the monetary policy function of the European System of Central Banks (hereinafter referred to as "monetary income") shall be allocated at the end of each financial year in accordance with the provisions of this Article.

2. 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.

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 paragraph 2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from paragraph 2, monetary income shall be measured according to an alternative method for a period of not more than five years.

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 European System of Central Banks. 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.

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 European Central Bank, subject to any decision taken by the Governing Council pursuant to Article 33(2).

6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the European Central Bank in accordance with guidelines established by the Governing Council.

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 European Central Bank

1. The net profit of the European Central Bank 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 European Central Bank in proportion to their paid-up shares.

2. In the event of a loss incurred by the European Central Bank, the shortfall may be offset against the general reserve fund of the European Central Bank 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

1. In accordance with Article I-76 of the *european Treaty*, the European Central Bank shall adopt:

(a) European regulations to the extent necessary to implement the tasks defined in Article 3(1)(a), Article 19(1), Article 22 or Article 25(2) of this Statute and in cases which shall be laid down in the European regulations and decisions referred to in Article 41;

(b) the European decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and this Statute;

(c) recommendations and opinions.

2. The European Central Bank may decide to publish its European decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its

European regulations and decisions.

ARTICLE 35

Judicial control and related matters

1. The acts or omissions of the European Central Bank shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Constitution. The European Central Bank may institute proceedings in the cases and under the conditions laid down in the Constitution.

2. Disputes between the European Central 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 upon the Court of Justice of the European Union.

3. The European Central Bank shall be subject to the liability regime provided for in Article II-309 of the *european Treaty*. The national central banks shall be liable according to their respective national laws.

4. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the European Central Bank, whether that contract be governed by public or private law.

5. A decision of the European Central Bank to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Constitution and this Statute. If the European Central Bank considers that a national central bank has failed to fulfil an obligation under the Constitution and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the European Central Bank, the

latter may bring the matter before the Court of Justice of the European Union.

ARTICLE 36

Staff

1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the European Central Bank.

2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the European Central Bank and its servants within the limits and under the conditions laid down in the conditions of employment.

ARTICLE 37

Professional secrecy

1. Members of the governing bodies and the staff of the European Central Bank 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.

2. Persons having access to data covered by a legally binding Union act imposing an obligation of secrecy shall be subject to that obligation.

ARTICLE 38

Signatories

The European Central Bank 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 European Central Bank who have been duly authorised by the President to sign on

behalf of the European Central Bank.

ARTICLE 39

Privileges and immunities

The European Central Bank 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 Union.

CHAPTER VIII
AMENDMENT OF THE STATUTE AND COMPLEMENTARY RULES

ARTICLE 40

Simplified amendment procedures

1. In accordance with Article I-73(3) of the *european Treaty*, Articles 5(1), (2) and (3), 17, 18, 19(1), 22, 23, 24, 26, 32(2), (3), (4) and (6), 33(1)(a) and 36 of this Statute may be amended by European laws:

(a) on a proposal from the Commission and after consulting the European Central Bank, or

(b) on a recommendation from the European Central Bank and after consulting the Commission.

2. Article 10(2) may be amended by a European decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and

after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

3. A recommendation made by the European Central Bank under this Article shall require a unanimous decision by the Governing Council.

ARTICLE 41

Complementary rules

In accordance with Article I-73(4) of the *european Treaty*, the Council shall adopt European regulations and decisions establishing the measures referred to in Articles 4, 5 (4), 19(2), 20, 28(1), 29(2), 30(4) and 34(3) of this Statute. It shall act after consulting the European Parliament either:

(a) on a proposal from the Commission and after consulting the European Central Bank or

(b) on a recommendation from the European Central Bank and after consulting the Commission.

CHAPTER IX
TRANSITIONAL AND OTHER PROVISIONS FOR THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 42

General provisions

1. A derogation as referred to in Article I-83 (1) of the *european 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 and 50.

2. The central banks of Member States with a derogation as specified in Article I-83(1) of the *european Treaty* shall retain their powers in the field of monetary policy according to national law.

3. In accordance with the second subparagraph of Article I-83 paragraph (2) of the *european Treaty*, in Articles 3, 11(2) and 19 of this Statute "Member States" shall mean Member States whose currency is the euro.

4. In Articles 9(2), 10(2) and (3), 12(1), 16, 17, 18, 22, 23, 27, 30, 31, 32, 33(2) and 50 of this Statute, "national central banks" shall mean central banks of Member States whose currency is the euro.

5. In Articles 10(3) and 33(1), "shareholders" shall mean national central banks of Member States whose currency is the euro.

6. In Articles 10(3) and 30(2), "subscribed capital" shall mean capital of the European Central Bank subscribed by the national central banks of Member States whose currency is the euro.

ARTICLE 43

Transitional tasks of the European Central Bank

The European Central Bank shall take over the former functions of the European Monetary Institute referred to in Article I-85 (2) of the *european Treaty* which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The European Central Bank shall give advice in the preparations for the abrogation of the

derogations referred to in Article I-84 of the *european Treaty*.

ARTICLE 44

The General Council of the European Central Bank

1. Without prejudice to Article I-73(1) of the *european Treaty*, the General Council shall be constituted as a third decision-making body of the European Central Bank.

2. The General Council shall comprise the President and Vice-President of the European Central Bank 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.

3. The responsibilities of the General Council are listed in full in Article 46.

ARTICLE 45

Functioning of the General Council

1. The President or, in his absence, the Vice-President of the European Central Bank shall chair the General Council of the European Central Bank.

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.

3. The President shall prepare the meetings of the General Council.

4. By way of derogation from Article 12(3), the General Council shall adopt its Rules of Procedure.

5. The Secretariat of the General Council shall be provided by the European Central Bank.

ARTICLE 46

Responsibilities of the General Council

1. The General Council shall:

(a) perform the tasks referred to in Article 43;

(b) contribute to the advisory functions referred to in Articles 4 and 25(1).

2. The General Council shall contribute to:

(a) the collection of statistical information as referred to in Article 5;

(b) the reporting activities of the European Central Bank as referred to in Article 15;

(c) the establishment of the necessary rules for the application of Article 26 as referred to in Article 26(4);

(d) the taking of all other measures necessary for the application of Article 29 as referred to in Article 29(4);

(e) the laying down of the conditions of employment of the staff of the European Central Bank as referred to in Article 36.

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 euro as referred to in Article I-84(3) of the *european Treaty*.

4. The General Council shall be informed by the President of the European Central Bank of decisions of the Governing Council.

ARTICLE 47

Transitional provisions for the capital of the European Central Bank

In accordance with Article 29, each national central bank shall be assigned a weighting in the key for subscription of the European Central Bank'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 European Central Bank 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 European Central Bank.

ARTICLE 48

Deferred payment of capital, reserves and provisions
of the European Central Bank

1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the European Central Bank to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the European Central Bank foreign reserve assets in accordance with Article 30(1). The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the European Central Bank 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.

2. In addition to the payment to be made in accordance with paragraph 1, the national central bank concerned shall contribute to the reserves of the European Central Bank, 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 European Central Bank, 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.

3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the European System of Central Banks, the subscribed capital of the European Central Bank and the limit on the amount of foreign reserve assets that may be transferred to the European Central Bank 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 European System of Central Banks. 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 49

Derogation from Article 32

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.

2. Paragraph 1 shall be applicable for not more than five financial years after the start of the third stage.

ARTICLE 50

Exchange of banknotes in Member States' currencies

Following the irrevocable fixing of exchange rates in accordance with Article I-84(3) of the

european Treaty, the Governing Council shall take the necessary measures to ensure that banknotes denominated in the currencies of Member States with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

ARTICLE 51

Applicability of the transitional provisions

If and as long as there are Member States with a derogation Articles 42 to 47 shall be applicable.

5. PROTOCOL ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article II-273 of the *european Treaty*,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

The European Investment Bank referred to in Article II-273 of the *european Treaty* (hereinafter called the "Bank") is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of the Constitution and of this Statute.

ARTICLE 2

The task of the Bank shall be that defined in Article II-274 of the *european Treaty*.

ARTICLE 3

In accordance with Article II-273 of the *european Treaty*, the Bank's members shall be the Member States.

ARTICLE 4

1. The capital of the Bank shall be 163 653 737 000 euro, subscribed by the Member States as follows:

Germany	26 649 532 500
France	26 649 532 500
Italy	26 649 532 500
United Kingdom	26 649 532 500
Spain	15 989 719 500
Belgium	7 387 065 000
Netherlands	7 387 065 000
Sweden	4 900 585 500
Denmark	3 740 283 000
Austria	3 666 973 500
Poland	3 411 263 500
Finland	2 106 816 000
Greece	2 003 725 500
Portugal	1 291 287 000
Czech Republic	1 258 785 500
Hungary	1 190 868 500
Ireland	935 070 000
Slovakia	428 490 500
Slovenia	397 815 000
Lithuania	249 617 500
Luxembourg	187 015 500
Cyprus	183 382 000
Latvia	152 335 000
Estonia	117 640 000
Malta	69 804 000

The Member States shall be liable only up to the amount of their share of the capital subscribed and not paid up.

2. The admission of a new member shall entail an increase in the subscribed capital corresponding to the capital brought in by the new member.

3. The Board of Governors may, acting unanimously, decide to increase the subscribed capital.

4. The share of a member in the subscribed capital may not be transferred, pledged or attached.

ARTICLE 5

1. The subscribed capital shall be paid in by Member States to the extent of 5% on average of the amounts laid down in Article 4(1).

2. In the event of an increase in the subscribed capital, the Board of Governors, acting unanimously, shall fix the percentage to be paid up and the arrangements for payment. Cash payments shall be made exclusively in euro.

3. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the Bank to meet its obligations.

Each Member State shall make this payment in proportion to its share of the subscribed capital.

ARTICLE 6

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

ARTICLE 7

1. The Board of Governors shall consist of the ministers designated by the Member States.

2. The Board of Governors shall lay down general directives for the credit policy of the Bank, in accordance with the Union's objectives.

The Board of Governors shall ensure that these directives are implemented.

3. The Board of Governors shall in addition:

(a) decide whether to increase the subscribed capital in accordance with Article 4(3) and Article 5(2);

(b) for the purposes of Article 9(1), determine the principles applicable to financing operations undertaken within the framework of the Bank's task;

(c) exercise the powers provided in Articles 9 and 11 in respect of the appointment and the compulsory retirement of the members of the Board of Directors and of the Management Committee, and those powers provided for in the second subparagraph of Article 11(1);

(d) take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article 16(1);

(e) approve the annual report of the Board of Directors;

(f) approve the annual balance sheet and profit and loss account;

(g) approve the Rules of Procedure of the Bank;

(h) exercise the other powers conferred by this Statute.

4. Within the framework of the Constitution and this Statute, the Board of Governors, acting unanimously, may take any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

ARTICLE 8

1. 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.

A qualified majority shall require eighteen votes in favour and 68% of the subscribed capital.

2. Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity.

ARTICLE 9

1. The Board of Directors shall take decisions in respect of granting finance, in particular in the form of loans and guarantees, and raising loans; it shall fix the interest rates on loans granted and the commission and other charges. It may, on the basis of a decision taken by a qualified majority, delegate some of its functions to the Management Committee. It shall determine the terms and conditions for such delegation and shall supervise its execution.

The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the Constitution and this Statute and with the general directives laid down by the Board of Governors.

At the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved.

2. The Board of Directors shall consist of twenty-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. One shall also be 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 between the Kingdom of Spain and the Portuguese Republic,

– one alternate nominated by common accord between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

– one alternate nominated by common accord between the Kingdom of Denmark, the Hellenic Republic and Ireland,

– one alternate nominated by common accord between the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

– three alternates nominated by common accord between 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,

– one alternate director 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.

The Rules of Procedure shall lay down the arrangements for participating in the meetings of the Board of Directors and the provisions applicable to alternates and co-opted experts..

The President of the Management Committee or, in his absence, one of the Vice-Presidents, shall preside over meetings of the Board of Directors but shall not vote.

Members of the Board of Directors shall be chosen from persons whose independence and competence are beyond doubt. They shall be responsible only to the Bank.

3. A director may be compulsorily retired by the Board of Governors only if he no longer fulfils the conditions required for the performance of his duties; the Board must act by a qualified majority.

If the annual report is not approved, the Board of Directors shall resign.

4. Any vacancy arising as a result of death, voluntary resignation, compulsory retirement or collective resignation shall be filled in accordance with paragraph 2. A member shall be replaced for the remainder of his term of office, save where the entire Board of Directors is being replaced.

5. The Board of Governors shall determine the remuneration of members of the Board of Directors. The Board of Governors shall lay down what activities are incompatible with the duties of a director or an alternate.

ARTICLE 10

1. Each director shall have one vote on the Board of Directors. He may delegate his vote

in all cases, according to procedures to be laid down in the Rules of Procedure of the Bank.

2. Save as otherwise provided in this Statute, decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote, representing at least 50% of the subscribed capital. A qualified majority shall require eighteen votes and 68% of the subscribed capital in favour. The Rules of Procedure of the Bank shall lay down how many members of the Board of Directors constitute the quorum needed for the adoption of decisions.

ARTICLE 11

1. The Management Committee shall consist of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments shall be renewable.

The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.

2. On a proposal from the Board of Directors adopted by a qualified majority, the Board of Governors may, acting 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, including decisions on the raising of loans and the granting of finance, in particular in the form of loans and guarantees. It shall ensure that these decisions are implemented.

4. The Management Committee, acting by a majority, shall adopt opinions on proposals for raising loans or granting finance, in particular in the form of loans and guarantees.

5. The Board of Governors shall determine the remuneration of members of the

Management Committee and shall lay down what activities are incompatible with their duties.

6. The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters.

7. The staff of the Bank shall be under the authority of the President. They shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States. The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.

8. The Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties.

ARTICLE 12

1. A Committee consisting of six members, appointed on the grounds of their competence by the Board of Governors, shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts.

2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.

3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review.

4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity.

ARTICLE 13

The Bank shall deal with each Member State through the authority designated by that State. In the conduct of financial operations the Bank shall have recourse to the national central bank of the Member State concerned or to other financial institutions approved by that State.

ARTICLE 14

1. The Bank shall cooperate with all international organisations active in fields similar to its own.

2. The Bank shall seek to establish all appropriate contacts in the interests of cooperation with banking and financial institutions in the countries to which its operations extend.

ARTICLE 15

At the request of a Member State or of the Commission, or on its own initiative, the Board of Governors shall, in accordance with the same provisions as governed their adoption, interpret or supplement the directives laid down by it under Article 7.

ARTICLE 16

1. Within the framework of the task set out in Article II-274 of the *european Treaty*, the Bank shall grant finance, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments to be carried out in the territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

However, by decision of the Board of Governors, acting by a qualified majority on a proposal from the Board of Directors, the Bank may grant financing for investment to be carried out, in whole or in part, outside the 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 investment will be carried out, on adequate guarantees, or on the financial strength of the debtor.

Furthermore, in accordance with the principles established by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of projects provided for in Article II-274 of the *european Treaty* so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions of any financing operation presenting a specific risk profile and thus considered to be a special activity.

4. The Bank may guarantee loans contracted by public or private undertakings or other bodies for the purpose of carrying out projects provided for in Article II-274 of the *european 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, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount shall be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.

The amount of the Bank's disbursed equity participations shall not exceed at any time an amount corresponding to the total of its paid-in subscribed capital, reserves, non-allocated provisions and profit and loss account surplus.

By way of exception, the special activities of the Bank, as decided by the Board of Governors and the Board of Directors in accordance with paragraph 3, will have a specific allocation of reserve.

This paragraph shall also apply to the consolidated accounts of the Bank.

6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

ARTICLE 17

1. Interest rates on loans to be granted by the Bank and commission and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 22.

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 investment to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article I-53 of the *european Treaty*.

ARTICLE 18

In its financing operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed in the most rational way in the interests of the Union.

It may grant loans or guarantees only:

(a) where, in the case of investments by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in the case of other investments, either by a commitment entered into by the State in which the investment is made or by some other means; and,

(b) where the execution of the investment contributes to an increase in economic

productivity in general and promotes the establishment or functioning of the internal market.

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

However, in accordance with the principles determined by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of operations provided for in Article II-274 of the *european Treaty* so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, insofar as this is required to finance an investment or programme.

3. It may dispose of its claims on the capital market and may, to this end, require its debtors to issue bonds or other securities.

4. Neither the Bank nor the Member States shall impose conditions requiring funds lent by the Bank to be spent within a specified Member State.

5. The Bank may make its loans conditional on international invitations to tender being arranged.

6. The Bank shall not finance, in whole or in part, any investment opposed by the Member State in whose territory it is to be carried out.

7. As a complement to its lending activity, the Bank may provide technical assistance services in accordance with the terms and conditions laid down by the Board of Governors, acting by a qualified majority, and in compliance with this Statute.

ARTICLE 19

1. Any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the

Member State on whose territory the investment will be carried out.

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission.

The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the investment in question.

3. The Board of Directors shall rule on financing operations submitted to it by the Management Committee.

4. The Management Committee shall examine whether financing operations submitted to it comply with the provisions of this Statute, in particular with Articles 16 and 18. Where the Management Committee is in favour of the financing operation, it shall submit the corresponding proposal to the Board of Directors. The Committee may make its favourable opinion subject to such conditions as it considers essential. Where the Management Committee is against granting the finance, it shall submit the relevant documents together with its opinion to the Board of Directors.

5. Where the Management Committee delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous.

6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous, the director nominated by the Commission abstaining.

7. Where both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the finance.

8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management

Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors.

ARTICLE 20

1. The Bank shall borrow on the capital markets the funds necessary for the performance of its tasks.

2. The Bank may borrow on the capital markets of the Member States in accordance with the legal provisions applying to those markets.

The competent authorities of a Member State with a derogation within the meaning of Article I-83(1) of the *european Treaty* may oppose this only if there is reason to fear serious disturbances on the capital market of that State.

ARTICLE 21

1. The Bank may employ any available funds which it does not immediately require to meet its obligations in the following ways:

(a) it may invest on the money markets;

(b) it may, subject to the provisions of Article 18(2), buy and sell securities;

(c) it may carry out any other financial operation linked with its objectives.

2. Without prejudice to the provisions of Article 23, the Bank shall not, in managing its investments, engage in any currency arbitrage not directly required to carry out its lending operations or fulfil commitments arising out of loans raised or guarantees granted by it.

3. The Bank shall, in the fields covered by this Article, act in agreement with the competent authorities or with the national central bank of the Member State concerned.

ARTICLE 22

1. A reserve fund of up to 10% of the subscribed capital shall be built up progressively. If the state of the liabilities of the Bank should so justify, the Board of Directors may decide to set aside additional reserves. Until such time as the reserve fund has been fully built up, it shall be fed by:

(a) interest received on loans granted by the Bank out of sums to be paid up by the Member States pursuant to Article 5;

(b) interest received on loans granted by the Bank out of funds derived from repayment of the loans referred to in (a);

to the extent that this income is not required to meet the obligations of the Bank or to cover its expenses.

2. The resources of the reserve fund shall be so invested as to be available at any time to meet the purpose of the fund.

ARTICLE 23

1. The Bank shall at all times be entitled to transfer its assets into the currency of a Member State whose currency is not the euro in order to carry out financial operations corresponding to the task set out in Article II-274 of the *european Treaty*, taking into account the provisions of Article 21 of this Statute. The Bank shall, as far as possible, avoid making such transfers if it has cash or liquid assets in the currency required.

2. The Bank may not convert its assets in the currency of a Member State whose currency is not the euro into the currency of a third country without the agreement of the Member State concerned.

3. The Bank may freely dispose of that part of its capital which is paid up and of any currency borrowed on markets outside the Union.

4. The Member States undertake to make available to the debtors of the Bank the currency needed to repay the capital and pay the interest on loans or commission on guarantees granted by the Bank for investment to be carried out in their territory.

ARTICLE 24

If a Member State fails to meet the obligations of membership arising from this Statute, in particular the obligation to pay its share of the subscribed capital 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 Member State or its nationals from their obligations towards the Bank.

ARTICLE 25

1. If the Board of Governors decides to suspend the operations of the Bank, all its activities shall cease forthwith, except those required to ensure the due realisation, protection and preservation of its assets and the settlement of its liabilities.

2. In the event of liquidation, the Board of Governors shall appoint the liquidators and give them instructions for carrying out the liquidation. It shall ensure that the rights of the members of staff are safeguarded.

ARTICLE 26

1. In each of the Member States, the Bank shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

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

ARTICLE 27

1. Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.

2. The Bank shall have an address for service in each Member State. It may, however, in any contract, specify a particular address for service.

3. 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 28

1. The Board of Governors may, acting unanimously, decide to establish subsidiaries or other entities, which shall have legal personality and financial autonomy.

2. The Board of Governors, acting unanimously, shall establish the Statutes of the bodies referred to in paragraph 1, defining, in particular, their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank.

3. The Bank may participate in the management of these bodies and contribute to their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

4. The Protocol on the privileges and immunities of the European Union shall apply to the bodies referred to in paragraph 1 insofar as they are incorporated under Union law, to the members of their organs in the performance of their duties as such and to their staff, under the same terms and conditions as those applicable to the Bank.

Those dividends, capital gains or other forms of revenue stemming from such bodies to which the members, other than the European Union and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, hear disputes concerning measures adopted by organs of a body incorporated under Union law. Proceedings against such measures may be instituted by any member of such a body in its capacity as such or by Member States under the conditions laid down in Article II-246 of the e*uropean Treaty*.

6. The Board of Governors may, acting unanimously, decide to admit the staff of bodies incorporated under Union law to joint schemes with the Bank, in compliance with the respective internal procedures.

6. PROTOCOL ON THE LOCATION OF THE SEATS OF THE INSTITUTIONS AND OF CERTAIN BODIES, OFFICES, AGENCIES AND DEPARTMENTS OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to Article II-310 of the *european Treaty*,

RECALLING AND CONFIRMING the Decision of 8 April 1965, and without prejudice to the decisions concerning the seat of future institutions, bodies, offices, agencies and departments,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty* and to the Treaty establishing the European Atomic Energy Community:

SOLE ARTICLE

1. 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.

2. The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.

3. 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.

4. The Court of Justice of the European Union shall have its seat in Luxembourg.

5. The European Central Bank shall have its seat in Frankfurt.

6. The Court of Auditors shall have its seat in Luxembourg.

7. The Committee of the Regions shall have its seat in Brussels.

8. The Economic and Social Committee shall have its seat in Brussels.

9. The European Investment Bank shall have its seat in Luxembourg.

10. Europol shall have its seat in The Hague.

7. PROTOCOL
ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article II-312 of the e*uropean Treaty*, the Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks,

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

CHAPTER I
PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE UNION

ARTICLE 1

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

ARTICLE 2

The archives of the Union shall be inviolable.

ARTICLE 3

The Union, its 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 Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

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

ARTICLE 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use. Articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the State into which they have been imported, except under conditions approved by the government of that State.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II
COMMUNICATIONS AND *LAISSEZ-PASSER*

ARTICLE 5

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

ARTICLE 6

1. *Laissez-passer* in a form to be prescribed by a European regulation of the Council acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third States.

CHAPTER III
MEMBERS OF THE EUROPEAN PARLIAMENT

ARTICLE 7

No administrative or other restriction shall be imposed on the free movement of members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own governments, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the governments of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

ARTICLE 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

ARTICLE 9

During the sessions of the European Parliament, its members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their Parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its members.

CHAPTER IV
REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE UNION

ARTICLE 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V
OFFICIALS AND OTHER SERVANTS OF THE UNION

ARTICLE 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

(a) subject to the provisions of the Constitution relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased

to hold office;

(b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;

(c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

(d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the State concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that State, subject in either case to the conditions considered to be necessary by the government of the State 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 State of their last residence or in the State of which they are nationals on the terms ruling in the home market in that State, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the State concerned.

ARTICLE 12

Officials and other servants of the Union shall be liable to a tax, for the benefit of the Union, on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by a European law. That law shall be adopted after consultation of the institutions concerned.

Officials and other servants of the Union shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

ARTICLE 13

In the application of income tax, wealth tax and death duties and in the application of

conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their State of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the State of their actual residence and in the State of domicile for tax purposes, as having maintained their domicile in the latter State provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the first paragraph and situated in the territory of the State where they are staying shall be exempt from death duties in that State. Such property shall, for the assessment of such duty, be considered as being in the State of domicile for tax purposes, subject to the rights of third States 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 organisations shall not be taken into consideration in applying the provisions of this Article.

ARTICLE 14

The scheme of social security benefits for officials and other servants of the Union shall be laid down by a European law. That law shall be adopted after consultation of the institutions concerned.

ARTICLE 15

The categories of officials and other servants of the Union to whom Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part, shall be determined by a European law. That law shall be adopted after consultation of the institutions concerned.

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 STATES ACCREDITED TO THE UNION

ARTICLE 16

The Member State in whose territory the Union has its seat shall accord the customary diplomatic privileges and immunities to missions of third States accredited to the Union.

CHAPTER VII
GENERAL PROVISIONS

ARTICLE 17

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

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

ARTICLE 18

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

ARTICLE 19

Articles 11 to 14 and Article 17 shall apply to members of the Commission.

ARTICLE 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union concerning immunity from legal proceedings of Judges and Advocates-General.

Articles 11 to 14 and Article 17 shall also apply to the members of the Court of Auditors.

ARTICLE 21

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the Protocol on the Statute of the European System of Central Banks and of 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.

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 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.

8. PROTOCOL ON THE TREATIES AND ACTS OF ACCESSION OF THE KINGDOM OF DENMARK, IRELAND AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE HELLENIC REPUBLIC, OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC, AND OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN

THE HIGH CONTRACTING PARTIES,

RECALLING that the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland acceded to the European Communities on 1 January 1973; that the Hellenic Republic acceded to the European Communities on 1 January 1981; that the Kingdom of Spain and the Portuguese Republic acceded to the European Communities on 1 January 1986; that the Republic of Austria, the Republic of

Finland and the Kingdom of Sweden acceded to the European Communities and to the European Union established by the Treaty on European Union on 1 January 1995;

CONSIDERING THAT Article III-315(2) of the *european Treaty* provides that the Treaties concerning the accessions referred to above shall be repealed;

CONSIDERING THAT certain provisions appearing in those Accession Treaties and in the Acts annexed thereto remain relevant; and that Article IV-437(2) of the Constitution provides that such provisions must be set out or referred to in a Protocol, so that they remain in force and that their legal effects are preserved;

WHEREAS the provisions in question require the technical adjustments necessary to bring them into line with the Constitution without altering their legal effect,

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

TITLE I
Common provisions

ARTICLE 1

The rights and obligations resulting from the Accession Treaties referred to in Article III-315(2)(a) to (d) of the *european Treaty* took effect, under the conditions laid down in those Treaties, on the following dates:

(a) 1 January 1973, for the Treaty concerning the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland;

(b) 1 January 1981, for the Treaty concerning the accession of the Hellenic Republic;

(c) 1 January 1986, for the Treaty concerning the accession of the Kingdom of Spain and the Portuguese Republic;

(d) 1 January 1995, for the Treaty concerning the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

ARTICLE 2

1. The acceding States referred to in Article 1 shall be required to accede to the following agreements or conventions concluded before their respective accessions, insofar as such agreements or conventions are still in force:

(a) agreements or conventions concluded between the other Member States which are based on the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community or the Treaty on European Union, or which are inseparable from the attainment of the objectives of those Treaties, or which relate to the functioning of the Communities or of the Union or which are connected with the activities thereof;

(b) agreements or conventions concluded by the other Member States, acting jointly with the European Communities, with one or more third States or with an international organisation, and the agreements which are related to those agreements or conventions. The Union and the other Member States shall assist the acceding States referred to in Article 1 in this respect.

2. The acceding States referred to in Article 1 shall take appropriate measures, where necessary, to adjust their position in relation to international organisations, and in relation to those international agreements to which the Union or the European Atomic Energy Community or other Member States are also parties, to the rights and obligations arising from their accession.

ARTICLE 3

Provisions of the Acts of Accession, as interpreted by the Court of Justice of the European Communities and the Court of First Instance, the purpose or effect of which is to repeal or amend, otherwise than as a transitional measure, acts adopted by the institutions, bodies, offices or agencies of the European Communities or of the European Union established by the Treaty on European Union shall remain in force subject to the second paragraph.

The provisions referred to in the first paragraph shall have the same status in law as the acts which they repeal or amend and shall be subject to the same rules as those acts.

ARTICLE 4

The texts of the acts of the institutions, bodies, offices and agencies of the European Communities or of the European Union established by the Treaty on European Union which were adopted before the accessions referred to in Article 1 and which were subsequently drawn up successively in the English and Danish languages, in the Greek language, in the Spanish and Portuguese languages, and in the Finnish and Swedish languages, shall be authentic from the date of the respective accessions referred to in Article 1, under the same conditions as the texts drawn up and authentic in the other languages.

ARTICLE 5

A European law of the Council may repeal the transitional provisions set out in this Protocol, when they are no longer applicable. The Council shall act unanimously after consulting the European Parliament.

TITLE II
PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE KINGDOM OF DENMARK, IRELAND AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Section 1
Provisions on Gibraltar

ARTICLE 6

1. Acts of the institutions relating to the products in Annex I to the *european Treaty* and the products subject, on importation into the Union, to specific rules as a result of the implementation of the common agricultural policy, as well as the acts on the harmonisation of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar unless the Council adopts a European decision which provides otherwise. The Council shall act unanimously on a proposal from the Commission.

2. The situation of Gibraltar defined in point VI of Annex II [20] to the Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland shall be maintained.

Section 2
Provisions on the Faroe Islands

ARTICLE 7

Danish nationals resident in the Faroe Islands shall be considered to be nationals of a Member State within the meaning of the Constitution only from the date on which the Constitution becomes applicable to those islands.

Section 3
Provisions on the Channel Islands and the Isle of Man

ARTICLE 8

1. The Union rules on customs matters and quantitative restrictions, in particular customs duties, charges having equivalent effect and the Common Customs Tariff, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom.

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Union rules and applicable by the United Kingdom shall be applied to third countries.

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[20] OJ L 73, 27.3.1972, p. 47.

Such provisions of Union rules as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, on a proposal from the Commission, shall adopt the European regulations or decisions establishing the conditions under which the provisions referred to in the first and second subparagraphs shall be applicable to these territories.

ARTICLE 9

The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by Union law. However, such persons shall not benefit from provisions of Union law relating to the free movement of persons and services.

ARTICLE 10

The provisions of the Treaty establishing the European Atomic Energy Community applicable to persons or undertakings within the meaning of Article 196 of that Treaty shall apply to those persons or undertakings when they are established in the territories referred to in Article 8 of this Protocol.

ARTICLE 11

The authorities of the territories referred to in Article 8 shall apply the same treatment to all natural and legal persons of the Union.

ARTICLE 12

If, during the application of the arrangements defined in this Section, difficulties appear on either side in relations between the Union and the territories referred to in Article 8, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application.

The Council shall adopt the appropriate European regulations or decisions within one month.

ARTICLE 13

In this Section, Channel Islander or Manxman shall mean any British citizen who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or a grandparent was born, adopted, naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years.

The administrative arrangements necessary to identify these persons will be notified to the Commission.

Section 4

Provisions on the implementation of the policy of industrialisation and economic development in Ireland

ARTICLE 14

The Member States take note of the fact that the Government of Ireland has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standards of living in Ireland with those of the other Member States and to eliminate under-employment while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be so attained and agree to recommend to this end that the institutions implement all the means and procedures laid down by the Constitution, particularly by making adequate use of the

Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles I-53 and I-54 of the *european Treaty*, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

Section 5

Provisions on the exchange of information with Denmark in the field of nuclear energy

ARTICLE 15

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of Denmark, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1973, Denmark shall place at the disposal of the European Atomic Energy Community an equivalent volume of information in the sectors specified in paragraph 3. This information shall be set forth in detail in a document transmitted to the Commission. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The sectors in which Denmark shall make information available to the European Atomic Energy Community are as follows:

(a) DOR heavy water moderated organic cooled reactor;

(b) DT-350, DK-400 heavy water pressure vessel reactors;

(c) high temperature gas loop;

(d) instrumentation systems and special electronic equipment;

(e) reliability;

(f) reactor physics, reactor dynamics and heat exchange;

(g) in-pile testing of materials and equipment.

4. Denmark shall undertake to supply the European Atomic Energy Community with any information complementary to the reports which it shall communicate, in particular during visits by European Atomic Energy Community personnel or personnel from the Member States to the Risö Centre, under conditions to be determined by mutual agreement in each case.

ARTICLE 16

1. In those sectors in which Denmark places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, Denmark shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

Provisions on the exchange of information with Ireland in the field of nuclear energy

ARTICLE 17

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of Ireland, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1973, Ireland shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Ireland, which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern studies for the development of a power reactor and work on radioisotopes and their application in medicine, including the problems of radiation protection.

ARTICLE 18

1. In those sectors in which Ireland places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, Ireland shall encourage and facilitate the granting of sublicences on commercial terms to Member

States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

Section 7
Provisions on the exchange of information with the United Kingdom in the field of nuclear energy

ARTICLE 19

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the United Kingdom, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1973, the United Kingdom shall place at the disposal of the European Atomic Energy Community an equivalent volume of information in the sectors set out in the list contained in the Annex [21] to Protocol No 28 to the Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland. This information shall be set forth in detail in a document transmitted to the Commission. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. In view of the European Atomic Energy Community's greater interest in certain sectors, the United Kingdom shall lay special emphasis on the transmission of information in the following sectors:

(a) fast reactor research and development (including safety);

[21] *OJ L 73, 27.3.1972, p. 84.*

(b) fundamental research (applicable to reactor types);

(c) reactor safety (other than fast reactors);

(d) metallurgy, steel, zirconium alloys and concrete;

(e) compatibility of structural materials;

(f) experimental fuel fabrication;

(g) thermohydrodynamics;

(h) instrumentation.

ARTICLE 20

1. In those fields in which the United Kingdom places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in the Member States of the Community and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the United Kingdom shall encourage and facilitate the granting of sublicences on commercial terms to the Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

TITLE III
PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE HELLENIC REPUBLIC

Section 1
Provisions on the granting by Greece of exemption from customs duties on the import of certain goods

ARTICLE 21

Article I-37 of the e*uropean Treaty* shall not prevent the Hellenic Republic from maintaining measures of exemption granted before 1 January 1979 pursuant to:

(a) Law No 4171/61 (General measures to aid development of the country's economy),

(b) Decree Law No 2687/53 (Investment and protection of foreign capital),

(c) Law No 289/76 (Incentives with a view to promoting the development of frontier regions and governing all pertinent questions),

until the expiry of the agreements concluded by the Hellenic Government with those

persons benefiting from these measures.

Section 2
Provisions on taxation

ARTICLE 22

The acts listed in point II.2 of Annex VIII [22] to the Act concerning the conditions of accession of the Hellenic Republic shall apply in respect of the Hellenic Republic under the conditions laid down in that Annex, with the exception of the references to points 9 and 18(b) thereof.

Section 3
Provisions on cotton

ARTICLE 23

1. This Section concerns cotton, not carded or combed, falling within subheading No 520 100 of the Combined Nomenclature.

2. A system shall be introduced in the Union particularly to:

(a) support the production of cotton in regions of the Union where it is important for the agricultural economy,

(b) permit the producers concerned to earn a fair income,

(c) stabilise the market by structural improvements at the level of supply and marketing.

[22] OJ L 291, 19.11.1979, p. 163.

3. The system referred to in paragraph 2 shall include the grant of an aid to production.

4. In order to allow cotton producers to concentrate supply and to adapt production to market requirements, a system shall be introduced to encourage the formation of producer groups and federations of such groups.

This system shall provide for the grant of aids with a view to providing incentives for the formation and facilitating the functioning of producer groups.

The only groups that may benefit from this system must:

(a) be formed on the initiative of the producers themselves,

(b) offer a sufficient guarantee for the duration and effectiveness of their action,

(c) be recognised by the Member State concerned.

5. The Union trading system with third countries shall not be affected. In this respect, in particular, no measure restricting imports may be laid down.

6. A European law of the Council shall establish the adjustments necessary to the system introduced pursuant to this Section.

The Council, on a proposal from the Commission, shall adopt the European regulations and decisions establishing the general rules necessary for implementing the provisions of this Section.

The Council shall act after consulting the European Parliament.

Section 4

Provisions on the economic and industrial development of Greece

ARTICLE 24

The Member States take note of the fact that the Hellenic Government has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standards of living in Greece with those of the other Member States and to eliminate underemployment while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be so attained. To this end, the institutions shall implement all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

In particular, in the application of Articles I-53 and I-54 of the *european Treaty*, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

Section 5

Provisions on the exchange of information with Greece in the field of nuclear energy

ARTICLE 25

1. From 1 January 1981, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Hellenic Republic, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1981, the Hellenic Republic shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Greece

which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern:

(a) studies on the application of radioisotopes in the following fields: medicine, agriculture, entomology and environmental protection,

(b) the application of nuclear technology to archeometry,

(c) the development of electronic medical apparatus,

(d) the development of methods of radioactive ore prospecting.

ARTICLE 26

1. In those sectors in which the Hellenic Republic places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States of the Community and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Hellenic Republic shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the European Atomic Energy Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

TITLE IV
PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Section 1
Financial provisions

ARTICLE 27

The own resources accruing from value added tax shall be calculated and checked as if the Canary Islands and Ceuta and Melilla were included in the territorial field of application of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

Section 2
Provisions on patents

ARTICLE 28

The provisions of Spanish national law relating to the burden of proof, which were adopted under paragraph 2 of Protocol No 8 to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic, shall not apply if the infringement proceedings are brought against the holder of another process patent for the manufacture of a product identical to that obtained as the result of the patented process of the plaintiff, if that other patent was issued before 1 January 1986.

In cases where shifting the burden of proof does not apply, the Kingdom of Spain shall continue to require the patent holder to adduce proof of infringement. In all these cases the Kingdom of Spain shall apply a judicial procedure known as "distraint-description".

"Distraint-description" means a procedure forming part of the system referred to in the first and second paragraphs by which any person entitled to bring an action for infringement may, after obtaining a court order, granted on his application, cause a detailed description to be made, at the premises of the alleged infringer, by a bailiff assisted by experts, of the processes in question, in particular by photocopying technical documents, with or without actual distraint. This court order may order the payment of a security, intended to grant damages to the alleged infringer in case of injury caused by the "distraint-description".

ARTICLE 29

The provisions of Portuguese national law relating to the burden of proof, which were adopted under paragraph 2 of Protocol No 19 to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic, shall not apply if the infringement proceedings are brought against the holder of another process patent for the manufacture of a product identical to that obtained as the result of the patented process of the plaintiff, if that other patent was issued before 1 January 1986.

In cases where shifting the burden of proof does not apply, the Portuguese Republic shall continue to require the patent holder to adduce proof of infringement. In all these cases, the Portuguese Republic shall apply a judicial procedure known as "distraint-description".

"Distraint-description" means a procedure forming part of the system referred to in the first and second paragraphs by which any person entitled to bring an action for infringement

may, after obtaining a court order, granted on his application, cause a detailed description to be made, at the premises of the alleged infringer, by a bailiff assisted by experts, of the processes in question, in particular by photocopying technical documents, with or without actual distraint. This court order may order the payment of a security, intended to grant damages to the alleged infringer in case of injury caused by the "distraint-description".

Section 3

Provisions on the mechanism for additional responsibilities within the framework of fisheries agreements concluded by the Union with third countries

ARTICLE 30

1. A specific system is hereby established for the execution of operations carried out as a complement to fishing activities undertaken by vessels flying the flag of a Member State in waters falling under the sovereignty or within the jurisdiction of a third country within the framework of responsibilities created under fisheries agreements concluded by the Union with the third countries in question.

2. Operations considered likely to occur by way of addition to fishing activities subject to the conditions and within the limits referred to in paragraphs 3 and 4 relate to:

(a) the processing, in the territory of the third country concerned, of fishery products caught by vessels flying the flag of a Member State in the waters of that third country in the course of fishing activities carried out by virtue of a fisheries agreement, with a view to those products being put on the Union market under tariff headings falling within Chapter 3 of the Common Customs Tariff,

(b) the loading or transhipment aboard a vessel flying the flag of a Member State occurring within the framework of activities provided for under such a fisheries agreement, of fishery products falling within Chapter 3 of the Common Customs Tariff with a view to their transport and any processing for the purpose of being put

on the Union market.

3. The import into the Union of products having been the subject of the operations referred to in paragraph 2 shall be carried out subject to suspension, in part or in whole, of the Common Customs Tariff duties or subject to a special system of charges, under the conditions and within the limits of additionality fixed annually in relation to the volume of fishing possibilities deriving from the agreements in question and from their accompanying detailed rules.

4. European laws or framework laws shall lay down the general rules of application of this system and in particular the criteria for fixing and apportioning the quantities concerned.

The detailed implementing rules of this system and the quantities concerned shall be adopted in accordance with the procedure laid down in Article 37 of Regulation (EC) No 104/2000.

Section 4
Provisions on Ceuta and Melilla

Subsection 1
General provisions

ARTICLE 31

1. The Constitution and the acts of the institutions shall apply to Ceuta and to Melilla, subject to the derogations referred to in paragraphs 2 and 3 and to the other provisions of this Section.

2. The conditions under which the provisions of the Constitution concerning the free movement of goods, and the acts of the institutions concerning customs legislation and

commercial policy, shall apply to Ceuta and to Melilla are set out in Subsection 3 of this Section.

3. Without prejudice to the specific provisions of Article 32, the acts of the institutions concerning the common agricultural policy and the common fisheries policy shall not apply to Ceuta or to Melilla.

4. At the request of the Kingdom of Spain, a European law or framework law of the Council may:

(a) include Ceuta and Melilla in the customs territory of the Union;

(b) define the appropriate measures aimed at extending to Ceuta and to Melilla the provisions of Union law in force.

On a proposal from the Commission acting on its own initiative or at the request of a Member State, the Council may adopt a European law or framework law adjusting the arrangements applicable to Ceuta and to Melilla if necessary.

The Council shall act unanimously after consulting the European Parliament.

Subsection 2
Provisions relating to the Common Fisheries Policy

ARTICLE 32

1. Subject to paragraph 2 and without prejudice to Subsection 3, the common fisheries policy shall not apply to Ceuta or to Melilla.

2. The Council, on a proposal from the Commission, shall adopt the European laws, framework laws, regulations or decisions which:

(a) determine the structural measures which may be adopted in favour of Ceuta and

Melilla;

(b) determine the procedures appropriate to take into consideration all or part of the interests of Ceuta and Melilla when it adopts acts, case by case, with a view to the negotiations by the Union aimed at the resumption or conclusion of fisheries agreements with third countries and to the specific interests of Ceuta and Melilla within international conventions concerning fisheries, to which the Union is a contracting party.

3. The Council, on a proposal from the Commission, shall adopt the European laws, framework laws, regulations or decisions which determine, where appropriate, the possibilities and conditions of mutual access to respective fishing zones and to the resources thereof. It shall act unanimously.

4. The European laws and framework laws referred to in paragraphs 2 and 3 shall be adopted after consultation of the European Parliament.

Subsection 3
Provisions on free movement of goods, customs legislation and commercial policy

ARTICLE 33

1. Products originating in Ceuta or in Melilla and products coming from third countries imported into Ceuta or into Melilla under the arrangements which are applicable there to them shall not be deemed, when released for free circulation in the customs territory of the Union, to be goods fulfilling the conditions of paragraphs 1 to 3 of Article I-37 of the *european Treaty*.

2. The customs territory of the Union shall not include Ceuta and Melilla.

3. Except where otherwise provided for in this Subsection, the acts of the institutions regarding customs legislation for foreign trade shall apply under the same conditions to trade between the customs territory of the Union, on the one hand, and Ceuta and Melilla,

on the other.

4. Except where otherwise provided for in this Subsection, the acts of the institutions regarding the common commercial policy, be they autonomous or enacted by agreement, directly linked to the import or export of goods, shall not be applicable to Ceuta or to Melilla.

5. Except where otherwise provided for in this Title, the Union shall apply in its trade with Ceuta and Melilla, for products falling within Annex I to the *european Treaty*, the general arrangements which it applies in its foreign trade.

ARTICLE 34

1. Subject to Article 35, customs duties on the import into the customs territory of the Union of products originating in Ceuta or in Melilla shall be abolished.-

ARTICLE 35

1. Fishery products falling within heading Nos 03.01, 03.02, 03.03, 16.04, 16.05 and subheadings 05.11.91 and 23.01.20 of the Common Customs Tariff and originating in Ceuta or in Melilla, shall, within the limit of tariff quotas calculated by product and on the average quantities actually disposed of during 1982, 1983 and 1984, qualify for exemption from customs duties throughout the customs territory of the Union.

The release for free circulation of products imported into the customs territory of the Union, under these tariff quotas, shall be subject to compliance with the rules laid down by the common organisation of markets and in particular with respect to reference prices.

2. The Council, on a proposal from the Commission, shall each year adopt European regulations or decisions opening and allocating tariff quotas in accordance with the detailed rules laid down in paragraph 1.

ARTICLE 36

1. Where application of Article 34 could lead to a substantial increase in the import of certain products originating in Ceuta or in Melilla such as might prejudice Union producers, the Council, on a proposal from the Commission, may adopt European regulations or decisions to subject the access of these products to the customs territory of the Union to special conditions.

2. Where, because the common commercial policy and the Common Customs Tariff are not applied to the import of raw materials or intermediate products into Ceuta or into Melilla, imports of a product originating in Ceuta or in Melilla cause, or may cause, serious injury to a producer activity exercised in one or more Member States, the Commission, at the request of a Member State or on its own initiative, may take the appropriate measures.

ARTICLE 37

The customs duties on import into Ceuta and into Melilla of products originating in the customs territory of the Union, and charges having equivalent effect, shall be abolished.

ARTICLE 38

The customs duties and charges having an effect equivalent to such duties and the trade arrangements applied on the import into Ceuta and into Melilla of goods coming from a third country may not be less favourable than those applicable by the Union in accordance with its international commitments or its preferential arrangements with regard to such third country, providing that the same third country grants, to imports from Ceuta and from Melilla, the same treatment as that which it grants to the Union. However, the arrangements applied to imports into Ceuta and into Melilla with regard to goods coming from such third country may not be more favourable than those applied with regard to the imports of products originating in the customs territory of the Union.

ARTICLE 39

The Council, on a proposal from the Commission, shall adopt European regulations or decisions laying down the rules for the application of this Subsection and in particular the rules of origin applicable to trade, as referred to in Articles 34, 35 and 37, including the provisions concerning the identification of originating products and the control of origin.

The rules will include, in particular, provisions on marking and/or labelling of products, on the conditions of registration of vessels, on the application of the rule on mixed origin for fishery products, and also provisions enabling the origin of products to be determined.

Section 5
Provisions on the regional development of Spain

ARTICLE 40

The Member States take note of the fact that the Spanish Government has embarked upon the implementation of a policy of regional development designed in particular to stimulate economic growth in the less-developed regions and areas of Spain.

They recognise it to be in their common interest that the objectives of this policy be attained.

They agree, in order to help the Spanish Government to accomplish this task, to recommend that the institutions use all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles I-53 and I-54 of the *european Treaty*, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population of the

less-developed regions and areas of Spain.

Section 6
Provisions on the economic and industrial development of Portugal

ARTICLE 41

The Member States take note of the fact that the Portuguese Government has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standard of living in Portugal with that of the other Member States and to eliminate underemployment while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be attained.

They agree to recommend to this end that the institutions use all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles I-53 and I-54 of the e*uropean Treaty*, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

Section 7

Provisions on the exchange of information with the Kingdom of Spain in the field of nuclear energy

ARTICLE 42

1. From 1 January 1986, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Kingdom of Spain, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1986, the Kingdom of Spain shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Spain which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern:

(a) nuclear physics (low and high-energy);

(b) radiation protection;

(c) isotope applications, in particular those of stable isotopes;

(d) research reactors and relevant fuels;

(e) research into the field of the fuel cycle (more especially the mining and processing of low-grade uranium ore; optimisation of fuel elements for power reactors).

ARTICLE 43

1. In those sectors in which the Kingdom of Spain places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Kingdom of Spain shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

Section 8

Provisions on the exchange of information with the Portuguese Republic in the field of nuclear energy

ARTICLE 44

1. From 1 January 1986, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Portuguese Republic, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1986, the Portuguese Republic shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Portugal which is given limited distribution, insofar as strictly commercial applications are not

involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern:

(a) reactor dynamics;

(b) radiation protection;

(c) application of nuclear measuring techniques (in the industrial, agricultural, archaeological and geological fields);

(d) atomic physics (effective measuring of cross sections, pipeline techniques);

(e) extractive metallurgy of uranium.

ARTICLE 45

1. In those sectors in which the Portuguese Republic places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Portuguese Republic shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

TITLE V
PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN

Section 1
Financial provisions

ARTICLE 46

Own resources accruing from value added tax shall be calculated and checked as though the Åland Islands were included in the territorial scope of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

Section 2
Provisions on agriculture

ARTICLE 47

Where there are serious difficulties resulting from accession which remain after full utilisation of Article 48 and of the other measures resulting from the rules existing in the Union, the Commission may adopt a European decision authorising Finland to grant national aids to producers so as to facilitate their full integration into the common agricultural policy.

ARTICLE 48

1. The Commission shall adopt European decisions authorising Finland and Sweden to grant long-term national aids with a view to ensuring that agricultural activity is maintained in specific regions. These regions should cover the agricultural areas situated to the north of the 62nd Parallel and some adjacent areas south of that parallel affected by comparable climatic conditions rendering agricultural activity particularly difficult.

2. The regions referred to in paragraph 1 shall be determined by the Commission, taking into consideration in particular:

(a) the low population density;

(b) the portion of agricultural land in the overall surface area;

(c) the portion of agricultural land devoted to arable crops intended for human consumption, in the agricultural surface area used.

3. The national aids provided for in paragraph 1 may be related to physical factors of production, such as hectares of agricultural land or heads of animal taking account of the

relevant limits laid down in the common organisations of the market, as well as the historical production patterns of each farm, but must not:

(a) be linked to future production;

(b) or lead to an increase in production or in the level of overall support recorded during a reference period preceding 1 January 1995, to be determined by the Commission.

These aids may be differentiated by region.

These aids must be granted in particular in order to:

(a) maintain traditional primary production and processing naturally suited to the climatic conditions of the regions concerned;

(b) improve the structures for the production, marketing and processing of agricultural products;

(c) facilitate the disposal of the said products;

(d) ensure that the environment is protected and the countryside preserved.

ARTICLE 49

1. The aids provided for in Articles 47 and 48 and any other national aid subject to Commission authorisation under this Title shall be notified to the Commission. They may not be applied until such authorisation has been given.

2. As regards the aids provided for in Article 48, the Commission shall submit to the Council every five years as from 1 January 1996 a report on:

(a) the authorisations granted;

(b) the results of the aid granted under such authorisations.

In preparation for drawing up such reports, Member States in receipt of such authorisations shall supply the Commission in good time with information on the effects of the aids granted, illustrating the development noted in the agricultural economy of the regions in question.

ARTICLE 50

In the field of the aids provided for in Articles I-53 and I-54 of the *european Treaty*:

(a) among the aids applied in Austria, Finland and Sweden prior to 1 January 1995, only those notified to the Commission by 30 April 1995 will be deemed to be existing aids within the meaning of Article I-54(1) of the e*uropean Treaty*;

(b) existing aids and plans intended to grant or alter aids which were notified to the Commission prior to 1 January 1995 shall be deemed to have been notified on that date.

ARTICLE 51

1. Unless otherwise stipulated in specific cases, the Council, on a proposal from the Commission, shall adopt the necessary European regulations or decisions to implement this Section.

2. A European law of the Council may make the adaptations to the provisions appearing in this Section which may prove necessary as a result of a modification in Union law. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 52

1. If transitional measures are necessary to facilitate the transition from the existing regime in Austria, Finland and Sweden to that resulting from application of the common

organisation of the markets under the conditions set out in the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, such measures shall be adopted in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets. These measures may be taken during a period expiring on 31 December 1997 and their application shall be limited to that date.

2. A European law of the Council may extend the period referred to in paragraph 1. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 53

Articles 51 and 52 shall be applicable to fishery products.

Section 3
Provisions on transitional measures

ARTICLE 54

The Acts listed in points VII.B.I, VII.D.1, VII.D.2.c, IX.2.b, c, f, g, h, i, j, l, m, n, x, y, z and aa, and X.a, b and c of Annex XV [23] to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall apply in respect of Austria, Finland and Sweden under the conditions laid down in that Annex.

With regard to point IX.2.x of Annex XV referred to in the first paragraph, the reference to the provisions of the Treaty establishing the European Community, in particular to Articles 90 and 91 thereof, must be understood as referring to the provisions of the e*uropean Treaty*, in particular to Article I-56(1) and (2) thereof.

[23] *OJ C 241, 29.8.1994, p. 322.*

Section 4

Provisions on the applicability of certain acts

ARTICLE 55

1. Any individual exemption decisions taken and negative clearance decisions taken before 1 January 1995 under Article 53 of the Agreement on the European Economic Area (EEA) or Article 1 of Protocol 25 to that Agreement, whether by the Surveillance Authority of the European Free Trade Association (EFTA) or the Commission, and which concern cases which fall under Article 81 of the Treaty establishing the European Community as a result of accession shall remain valid for the purposes of Article I-47 of the *european Treaty* until the time limit specified therein expires or until the Commission adopts a duly motivated European decision to the contrary, in accordance with Union law.

2. All decisions taken by the EFTA Surveillance Authority before 1 January 1995 pursuant to Article 61 of the EEA Agreement and which fall under Article 87 of the Treaty establishing the European Community as a result of accession shall remain valid with respect to Article I-53 of the e*uropean Treaty* unless the Commission adopts a European decision to the contrary pursuant to Article I-54 of the *european Treaty*. This paragraph shall not apply to decisions subject to the proceedings provided for in Article 64 of the EEA Agreement.

3. Without prejudice to paragraphs 1 and 2, the decisions taken by the EFTA Surveillance Authority remain valid after 1 January 1995 unless the Commission takes a duly motivated decision to the contrary in accordance with Union law.

Section 5
Provisions on the Åland Islands

ARTICLE 56

The provisions of the Constitution shall not preclude the application of the existing provisions in force on 1 January 1994 on the Åland islands on:

(a) restrictions, on a non-discriminatory basis, on the right of natural persons who do not enjoy hembygdsrätt/kotiseutuoikeus (regional citizenship) in Åland, and for legal persons, to acquire and hold real property on the Åland islands without permission by the competent authorities of the Åland islands;

(b) restrictions, on a non-discriminatory basis, on the right of establishment and the right to provide services by natural persons who do not enjoy hembygdsrätt/kotiseutuoikeus (regional citizenship) in Åland, or by legal persons without permission by the competent authorities of the Åland islands.

ARTICLE 57

1. The territory of the Åland Islands – being considered as a third territory, as defined in the third indent of Article 3(1) of Council Directive 77/388/EEC, and as a national territory falling outside the field of application of the excise harmonisation directives as defined in Article 2 of Council Directive 92/12/EEC – shall be excluded from the territorial application of Union law in the fields of harmonisation of the laws of the Member States on turnover taxes and on excise duties and other forms of indirect taxation.

This paragraph shall not apply to the provisions of Council Directive 69/335/EEC relating to capital duty.

2. The derogation provided for in paragraph 1 is aimed at maintaining a viable local economy in the islands and shall not have any negative effects on the interests of the

Union nor on its common policies. If the Commission considers that the provisions in paragraph 1 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council, which shall adopt the necessary acts in accordance with the pertinent articles of the Constitution.

ARTICLE 58

The Republic of Finland shall ensure that the same treatment applies to all natural and legal persons of the Member States in the Åland islands.

ARTICLE 59

The provisions of this Section shall apply in the light of the Declaration on the Åland Islands, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Section 6
Provisions on the Sami people

ARTICLE 60

Notwithstanding the provisions of the Constitution, exclusive rights to reindeer husbandry within traditional Sami areas may be granted to the Sami people.

ARTICLE 61

This Section may be extended to take account of any further development of exclusive Sami rights linked to their traditional means of livelihood. A European law of the Council may make the necessary amendments to this Section. The Council shall act unanimously after consulting the European Parliament and the Committee of the Regions.

ARTICLE 62

The provisions of this Section shall apply in the light of the Declaration on the Sami people, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 3 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Section 7

Special provisions in the framework of the Structural Funds in Finland and Sweden

ARTICLE 63

Areas covered by the objective of promoting the development and structural adjustment of regions with an extremely low population density shall in principle represent or belong to regions at NUTS level II with a population density of 8 persons per km^2 or less. Union assistance may, subject to the requirement of concentration, also extend to adjacent and contiguous smaller areas fulfilling the same population density criterion. The regions and areas referred to in this Article, are listed in Annex 1 [24] to Protocol No 6 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Section 8

Provisions on rail and combined transport in Austria

ARTICLE 64

1. For the purposes of this Section, the following definitions shall apply:

[24] *OJ C 241, 29.8.1994, p. 355.*

(a) "heavy goods vehicle" shall mean any motor vehicle with a maximum authorised weight of over 7,5 tonnes registered in a Member State designed to carry goods or haul trailers, including semi-trailer tractor units, and trailers with a maximum authorised weight of over 7,5 tonnes and hauled by a motor vehicle registered in a Member State with a maximum authorised weight of 7,5 tonnes or less;

(b) "combined transport" shall mean the carriage of goods by heavy goods vehicles or loading units which complete part of their journey by rail and either begin or end the journey by road, whereby transit traffic may under no circumstances cross Austrian territory on its way to or from a rail terminal by road alone.

2. Articles 65 to 71 shall apply to measures relating to the provision of rail and combined transport crossing the territory of Austria.

ARTICLE 65

The Union and the Member States concerned shall, within the framework of their respective competences, adopt and closely coordinate measures for the development and promotion of rail and combined transport for the trans-Alpine carriage of goods.

ARTICLE 66

When establishing the guidelines provided for in Article I-133 of the Constitution, the Union shall ensure that the axes defined in Annex 1 [25] to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden form part of the trans-European networks for rail and combined transport and are furthermore identified as projects of common interest.

ARTICLE 67

The Union and the Member States concerned shall, within the framework of their

[25] *OJ C 241, 29.8.1994, p. 364.*

respective competences, implement the measures listed in Annex 2 [26] to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

ARTICLE 68

The Union and the Member States concerned shall use their best endeavours to develop and utilise the additional railway capacity referred to in Annex 3 [27] to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

ARTICLE 69

The Union and the Member States concerned shall take measures to enhance the provision of rail and combined transport. Where appropriate, and subject to the provisions of the Constitution, such measures shall be established in close consultation with railway companies and other railway service providers. Priority should be given to those measures set out in the provisions of Union law on railways and combined transport. In implementing any measures, particular attention shall be attached to the competitiveness, effectiveness and cost transparency of rail and combined transport. In particular, the Member States concerned shall endeavour to take such measures so as to ensure that prices for combined transport are competitive with those for other modes of transport. Any aid granted to these ends shall comply with Union law.

ARTICLE 70

The Union and the Member States concerned shall, in the event of a serious disturbance in rail transit, such as a natural disaster, take all possible concerted action to maintain the flow of traffic. Priority shall be given to sensitive loads, such as perishable foods.

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[26] *OJ C 241, 29.8.1994, p. 365.*

[27] *OJ C 241, 29.8.1994, p. 367.*

ARTICLE 71

The Commission, acting in accordance with the procedure laid down in Article 73(2), shall review the operation of this Section.

ARTICLE 72

1. This Article shall apply to the carriage of goods by road on journeys carried out within the territory of the Community.-

2. For journeys which involve transit of goods by road through Austria, the regime established for journeys on own account and for journeys for hire or reward under the First Council Directive of 23 July 1962 and Council Regulation (EEC) No 881/92 shall apply subject to the provisions of this Article.

3. Until 1 January 1998, the following provisions shall apply:

(a) The total of NOx emissions from heavy goods vehicles crossing Austria in transit shall be reduced by 60% in the period between 1 January 1992 and 31 December 2003, according to the table in Annex 4.

(b) The reductions in total NOx emissions from heavy goods vehicles shall be administered according to an ecopoints system. Under that system any heavy goods vehicle crossing-Austria in transit shall require a number of ecopoints equivalent to its NOx emissions (authorised under the Conformity of Production (COP) value or type-approval value). The method of calculation and administration of such points is described in Annex 5.

(c) If the number of transit journeys in any year exceeds the reference figure established for 1991 by more than 8%, the Commission, acting in accordance with the procedure laid down in Article 16, shall adopt appropriate measures in accordance with paragraph 3 of Annex 5.

(d) Austria shall issue and make available in good time the ecopoints cards required for the administration of the ecopoints system, pursuant to Annex 5, for heavy goods vehicles crossing Austria in transit.

(e) The ecopoints shall be distributed by the Commission among Member States in accordance with provisions to be established in accordance with paragraph 7.

4. Before 1 January 1998, the Council, on the basis of a report by the Commission, shall review the operation of provisions concerning transit of goods by road through Austria. The review shall take place in conformity with basic principles of Community law, such as the proper functioning of the internal market, in particular the free movement of goods and freedom to provide services, protection of the environment in the interest of the Community as a whole, and traffic safety. Unless the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, decides otherwise, the transitional period shall be extended to 1 January 2001, during which the provisions of paragraph 3 shall apply.

5. Before 1 January 2001, the Commission, in cooperation with the European Environment Agency, shall make a scientific study of the degree to which the objective concerning reduction of pollution set out in paragraph 3(a) has been achieved. If the Commission concludes that this objective has been achieved on a sustainable basis, the provisions of paragraph 3 shall cease to apply on 1 January 2001. If the Commission concludes that this objective has not been achieved on a sustainable basis, the Council, acting in accordance with Article 75 of the EC Treaty, may adopt measures, within a Community framework, which ensure equivalent protection of the environment, in particular a 60% reduction of pollution. If the Council does not adopt such measures, the transitional period shall be automatically extended for a final period of three years, during which the provisions of paragraph 3 shall apply.

6. At the end of the transitional period, the Community *acquis* in its entirety shall be applied.

7. The Commission, acting in accordance with the procedure laid down in Article 16, shall adopt detailed measures concerning the procedures relating to the ecopoints

system, the distribution of ecopoints and technical questions concerning the application of this Article, which shall enter into force on the date of accession of Austria.

The measures referred to in the first subparagraph shall ensure that the factual situation for the present Member States resulting from the application of Council Regulation (EEC) No 3637/92 and of the Administrative Arrangement, signed on 23 December 1992, setting the date of entry into force and the procedures for the introduction of the ecopoints system referred to in the Transit Agreement, is maintained. All necessary efforts shall be made to ensure that the share of ecopoints allocated to Greece takes sufficient account of Greek needs in this context.

ARTICLE 73

1. The Commission shall be assisted by a Committee.

2. In cases where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. The Committee shall adopt its Rules of Procedure.

Section 9

Provisions on the use of specific Austrian terms of the German language in the framework of the European Union

ARTICLE 74

1. The specific Austrian terms of the German language contained in the Austrian legal order and listed in the Annex [28] to Protocol No 10 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall have the same status and may be used with the same legal effect as the

[28] *OJ C 241, 29.8.1994, p. 370.*

corresponding terms used in Germany listed in that Annex.

2. In the German language version of new legal acts the specific Austrian terms referred to in the Annex to Protocol No 10 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall be added in appropriate form to the corresponding terms used in Germany.

9. PROTOCOL ON THE TREATY AND THE ACT 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

THE HIGH CONTRACTING PARTIES,

RECALLING that 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 acceded to the European Communities and to the European Union

established by the Treaty on European Union on 1 May 2004;

CONSIDERING that Article III-315(2)(e) of the *european* Treaty provides that the Treaty of 16 April 2003 concerning the accessions referred to above shall be repealed;

CONSIDERING that many of the provisions of the Act annexed to that Treaty of Accession remain relevant; that Article III-315(2) of the *european* Treaty provides that those provisions must be set out or referred to in a Protocol, so that they remain in force and their legal effects are preserved;

CONSIDERING that some of those provisions require the technical adjustments necessary to bring them into line with the Constitution without altering their legal effect,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european* Treaty and to the Treaty establishing the European Atomic Energy Community:

PART ONE

PROVISIONS RELATING TO THE ACT OF ACCESSION OF 16 APRIL 2003

TITLE I

PRINCIPLES

ARTICLE 1

For the purposes of this Protocol:

(a) the expression "Act of Accession of 16 April 2003" means 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 and the adjustments to the Treaties on which the European Union is founded;

(b) the expressions "Treaty establishing the European Community" ("EC Treaty") and "Treaty establishing the European Atomic Energy Community" ("EAEC Treaty") mean those Treaties as supplemented or amended by treaties or other acts which entered into force before 1 May 2004;

(c) the expression "Treaty on European Union" ("EU Treaty") means that Treaty as supplemented or amended by treaties or other acts which entered into force before 1 May 2004;

(d) the expression "the Community" means one or both of the Communities referred to in (b) as the case may be;

(e) the expression "present Member States" means the following Member States: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;

(f) the expression "new Member States" means the following Member States: 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.

ARTICLE 2

The rights and obligations resulting from the Treaty on the 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, referred to in Article III-315(2)(e) of the *european* Treaty, took effect, under the conditions laid down in that Treaty, as from 1 May 2004.

ARTICLE 3

1. The provisions of the Schengen *acquis* integrated into the framework of the Union by the Protocol annexed to the *european Treaty* (hereinafter referred to as the "Schengen Protocol") and the acts building upon it or otherwise related to it, listed in Annex I to the Act of Accession of 16 April 2003, as well as any further such acts adopted before 1 May 2004, shall be binding on and applicable in the new Member States from 1 May 2004.

2. Those provisions of the Schengen *acquis* as integrated into the framework of the Union and the acts building upon it or otherwise related to it not referred to in paragraph 1, while binding on the new Member States from 1 May 2004, shall apply in a new Member State only pursuant to a European decision of the Council to that effect after verification in accordance with the applicable Schengen evaluation procedures that the necessary conditions for the application of all parts of the *acquis* concerned have been met in that new Member State.

The Council shall take its decision, after consulting the European Parliament, acting with the unanimity of its members representing the Governments of the Member States in respect of which the provisions referred to in the present paragraph have already been put into effect and of the representative of the Government of the Member State in respect of which those provisions are to be put into effect. The members of the Council representing the Governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall take part in such a decision insofar as it relates to the provisions of the Schengen *acquis* and the acts building upon it or otherwise related to it in which these Member States participate.

3. The Agreements concluded by the Council under Article 6 of the Schengen Protocol

shall be binding on the new Member States from 1 May 2004.

4. The new Member States shall be required in respect of those conventions or instruments in the field of justice and home affairs which are inseparable from the attainment of the objectives of the EU Treaty:

(a) to accede to those which, by 1 May 2004, have been opened for signature by the present Member States, and to those which have been drawn up by the Council in accordance with Title VI of the EU Treaty and recommended to the Member States for adoption;

(b) to introduce administrative and other arrangements, such as those adopted by 1 May 2004 by the present Member States or by the Council, to facilitate practical cooperation between the Member States' institutions and organisations working in the field of justice and home affairs.

ARTICLE 4

Each of the new Member States shall participate in Economic and Monetary Union from 1 May 2004 as a Member State with a derogation within the meaning of Article I-83 of the *european* Treaty.

ARTICLE 5

1. The new Member States, which have acceded by the Act of Accession of 16 April 2003 to the decisions and agreements adopted by the Representatives of the Governments of the Member States, meeting within the Council, shall be required to accede to all other agreements concluded by the present Member States relating to the functioning of the Union or connected with the activities thereof.

2. The new Member States shall be required to accede to the conventions provided for in Article 293 of the EC Treaty and to those that are inseparable from the attainment of the objectives of the EC Treaty, insofar as they are still in force, and also to the protocols on

the interpretation of those conventions by the Court of Justice of the European Communities, signed by the present Member States, and to this end they shall be required to enter into negotiations with the present Member States in order to make the necessary adjustments thereto.

ARTICLE 6

1. The new Member States shall be required to accede, under the conditions laid down in this Protocol, to the agreements or conventions concluded or provisionally applied by the present Member States and the Union or the European Atomic Energy Community, acting jointly, and to the agreements concluded by those States which are related to those agreements or conventions.

The accession of the new Member States to the agreements or conventions mentioned in paragraph 4, as well as the agreements with Belarus, China, Chile, Mercosur and Switzerland which have been concluded or signed by the Community and its present Member States jointly shall be agreed by the conclusion of a protocol to such agreements or conventions between the Council, acting unanimously on behalf of the Member States, and the third country or countries or international organisation concerned. This procedure is without prejudice to the Union's and the European Atomic Energy Community's own competences and does not affect the allocation of powers between the Union and the European Atomic Energy Community and the Member States as regards the conclusion of such agreements in the future or any other amendments not related to accession. The Commission shall negotiate these protocols on behalf of the Member States on the basis of negotiating directives approved by the Council, acting by unanimity, and in consultation with a committee comprised of the representatives of the Member States. It shall submit a draft of the protocols for conclusion to the Council.

2. Upon acceding to the agreements and conventions referred to in paragraph 1 the new Member States shall acquire the same rights and obligations under those agreements and conventions as the present Member States.

3. The new Member States shall be required to accede, under the conditions laid down in

this Protocol, to the Agreement on the European Economic Area [29], in accordance with Article 128 of that Agreement.

4. As from 1 May 2004, and, where appropriate, pending the conclusion of the necessary protocols referred to in paragraph 1, the new Member States shall apply the provisions of the Agreements concluded by the present Member States and, jointly, the Community, with Algeria, Armenia, Azerbaijan, Bulgaria, Croatia, Egypt, the former Yugoslav Republic of Macedonia, Georgia, Israel, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Mexico, Moldova, Morocco, Romania, the Russian Federation, San Marino, South Africa, South Korea, Syria, Tunisia, Turkey, Turkmenistan, Ukraine and Uzbekistan as well as the provisions of other agreements concluded jointly by the present Member States and the Community before 1 May 2004.

Any adjustments to these Agreements shall be the subject of protocols concluded with the co-contracting countries in conformity with the provisions of the second subparagraph of paragraph 1. Should the protocols not have been concluded by 1 May 2004, the Union, the European Atomic Energy Community and the Member States shall take, in the framework of their respective competences, the necessary measures to deal with that situation.

5. As from 1 May 2004, the new Member States shall apply the bilateral textile agreements and arrangements concluded by the Community with third countries.

The quantitative restrictions applied by the Union on imports of textile and clothing products shall be adjusted to take account of the accession of the new Member States.

Should the amendments to the bilateral textile agreements and arrangements not have entered into force by 1 May 2004, the Union shall make the necessary adjustments to its rules for the import of textile and clothing products from third countries to take into account the accession of the new Member States.

6. The quantitative restrictions applied by the Union on imports of steel and steel products shall be adjusted on the basis of imports by new Member States during the years immediately preceding the signing of the Accession Treaty of steel products

[29] *OJ L 1, 3.1.1994, p. 3.*

originating in the supplier countries concerned.

7. Fisheries agreements concluded before 1 May 2004 by the new Member States with third countries shall be managed by the Union.

The rights and obligations resulting for the new Member States from those agreements shall not be affected during the period in which the provisions of those agreements are provisionally maintained.

As soon as possible, and in any event before the expiry of the agreements referred to in the first subparagraph, appropriate European decisions for the continuation of fishing activities resulting from those agreements shall be adopted in each case by the Council on a proposal from the Commission, including the possibility of extending certain agreements for periods not exceeding one year.

8. With effect from 1 May 2004, the new Member States shall withdraw from any free trade agreements with third countries, including the Central European Free Trade Agreement.

To the extent that agreements between one or more of the new Member States on the one hand, and one or more third countries on the other, are not compatible with the obligations arising from the Constitution and in particular from this Protocol, the new Member States shall take all appropriate steps to eliminate the incompatibilities established. If a new Member State encounters difficulties in adjusting an agreement concluded with one or more third countries before accession, it shall, according to the terms of the agreement, withdraw from that agreement.

9. The new Member States shall take appropriate measures, where necessary, to adjust their position in relation to international organisations, and in relation to those international agreements to which the Union or the European Atomic Energy Community or other Member States are also parties, to the rights and obligations arising from their accession to the Union.

They shall in particular withdraw at 1 May 2004 or the earliest possible date thereafter from international fisheries agreements and organisations to which the Union is also a

party, unless their membership relates to matters other than fisheries.

ARTICLE 7

Acts adopted by the institutions to which the transitional provisions laid down in this Protocol relate shall retain their status in law; in particular, the procedures for amending those acts shall continue to apply.

ARTICLE 8

Provisions of the Act of Accession of 16 April 2003, as interpreted by the Court of Justice of the European Communities and the Court of First Instance, the purpose or effect of which is to repeal or amend, otherwise than as a transitional measure, acts adopted by the institutions, bodies, offices or agencies of the Community or of the European Union established by the Treaty on European Union shall remain in force subject to the application of the second paragraph.

These provisions shall have the same status in law as the acts which they repeal or amend and shall be subject to the same rules as those acts.

ARTICLE 9

The texts of the acts of the institutions, bodies, offices and agencies of the Community or of the European Union established by the Treaty on European Union and the texts of acts of the European Central Bank which were adopted before 1 May 2004 and which were drawn up in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovak languages shall be authentic from that date, under the same conditions as the texts drawn up and authentic in the other languages.

ARTICLE 10

A European law of the Council may repeal the transitional provisions set out in this Protocol, when they are no longer applicable. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 11

The application of the Constitution and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Protocol.

TITLE II
PERMANENT PROVISIONS

ARTICLE 12

The adaptations to the acts listed in Annex III to the Act of Accession of 16 April 2003 made necessary by accession shall be drawn up in conformity with the guidelines set out in that Annex and in accordance with the procedure and under the conditions laid down in Article 36.

ARTICLE 13

The measures listed in Annex IV to the Act of Accession of 16 April 2003 shall be applied under the conditions laid down in that Annex.

ARTICLE 14

A European law of the Council may make the adaptations to the provisions of this Protocol relating to the common agricultural policy which may prove necessary as a result of a

modification of Union law. The Council shall act unanimously after consulting the European Parliament.

TITLE III
TEMPORARY PROVISIONS

ARTICLE 15

The measures listed in Annexes V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV to the Act of Accession of 16 April 2003 shall apply in respect of the new Member States under the conditions laid down in those Annexes.

ARTICLE 16

1. The revenue designated as "Common Customs Tariff duties and other duties" referred to in Article 2(1)(b) of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources [30], or the corresponding provision in any Decision replacing it, shall include the customs duties calculated on the basis of the rates resulting from the Common Customs Tariff and any tariff concession relating thereto applied by the Union in the new Member States' trade with third countries.

2. For the year 2004, the harmonised VAT assessment base and the GNI (gross national income) base of each new Member State, referred to in Article 2(1)(c) and (d) of Council Decision 2000/597/EC, Euratom shall be equal to two thirds of the annual base. The GNI base of each new Member State to be taken into account for the calculation of the financing of the correction in respect of budgetary imbalances granted to the United Kingdom, referred to in Article 5(1) of Council Decision 2000/597/EC, Euratom

[30] *OJ L 253, 7.10.2000, p. 42.*

shall likewise be equal to two thirds of the annual base.

3. For the purposes of determining the frozen rate for 2004 according to Article 2(4)(b) of Council Decision 2000/597/EC, Euratom the capped VAT bases of the new Member States shall be calculated on the basis of two thirds of their uncapped VAT base and two thirds of their GNI.

ARTICLE 17

1. The budget of the Union for the financial year 2004 shall be adapted to take into account the accession of the new Member States through an amending budget taking effect on 1 May 2004.

2. The twelve monthly twelfths of VAT and GNI-based resources to be paid by the new Member States under the amending budget referred to in paragraph 1, as well as the retroactive adjustment of the monthly twelfths for the period January-April 2004 that only apply to the present Member States, shall be converted into eighths to be called during the period May-December 2004. The retroactive adjustments that result from any subsequent amending budget adopted in 2004 shall likewise be converted into equal parts to be called during the remainder of the year.

ARTICLE 18

On the first working day of each month the Union shall pay the Czech Republic, Cyprus, Malta and Slovenia, as an item of expenditure under the Union budget, one eighth in 2004, as of 1 May 2004, and one twelfth in 2005 and 2006 of the following amounts of temporary budgetary compensation:

	2004	2005	2006
	(million euro, 1999 prices)		
Czech Republic	125,4	178,0	85,1
Cyprus	68,9	119,2	112,3
Malta	37,8	65,6	62,9
Slovenia	29,5	66,4	35,5

ARTICLE 19

On the first working day of each month the Union shall pay the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, as an item of expenditure under the Union budget, one eighth in 2004, as of 1 May 2004, and one twelfth in 2005 and 2006 of the following amounts of a special lump-sum cash-flow facility:

	2004	2005	2006
	(million euro, 1999 prices)		
Czech Republic	174,70	91,55	91,55
Estonia	15,80	2,90	2,90
Cyprus	27,70	5,05	5,05
Latvia	19,50	3,40	3,40
Lithuania	34,80	6,30	6,30
Hungary	155,30	27,95	27,95
Malta	12,20	27,15	27,15
Poland	442,80	550,00	450,00
Slovenia	65,40	17,85	17,85
Slovakia	63,20	11,35	11,35

1 thousand million euro for Poland and 100 million euro for the Czech Republic included in the special lump-sum cash-flow facility shall be taken into account for any calculations on the distribution of Structural Funds for the years 2004, 2005 and 2006.

ARTICLE 20

1. The new Member States listed below shall pay the following amounts to the Research Fund for Coal and Steel referred to in Decision 2002/234/ECSC of the Representatives of the Governments of the Member States, meeting within the Council, of 27 February 2002 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel [31]:

	(million euro, current prices)
Czech Republic	39,88
Estonia	2,50
Latvia	2,69
Hungary	9,93
Poland	92,46
Slovenia	2,36
Slovakia	20,11

[31] *OJ L 79, 22.3.2002, p. 42.*

2. The contributions to the Research Fund for Coal and Steel shall be made in four instalments starting in 2006 and paid as follows, in each case on the first working day of the first month of each year:

2006: 15%
2007: 20%
2008: 30%
2009: 35%.

ARTICLE 21

1. Save as otherwise provided for in this Protocol, no financial commitments shall be made under the Phare programme [32], the Phare Cross-Border Cooperation programme [33], pre-accession funds for Cyprus and Malta [34], the ISPA programme [35] and the SAPARD programme [36] in favour of the new Member States after 31 December 2003. The new Member States shall receive the same treatment as the present Member States as regards expenditure under the first three Headings of the Financial Perspective, as defined in the Interinstitutional Agreement of 6 May 1999 [37], as from 1 January 2004, subject to the individual specifications and exceptions below or as otherwise provided for in this Protocol. The maximum additional appropriations for headings 1, 2, 3 and 5 of the Financial Perspective related to enlargement are set out in Annex XV to the Act of Accession of 16 April 2003. However, no financial commitment under the 2004 budget for any programme or agency concerned may be made before the accession of the relevant new Member State has taken place.

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32 *Regulation (EEC) No 3906/89 (OJ L 375, 23.12.1989, p. 11).*
33 *Regulation (EC) No 2760/98 (OJ L 345, 19.12.1998, p. 49).*
34 *Regulation (EC) No 555/2000 (OJ L 68, 16.3.2000, p. 3).*
35 *Regulation (EC) No 1267/1999 (OJ L 161, 26.6.1999, p. 73).*
36 *Regulation (EC) No 1268/1999 (OJ L 161, 26.6.1999, p. 87).*
37 *Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (OJ C 172, 18.6.1999, p. 1).*

2. Paragraph 1 shall not apply to expenditure under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Articles 2(1), 2(2), and 3(3) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [38], which will become eligible for Community funding only from 1 May 2004, in accordance with Article 2 of this Protocol.

However, paragraph 1 of this Article shall apply to expenditure for rural development under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Article 47a of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations [39], subject to the conditions set out in the amendment of that Regulation in Annex II to the Act of Accession of 16 April 2003.

3. Subject to the last sentence of paragraph 1, as of 1 January 2004, the new Member States shall participate in Union programmes and agencies according to the same terms and conditions as the present Member States with funding from the general budget of the Union.

4. If any measures are necessary to facilitate the transition from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures.

ARTICLE 22

1. Tendering, contracting, implementation and payments for pre-accession assistance under the Phare programme, the Phare Cross-Border Cooperation programme and pre-accession funds for Cyprus and Malta shall be managed by implementing agencies in the new Member States as from 1 May 2004.

The Commission shall adopt European decisions to waive the ex-ante control by the Commission over tendering and contracting following a positively assessed Extended

[38] *OJ L 160, 26.6.1999, p. 103.*
[39] *OJ L 160, 26.6.1999, p. 80.*

Decentralised Implementation System (EDIS) in accordance with the criteria and conditions laid down in the Annex to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 [40].

If these decisions to waive ex-ante control have not been adopted before 1 May 2004, any contracts signed between 1 May 2004 and the date on which the Commission decisions are taken shall not be eligible for pre-accession assistance.

However, exceptionally, if the Commission decisions to waive ex-ante control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance of contracts signed between 1 May 2004 and the date of these decisions, and the continued implementation of pre-accession assistance for a limited period, subject to ex-ante control by the Commission over tendering and contracting.

2. Global budget commitments made before 1 May 2004 under the pre-accession financial instruments referred to in paragraph 1, including the conclusion and registration of subsequent individual legal commitments and payments made after 1 May 2004, shall continue to be governed by the rules and regulations of the pre-accession financing instruments and be charged to the corresponding budget chapters until closure of the programmes and projects concerned. Notwithstanding this, public procurement procedures initiated after 1 May 2004 shall be carried out in accordance with the relevant Union acts.

3. The last programming exercise for the pre-accession assistance referred to in paragraph 1 shall take place in the last full calendar year preceding 1 May 2004. Actions under these programmes will have to be contracted within the following two years and disbursements made as provided for in the Financing Memorandum [41], usually by the end of the third year after the commitment. No extensions shall be granted for the contracting period. Exceptionally and in duly justified cases, limited extensions in terms of duration may be granted for disbursement.

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[40] *OJ L 232, 2.9.1999, p. 34.*

[41] *As set out in the Phare Guidelines (SEC (1999) 1596, updated on 6.9.2002 by C 3303/2).*

4. In order to ensure the necessary phasing out of the pre-accession financial instruments referred to in paragraph 1 as well as the ISPA programme, and a smooth transition from the rules applicable before and after 1 May 2004, the Commission may take all appropriate measures to ensure that the necessary statutory staff is maintained in the new Member States for a maximum of fifteen months following that date. During this period, officials assigned to posts in the new Member States before accession and who are required to remain in service in those States after 1 May 2004 shall benefit, as an exception, from the same financial and material conditions as were applied by the Commission before 1 May 2004 in accordance with Annex X to the Staff Regulations of officials and the conditions of employment of other servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 [42]. The administrative expenditure, including salaries for other staff, necessary for the management of the pre-accession assistance shall be covered, for all of 2004 and until the end of July 2005, under the heading "support expenditure for operations" (former part B of the budget) or equivalent headings for the financial instruments referred to in paragraph 1 as well as the ISPA programme, of the relevant pre-accession budgets.

5. Where projects approved under Regulation (EC) No 1258/1999 can no longer be funded under that instrument, they may be integrated into rural development programming and financed under the European Agricultural Guidance and Guarantee Fund. Should specific transitional measures be necessary in this regard, these shall be adopted by the Commission in accordance with the procedures laid down in Article 50(2) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [43].

ARTICLE 23

1. Between 1 May 2004 and the end of 2006, the Union shall provide temporary financial assistance, hereinafter referred to as the "Transition Facility", to the new Member States to develop and strengthen their administrative capacity to implement and enforce Union and European Atomic Energy Community law and to foster exchange of best practice among peers.

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[42] *OJ L 56, 4.3.1968, p. 1.*

[43] *OJ L 161, 26.6.1999, p. 1.*

2. Assistance shall address the continued need for strengthening institutional capacity in certain areas through action which cannot be financed by the Structural Funds, in particular in the following areas:

(a) justice and home affairs (strengthening of the judicial system, external border controls, anti-corruption strategy, strengthening of law enforcement capacities);

(b) financial control;

(c) protection of the financial interests of the Union and of the European Atomic Energy Community and the fight against fraud;

(d) internal market, including customs union;

(e) environment;

(f) veterinary services and administrative capacity-building relating to food safety;

(g) administrative and control structures for agriculture and rural development, including the Integrated Administration and Control System (IACS);

(h) nuclear safety (strengthening the effectiveness and competence of nuclear safety authorities and their technical support organisations as well as public radioactive waste management agencies);

(i) statistics;

(j) strengthening public administration according to needs identified in the Commission's comprehensive monitoring report which are not covered by the Structural Funds.

3. Assistance under the Transition Facility shall be decided in accordance with the procedure

laid down in Article 8 of Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe [44].

4. The programme shall be implemented in accordance with Article 53(1)(a) and (b) of the Financial Regulation applicable to the general budget of the European Communities [45] or the European law replacing it. For twinning projects between public administrations for the purpose of institution-building, the procedure for call for proposals through the network of contact points in the Member States shall continue to apply, as established in the Framework Agreements with the present Member States for the purpose of pre-accession assistance.

The commitment appropriations for the Transition Facility, at 1999 prices, shall be 200 million euro in 2004, 120 million euro in 2005 and 60 million euro in 2006. The annual appropriations shall be authorised by the budgetary authority within the limits of the Financial Perspective as defined by the Interinstitutional Agreement of 6 May 1999.

ARTICLE 24

1. A Schengen Facility is hereby created as a temporary instrument to help beneficiary Member States between 1 May 2004 and the end of 2006 to finance actions at the new external borders of the Union for the implementation of the Schengen *acquis* and external border control.

In order to address the shortcomings identified in the preparation for participation in Schengen, the following types of action shall be eligible for financing under the Schengen Facility:

(a) investment in construction, renovation or upgrading of border-crossing infrastructure and related buildings;

(b) investments in any kind of operating equipment (e.g. laboratory equipment, detection tools, Schengen Information System – SIS II hardware and software, means of transport);

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[44] *OJ L 375, 23.12.1989, p. 11.*

[45] *Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).*

(c) training of border guards;

(d) support to costs for logistics and operations.

2. The following amounts shall be made available under the Schengen Facility in the form of lump-sum grant payments as of 1 May 2004 to the beneficiary Member States listed below:

	2004	2005	2006
	(million euro, 1999 prices)		
Estonia	22,90	22,90	22,90
Latvia	23,70	23,70	23,70
Lithuania	44,78	61,07	29,85
Hungary	49,30	49,30	49,30
Poland	93,34	93,33	93,33
Slovenia	35,64	35,63	35,63
Slovakia	15,94	15,93	15,93

3. The beneficiary Member States shall be responsible for selecting and implementing individual operations in compliance with this Article. They shall also be responsible for coordinating use of the Schengen Facility with assistance from other Union instruments, ensuring compatibility with Union policies and measures and compliance with the Financial Regulation applicable to the general budget of the European Communities or with the European law replacing it.

The lump-sum grant payments shall be used within three years from the first payment and any unused or unjustifiably spent funds shall be recovered by the Commission. The beneficiary Member States shall submit, no later than six months after expiry of the three-year deadline, a comprehensive report on the financial execution of the lump-sum grant payments with a statement justifying the expenditure.

The beneficiary State shall exercise this responsibility without prejudice to the Commission's responsibility for the implementation of the Union's budget and in accordance with the provisions applicable to decentralised management in the said Financial Regulation or in the European law replacing it.

4. The Commission retains the right of verification, through the Anti-Fraud Office (OLAF).

The Commission and the Court of Auditors may also carry out on-the-spot checks in accordance with the appropriate procedures.

5. The Commission may adopt any technical provisions necessary for the operation of the Schengen Facility.

ARTICLE 25

The amounts referred to in Articles 18, 19, 23 and 24 shall be adjusted each year, as part of the technical adjustment provided for in paragraph 15 of the Interinstitutional Agreement of 6 May 1999.

ARTICLE 26

1. If, until the end of a period of up to three years after 1 May 2004, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, a new Member State may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market.

In the same circumstances, any present Member State may apply for authorisation to take protective measures with regard to one or more of the new Member States.

2. Upon request by the State concerned, the Commission shall, by emergency procedure, adopt the European regulations or decisions establishing the protective measures which it considers necessary, specifying the conditions and modalities under which they are to be put into effect.

In the event of serious economic difficulties and at the express request of the Member State concerned, the Commission shall act within five working days of the receipt of the request accompanied by the relevant background information. The measures thus decided on shall be applicable forthwith, shall take account of the interests of all parties concerned and shall not entail frontier controls.

3. The measures authorised under paragraph 2 may involve derogations from the rules of the Constitution, and in particular from this Protocol, to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph 1. Priority shall be given to such measures as will least disturb the functioning of the internal market.

ARTICLE 27

If a new Member State has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative, adopt European regulations or decisions establishing appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the European regulations or decisions establishing the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

ARTICLE 28

If there are serious shortcomings or any imminent risks of such shortcomings in a new

Member State in the transposition, state of implementation or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty, Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, and European laws and framework laws adopted on the basis of Sections 3 and 4 of Chapter IV of Title III of Part I of the *european Treaty*, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, adopt European regulations or decisions establishing appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between a new Member State and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the adopted measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking safeguard measures, and it shall take duly into account any observations of the Council in this respect.

ARTICLE 29

In order not to hamper the proper functioning of the internal market, the enforcement of the new Member States' national rules during the transitional periods referred to in Annexes V to XIV to the Act of Accession of 16 April 2003 shall not lead to border controls between Member States.

ARTICLE 30

If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy under the conditions set out in this Protocol, such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 42(2) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [46], or as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or of the European laws replacing them or the relevant procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be adopted during a period of three years after 1 May 2004 and their application shall be limited to that period. A European law of the Council may extend this period. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 31

If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the Union veterinary and phytosanitary rules, such measures shall be adopted by the Commission in accordance with the relevant procedure as determined in the applicable legislation. These measures shall be taken during a period of three years after 1 May 2004 and their application shall be limited to that period.

ARTICLE 32

1. The terms of office of the new members of the Committees, groups and other bodies listed in Annex XVI to the Act of Accession of 16 April 2003 shall expire at the same time as those of the members in office on 1 May 2004.

2. The terms of office of the new members of the Committees and groups set up by the Commission which are listed in Annex XVII to the Act of Accession of 16 April 2003 shall expire at the same time as those of the members in office on 1 May 2004.

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[46] *OJ L 178, 30.6.2001, p. 1.*

TITLE IV
APPLICABILITY OF THE ACTS OF THE INSTITUTIONS

ARTICLE 33

As from 1 May 2004, the new Member States shall be considered as being addressees of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the EAEC Treaty, provided that those directives and decisions have been addressed to all the present Member States. Except with regard to directives and decisions which enter into force pursuant to Article 254(1) and (2) of the EC Treaty, the new Member States shall be considered as having received notification of such directives and decisions upon 1 May 2004.

ARTICLE 34

The new Member States shall put into effect the measures necessary for them to comply, from 1 May 2004, with the provisions of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the EAEC Treaty, unless another time-limit is provided for in the Annexes referred to in Article 15 or in any other provisions of this Protocol.

ARTICLE 35

Unless otherwise stipulated, the Council, on a proposal from the Commission, shall adopt the necessary European regulations and decisions to implement the provisions contained in Annexes III and IV to the Act of Accession of 16 April 2003 referred to in Articles 12

and 13 of this Protocol.

ARTICLE 36

1. Where acts of the institutions prior to 1 May 2004 require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Protocol, those adaptations shall be made in accordance with the procedure laid down by paragraph 2. Those adaptations shall enter into force as from 1 May 2004.

2. The Council, on a proposal from the Commission, or the Commission, according to which of these two institutions adopted the original acts, shall to this end adopt the necessary acts.

ARTICLE 37

Provisions laid down by law, regulation or administrative action designed to ensure the protection of the health of workers and the general public in the territory of the new Member States against the dangers arising from ionising radiations shall, in accordance with Article 33 of the EAEC Treaty, be communicated by those States to the Commission within three months from 1 May 2004.

PART TWO
PROVISIONS ON THE PROTOCOLS
ANNEXED TO THE ACT OF ACCESSION OF 16 APRIL 2003

TITLE I
TRANSITIONAL PROVISIONS ON THE EUROPEAN INVESTMENT BANK

ARTICLE 38

The Kingdom of Spain shall pay the amount of 309 686 775 euro as its share of the capital paid in for the subscribed capital increase. This contribution shall be paid in eight equal instalments falling due on 30 September 2004, 30 September 2005, 30 September 2006, 31 March 2007, 30 September 2007, 31 March 2008, 30 September 2008 and 31 March 2009.

The Kingdom of Spain shall contribute, in eight equal instalments falling due on those dates, to the reserves and provisions equivalent to reserves, as well as to the amount still to be appropriated to the reserves and provisions, comprising the balance of the profit and loss account, established at the end of the month of April 2004, as entered on the balance sheet of the Bank, in amounts corresponding to 4,1292% of the reserves and provisions.

ARTICLE 39

From 1 May 2004, the new Member States shall pay the following amounts corresponding to their share of the capital paid in for the subscribed capital as defined in Article 4 of the Statute of the European Investment Bank.

Poland	170 563 175 euro
Czech Republic	62 939 275 euro
Hungary	59 543 425 euro
Slovakia	21 424 525 euro
Slovenia	19 890 750 euro
Lithuania	12 480 875 euro
Cyprus	9 169 100 euro
Latvia	7 616 750 euro
Estonia	5 882 000 euro
Malta	3 490 200 euro

These contributions shall be paid in eight equal instalments falling due on 30 September 2004, 30 September 2005, 30 September 2006, 31 March 2007, 30 September 2007, 31 March 2008, 30 September 2008 and 31 March 2009.

ARTICLE 40

The new Member States shall contribute, in eight equal instalments falling due on the dates referred to in Article 39, to the reserves and provisions equivalent to reserves, as well as to the amount still to be appropriated to the reserves and provisions, comprising the balance of the profit and loss account, established at the end of the month of April 2004, as entered on the balance sheet of the European Investment Bank, in amounts corresponding to the following percentages of the reserves and provisions:

Poland	2,2742%
Czech Republic	0,8392%
Hungary	0,7939%
Slovakia	0,2857%
Slovenia	0,2652%
Lithuania	0,1664%
Cyprus	0,1223%
Latvia	0,1016%
Estonia	0,0784%
Malta	0,0465%

ARTICLE 41

The capital and payments provided for in Articles 38, 39 and 40 shall be paid in by the

Kingdom of Spain and the new Member States in cash in euro, save by way of derogation decided unanimously by the Board of Governors.

TITLE II
PROVISIONS ON THE RESTRUCTURING OF THE CZECH STEEL INDUSTRY

ARTICLE 42

1. Notwithstanding Articles I-53 and I-54 of the *european Treaty*, State aid granted by the Czech Republic for restructuring purposes to specified parts of the Czech steel industry from 1997 to 2003 shall be deemed to be compatible with the internal market provided that:

(a) the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part [47], has been extended until 1 May 2004;

(b) the terms set out in the restructuring plan on the basis of which the abovementioned Protocol was extended are adhered to throughout the period 2002-2006;

(c) the conditions set out in this Title are met, and

(d) no State aid for restructuring is to be paid to the Czech steel industry after 1 May 2004.

[47] *OJ L 360, 31.12.1994, p. 2.*

2. Restructuring of the Czech steel sector, as described in the individual business plans of the companies listed in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003 (hereinafter referred to as "benefiting companies"), and in line with the conditions set out in this Title, shall be completed no later than 31 December 2006 (hereinafter referred to as "the end of the restructuring period").

3. Only benefiting companies shall be eligible for State aid in the framework of the Czech steel restructuring programme.

4. A benefiting company may not:

(a) in the case of a merger with a company not included in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003, pass on the benefit of the aid granted to the benefiting company;

(b) take over the assets of any company not included in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003 which is declared bankrupt in the period up to 31 December 2006.

5. Any subsequent privatisation of any of the benefiting companies shall respect the conditions and principles regarding viability, State aids and capacity reduction defined in this Title.

6. The total restructuring aid to be granted to the benefiting companies shall be determined by the justifications set out in the approved Czech steel restructuring plan and individual business plans as approved by the Council. But in any case, the aid paid out in the period 1997-2003 is limited to a maximum amount of CZK 14 147 425 201. Of this total figure, Nová Huť receives a maximum of CZK 5 700 075 201, Vítkovice Steel receives a maximum of CZK 8 155 350 000 and Válcovny Plechu Frýdek Místek receives a maximum of CZK 292 000 000 depending on the requirements as set out in the approved restructuring plan. The aid shall only be granted once. No further State aid shall be granted by the Czech Republic for restructuring purposes to the Czech steel industry.

7. The net capacity reduction to be achieved by the Czech Republic for finished products during the period 1997-2006 shall be 590 000 tonnes.

Capacity reduction shall be measured only on the basis of permanent closure of production facilities by physical destruction such that the facilities cannot be restored to service. A declaration of bankruptcy of a steel company shall not qualify as capacity reduction.

The above level of net capacity reduction, together with any other capacity reductions identified as necessary in the restructuring programmes, shall be completed in line with the timetable in Annex 2 to Protocol No 2 to the Act of Accession of 16 April 2003.

8. The Czech Republic shall remove trade barriers in the coal market in accordance with the *acquis* by accession, enabling Czech steel companies to obtain access to coal at international market prices.

9. The business plan for the benefiting company Nová Huť shall be implemented. In particular:

(a) the Vysoké Pece Ostrava (VPO) plant shall be brought into the organisational framework of Nová Huť by acquisition of full ownership. A target date shall be set for this merger, including assignation of responsibility for its implementation;

(b) restructuring efforts shall concentrate on the following:

    (i) evolving Nová Huť from being production-oriented to being marketing-oriented and improving the efficiency and effectiveness of its business management, including greater transparency on costs;

    (ii) Nová Huť reviewing its product mix and entry into higher added-value markets;

    (iii) Nová Huť making the necessary investments in order to achieve a higher quality of finished products in the short term;

(c) employment restructuring shall be implemented; levels of productivity comparable to

those obtained by the Union's steel industry product groups shall be reached as at 31 December 2006, on the basis of the consolidated figures of the benefiting companies concerned;

(d) compliance with the relevant Community *acquis* in the field of environmental protection shall be achieved by 1 May 2004 including the necessary investments addressed in the business plan. In accordance with the business plan the necessary future IPPC-related investment shall also be made, in order to ensure compliance with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control [48] by 1 November 2007.

10. The business plan for the benefiting company Vítkovice Steel shall be implemented. In particular:

(a) the Duo Mill shall be permanently closed no later than 31 December 2006. In the event of purchase of the company by a strategic investor, the purchase contract shall be made conditional on this closure by this date;

(b) restructuring efforts shall concentrate on the following:

(i) an increase in direct sales and a greater focus on cost reduction, this being essential for more efficient business management,

(ii) adapting to market demand and shifting towards higher value-added products,

(iii) bringing forward the proposed investment in the secondary steel-making process from 2004 to 2003, in order to allow the company to compete on quality rather than on price;

(c) compliance with the relevant Community *acquis* in the field of environmental protection shall be achieved by 1 May 2004 including the necessary investments addressed in the business plan, which include the need for future IPPC-related investment.

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[48] *OJ L 257, 10.10.1996, p. 26.*

11. The business plan for the benefiting company Válcovny Plechu Frýdek Místek (VPFM) shall be implemented. In particular:

(a) Hot Rolling Mills Nos 1 and 2 shall be permanently closed at the end of 2004;

(b) restructuring efforts shall concentrate on the following:

(i) making the necessary investment in order to reach a higher quality of finished product in the short term after the signing of the Treaty of Accession,

(ii) giving priority to the implementation of key identified profit improvement opportunities (including employment restructuring, cost reductions, yield improvements and distribution reorientation).

12. Any subsequent changes in the overall restructuring plan and the individual plans must be agreed by the Commission and, where appropriate, by the Council.

13. The implementation of the restructuring shall take place under conditions of full transparency and on the basis of sound market economy principles.

14. The Commission and the Council shall closely monitor the implementation of the restructuring and the fulfilment of the conditions set out in this Title concerning viability, State aid and capacity reductions before and after 1 May 2004 until the end of the restructuring period, in accordance with paragraphs 15 to 18. For this purpose the Commission shall report to the Council.

15. The Commission and the Council shall monitor the restructuring benchmarks set out in Annex 3 to Protocol No 2 to the Act of Accession of 16 April 2003. The references in that Annex to paragraph 16 of the said Protocol shall be construed as being made to paragraph 16 of this Article.

16. Monitoring shall include an independent evaluation to be carried out in 2003, 2004, 2005 and 2006. The Commission's viability test shall be an important element in ensuring that viability is achieved.

17. The Czech Republic shall cooperate fully with all the arrangements for monitoring. In particular:

(a) the Czech Republic shall supply the Commission with six-monthly reports concerning the restructuring of the benefiting companies, no later than 15 March and 15 September of each year, until the end of the restructuring period,

(b) the first report shall reach the Commission by 15 March 2003 and the last report by 15 March 2007, unless the Commission decides otherwise,

(c) the reports shall contain all the information necessary to monitor the restructuring process and the reduction and use of capacity and shall provide sufficient financial data to allow an assessment to be made of whether the conditions and requirements contained in this Title have been fulfilled. The reports shall at the least contain the information set out in Annex 4 to Protocol No 2 to the Act of Accession of 16 April 2003, which the Commission reserves the right to modify in line with its experiences during the monitoring process. In addition to the individual business reports of the benefiting companies, there shall also be a report on the overall situation of the Czech steel sector, including recent macroeconomic developments,

(d) the Czech Republic shall oblige the benefiting companies to disclose all relevant data which might, under other circumstances, be considered as confidential. In its reporting to the Council, the Commission shall ensure that company-specific confidential information is not disclosed.

18. The Commission may at any time decide to mandate an independent consultant to evaluate the monitoring results, undertake any research necessary and report to the Commission and the Council.

19. If the Commission establishes, on the basis of the reports referred to in paragraph 17, that substantial deviations from the financial data on which the viability assessment has been made have occurred, it may require the Czech Republic to take appropriate measures to reinforce the restructuring measures of the benefiting companies concerned.

20. Should the monitoring show that:

(a) the conditions for the transitional arrangements contained in this Title have not been fulfilled, or that

(b) the commitments made in the framework of the extension of the period during which the Czech Republic may exceptionally grant State support for the restructuring of its steel industry under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part [49] have not been fulfilled, or that

(c) the Czech Republic in the course of the restructuring period has granted additional incompatible State aid to the steel industry and to the benefiting companies in particular,

the transitional arrangements contained in this Title shall not have effect.

The Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Title.

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[49] *OJ L 360, 31.12.1994, p. 2.*

TITLE III
PROVISIONS ON THE SOVEREIGN BASE AREAS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN CYPRUS

ARTICLE 43

1. The Sovereign Base Areas shall be included within the customs territory of the Union and, for this purpose, the customs and common commercial policy acts of the Union listed in Part One of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall apply to the Sovereign Base Areas with the amendments set out in that Annex. In that Annex, reference to "this Protocol" shall be construed as being to this Title.

2. The Union acts on turnover taxes, excise duties and other forms of indirect taxation listed in Part Two of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall apply to the Sovereign Base Areas with the amendments set out in that Annex as well as the relevant provisions applying to Cyprus as set out in this Protocol.

3. The Union acts listed in Part Three of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall be amended as set out in that Annex to enable the United Kingdom to maintain the reliefs and exemptions from duties and taxes on supplies to its forces and associated personnel which are granted by the Treaty concerning the Establishment of the Republic of Cyprus (hereinafter referred to as the "Treaty of Establishment").

ARTICLE 44

Articles I-111 to I-118 of the *european Treaty*, together with the provisions adopted on that basis, and the provisions adopted in accordance with Article I-164(4)(b) of the *european Treaty* shall apply to the Sovereign Base Areas.

ARTICLE 45

Persons resident or employed in the territory of the Sovereign Base Areas who, under arrangements made pursuant to the Treaty of Establishment and the associated Exchange of Notes dated 16 August 1960, are subject to the social security legislation of the Republic of Cyprus shall be treated for the purposes of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community [50] as if they were resident or employed in the territory of the Republic of Cyprus.

ARTICLE 46

1. The Republic of Cyprus shall not be required to carry out checks on persons crossing its land and sea boundaries with the Sovereign Base Areas and any Union restrictions on the crossing of external borders shall not apply in relation to such persons.

2. The United Kingdom shall exercise controls on persons crossing the external borders of the Sovereign Base Areas in accordance with the undertakings set out in Part Four of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003.

ARTICLE 47

The Council, on a proposal from the Commission, may, in order to ensure effective

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50 *OJ L 149, 5.7.1971, p. 2.*

implementation of the objectives of this Title, adopt a European decision amending Articles 43 to 46, including the Annex to Protocol No 3 to the Act of Accession of 16 April 2003, or applying other provisions of the Constitution and Union acts to the Sovereign Base Areas on such terms and subject to such conditions as it may specify. The Council shall act unanimously. The Commission shall consult the United Kingdom and the Republic of Cyprus before bringing forward a proposal.

ARTICLE 48

1. Subject to paragraph 2, the United Kingdom shall be responsible for the implementation of this Title in the Sovereign Base Areas. In particular:

(a) the United Kingdom shall be responsible for the application of the Union measures specified in this Title in the fields of customs, indirect taxation and the common commercial policy in relation to goods entering or leaving the island of Cyprus through a port or airport within the Sovereign Base Areas;

(b) customs controls on goods imported into or exported from the island of Cyprus by the forces of the United Kingdom through a port or airport in the Republic of Cyprus may be carried out within the Sovereign Base Areas;

(c) the United Kingdom shall be responsible for issuing any licences, authorisations or certificates which may be required under any applicable Union measure in respect of goods imported into or exported from the island of Cyprus by the forces of the United Kingdom.

2. The Republic of Cyprus shall be responsible for the administration and payment of any Union funds to which persons in the Sovereign Base Areas may be entitled pursuant to the application of the common agricultural policy in the Sovereign Base Areas under Article 44, and the Republic of Cyprus shall be accountable to the Commission for such expenditure.

3. Without prejudice to paragraphs 1 and 2, the United Kingdom may delegate to the competent authorities of the Republic of Cyprus, in accordance with arrangements made

pursuant to the Treaty of Establishment, the performance of any functions imposed on a Member State by or under any provision referred to in Articles 43 to 46.

4. The United Kingdom and the Republic of Cyprus shall cooperate to ensure the effective implementation of this Title in the Sovereign Base Areas and, where appropriate, shall conclude further arrangements concerning the delegation of the implementation of any of the provisions referred to in Articles 43 to 46. A copy of any such arrangements shall be submitted to the Commission.

ARTICLE 49

The arrangements provided for in this Title shall have the sole purpose of regulating the particular situation of the Sovereign Base Areas of the United Kingdom in Cyprus and shall not apply to any other territory of the Union, nor serve as a precedent, in whole or in part, for any other special arrangements which either already exist or which might be set up in another European territory provided for in Article III-124 of the Constitution and in Article III-318 of the *european Treaty*.

ARTICLE 50

The Commission shall report to the European Parliament and the Council every five years as from 1 May 2004 on the implementation of the provisions of this Title.

ARTICLE 51

The provisions of this Title shall apply in the light of the Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 3 to the Act of Accession of 16 April 2003.

TITLE IV
PROVISIONS ON THE IGNALINA NUCLEAR POWER PLANT IN LITHUANIA

ARTICLE 52

Acknowledging the readiness of the Union to provide adequate additional assistance to the efforts by Lithuania to decommission the Ignalina Nuclear Power Plant and highlighting this expression of solidarity, Lithuania has undertaken to close Unit 1 of the Ignalina Nuclear Power Plant before 2005 and Unit 2 of this plant by 31 December 2009 at the latest and subsequently decommission these units.

ARTICLE 53

1. During the period 2004-2006, the Union shall provide Lithuania with additional financial assistance in support of its efforts to decommission, and to address the consequences of the closure and decommissioning of, the Ignalina Nuclear Power Plant (hereinafter "the Ignalina Programme").

2. Measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe [51].

3. The Ignalina Programme shall, inter alia, cover: measures in support of the decommissioning of the Ignalina Nuclear Power Plant; measures for the environmental upgrading in line with the *acquis* and modernisation measures of conventional production capacity to replace the production capacity of the two Ignalina Nuclear Power Plant

[51] *OJ L 375, 23.12.1989, p. 11.*

reactors; and other measures which are consequential to the decision to close and decommission this plant and which contribute to the necessary restructuring, environmental upgrading and modernisation of the energy production, transmission and distribution sectors in Lithuania as well as to enhancing the security of energy supply and improving energy efficiency in Lithuania.

4. The Ignalina Programme shall include measures to support plant personnel in maintaining a high level of operational safety at the Ignalina Nuclear Power Plant in the periods prior to the closure and during the decommissioning of the said reactor units.

5. For the period 2004-2006 the Ignalina Programme shall amount to 285 million euro in commitment appropriations, to be committed in equal annual tranches.

6. The contribution under the Ignalina Programme may, for certain measures, amount to up to 100% of the total expenditure. Every effort should be made to continue the co-financing practice established under the pre-accession assistance for Lithuania's decommissioning effort as well as to attract co-financing from other sources, as appropriate.

7. The assistance under the Ignalina Programme, or parts thereof, may be made available as a Union contribution to the Ignalina International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.

8. Public aid from national, Union and international sources:

(a) for the environmental upgrading in line with the *acquis* and modernisation measures of the Lithuanian Thermal Power Plant in Elektrenai as the key replacement for the production capacity of the two Ignalina Nuclear Power Plant reactors; and

(b) for the decommissioning of the Ignalina Nuclear Power Plant

shall be compatible with the internal market as defined in the Constitution.

9. Public aid from national, Union and international sources in support of Lithuania's efforts to address the consequences of the closure and of the decommissioning of the

Ignalina Nuclear Power Plant may, on a case by case basis, be considered to be compatible – under the Constitution – with the internal market, in particular public aid provided for enhancing the security of energy supply.

ARTICLE 54

1. Recognising that the decommissioning of the Ignalina Nuclear Power Plant is of a long-term nature and represents for Lithuania an exceptional financial burden not commensurate with its size and economic strength, the Union shall, in solidarity with Lithuania, provide adequate additional assistance to the decommissioning effort beyond 2006.

2. The Ignalina Programme shall be, for this purpose, seamlessly continued and extended beyond 2006. Implementing provisions for the extended Ignalina Programme shall be adopted in accordance with the procedure laid down in Article 35 of this Protocol and enter into force, at the latest, by the date of expiry of the Financial Perspective as defined in the Interinstitutional Agreement of 6 May 1999.

3. The Ignalina Programme, as extended in accordance with the provisions of paragraph 2, shall be based on the same elements and principles as described in Article 53.

4. For the period of the subsequent Financial Perspective, the overall average appropriations under the extended Ignalina Programme shall be appropriate. Programming of these resources will be based on actual payment needs and absorption capacity.

ARTICLE 55

Without prejudice to the provisions of Article 52, the general safeguard clause referred to in Article 26 shall apply until 31 December 2012 if energy supply is disrupted in Lithuania.

ARTICLE 56

This Title shall apply in the light of the Declaration on the Ignalina Nuclear Power Plant in Lithuania which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 4 to the Act of Accession of 16 April 2003.

TITLE V
PROVISIONS ON THE TRANSIT OF PERSONS BY LAND BETWEEN THE REGION OF KALININGRAD AND OTHER PARTS OF THE RUSSIAN FEDERATION

ARTICLE 57

The Union rules and arrangements on transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, and in particular the Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual [52], shall not in themselves delay or prevent the full participation of Lithuania in the Schengen *acquis*, including the removal of internal border controls.

[52] *OJ L 99, 17.4.2003, p. 8.*

ARTICLE 58

The Union shall assist Lithuania in implementing the rules and arrangements for the transit of persons between the region of Kaliningrad and the other parts of the Russian Federation with a view to Lithuania's full participation in the Schengen area as soon as possible.

The Union shall assist Lithuania in managing the transit of persons between the region of Kaliningrad and the other parts of the Russian Federation and shall, notably, bear any additional costs incurred by implementing the specific provisions of the *acquis* provided for such transit.

ARTICLE 59

Without prejudice to the sovereign rights of Lithuania, any further act concerning the transit of persons between the region of Kaliningrad and other parts of the Russian Federation shall be adopted by the Council on a proposal from the Commission. The Council shall act unanimously.

ARTICLE 60

This Title shall apply in the light of the Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, which incorporates, without altering its legal affect, the wording of the preamble to Protocol No 5 to the Act of Accession of 16 April 2003.

TITLE VI
PROVISIONS ON THE ACQUISITION OF SECONDARY RESIDENCES IN MALTA

ARTICLE 61

Bearing in mind the very limited number of residences in Malta and the very limited land available for construction purposes, which can only cover the basic needs created by the demographic development of the present residents, Malta may on a non-discriminatory basis maintain in force the rules on the acquisition and holding of immovable property for secondary residence purposes by nationals of the Member States who have not legally resided in Malta for at least five years laid down in the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246).

Malta shall apply authorisation procedures for the acquisition of immovable property for secondary residence purposes in Malta, which shall be based on published, objective, stable and transparent criteria. These criteria shall be applied in a non-discriminatory manner and shall not differentiate between nationals of Malta and of other Member States. Malta shall ensure that in no instance shall a national of a Member State be treated in a more restrictive way than a national of a third country.

In the event that the value of one such property bought by a national of a Member State exceeds the thresholds provided for in Malta's legislation, namely 30 000 Maltese lira for apartments and 50 000 Maltese lira for any type of property other than apartments and property of historical importance, authorisation shall be granted. Malta may revise the thresholds established by such legislation to reflect changes in prices in the property market in Malta.

TITLE VII
PROVISIONS ON ABORTION IN MALTA

ARTICLE 62

Nothing in the *european Treaty* or in the Treaties and Acts modifying or supplementing it shall affect the application in the territory of Malta of national legislation relating to abortion.

TITLE VIII
PROVISIONS ON THE RESTRUCTURING OF THE POLISH STEEL INDUSTRY

ARTICLE 63

1. Notwithstanding Articles I-53 and I-54 of the *european Treaty*, State aid granted by Poland for restructuring purposes to specified parts of the Polish steel industry shall be deemed to be compatible with the internal market provided that:

(a) the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part [53], has been extended until 1 May 2004,

[53] *OJ L 348, 31.12.1993, p. 2.*

(b) the terms set out in the restructuring plan, on the basis of which the abovementioned Protocol was extended are adhered to throughout the period 2002-2006,

(c) the conditions set out in this Title are met, and

(d) no State aid for restructuring is to be paid to the Polish steel industry after 1 May 2004.

2. Restructuring of the Polish steel sector, as described in the individual business plans of the companies listed in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003 (hereinafter referred to as "benefiting companies"), and in line with the conditions set out in this Title, shall be completed no later than 31 December 2006 (hereinafter referred to as "the end of the restructuring period").

3. Only benefiting companies shall be eligible for State aid in the framework of the Polish steel restructuring programme.

4. A benefiting company may not:

(a) in the case of a merger with a company not included in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003, pass on the benefit of the aid granted to the benefiting company;

(b) take over the assets of any company not included in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003 which is declared bankrupt in the period up to 31 December 2006.

5. Any subsequent privatisation of any of the benefiting companies shall take place on a basis that respects the need for transparency and shall respect the conditions and principles regarding viability, State aids and capacity reduction defined in this Title. No further State aid shall be granted as part of the sale of any company or individual assets.

6. The restructuring aid granted to the benefiting companies shall be determined by the justifications set out in the approved Polish steel restructuring plan and individual business

plans as approved by the Council. But, in any case, the aid paid out in the period of 1997-2003 in its total amount shall not exceed PLN 3 387 070 000.

Of this total figure:

(a) as regards Polskie Huty Stali (hereinafter referred to as "PHS"), the restructuring aid already granted or to be granted from 1997 until the end of 2003 shall not exceed PLN 3 140 360 000. PHS has already received PLN 62 360 000 of restructuring aid in the period 1997-2001; it shall receive further restructuring aid of no more than PLN 3 078 000 000 in 2002 and 2003 depending on the requirements set out in the approved restructuring plan (to be entirely paid out in 2002 if the extension of the grace period under Protocol 2 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, is granted by the end of 2002, or otherwise in 2003);

(b) as regards Huta Andrzej S.A., Huta Bankowa Sp. z o.o., Huta Batory S.A., Huta Buczek S.A., Huta L.W. Sp. z o.o., Huta Łabędy S.A., and Huta Pokój S.A. (hereinafter referred to as "other benefiting companies"), the steel restructuring aid already granted or to be granted from 1997 until the end of 2003 shall not exceed PLN 246 710 000. These firms have already received PLN 37 160 000 of restructuring aid in the period 1997-2001; they shall receive further restructuring aid of no more than PLN 210 210 000 depending on the requirements set out in the approved restructuring plan (of which PLN 182 170 000 in 2002 and PLN 27 380 000 in 2003 if the extension of the grace period under Protocol 2 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, is granted by the end of 2002, or otherwise PLN 210 210 000 in 2003).

No further State aid shall be granted by Poland for restructuring purposes to the Polish steel industry.

7. The net capacity reduction to be achieved by Poland for finished products during the period 1997-2006 shall be a minimum of 1 231 000 tonnes. This overall amount includes net capacity reductions of at least 715 000 tpy in hot-rolled products and 716 000 tpy in cold-rolled products, as well as an increase of at most 200 000 tpy of other finished

products.

Capacity reduction shall be measured only on the basis of permanent closure of production facilities by physical destruction such that the facilities cannot be restored to service. A declaration of bankruptcy of a steel company shall not qualify as capacity reduction.

The net capacity reductions shown in Annex 2 to Protocol No 8 to the Act of Accession of 16 April 2003 are minima and actual net capacity reductions to be achieved and the time frame for doing so shall be established on the basis of Poland's final restructuring programme and individual business plans under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, taking into account the objective to ensure the viability of benefiting companies as at 31 December 2006.

8. The business plan for the benefiting company PHS shall be implemented. In particular:

(a) restructuring efforts shall concentrate on the following:

(i) reorganising PHS production facilities on a product basis and ensuring horizontal organisation by function (purchasing, production, sales),

(ii) establishing in PHS a unified management structure enabling full realisation of synergies in the consolidation,

(iii) evolving the strategic focus of PHS from being production-oriented to being marketing-oriented,

(iv) improving the efficiency and effectiveness of PHS business management and also ensuring better control of direct sales,

(v) PHS reviewing, on the basis of sound economic considerations, the strategy of spin-off companies and, where appropriate, reintegrating services into the parent company,

(vi) PHS reviewing its product mix, reducing over-capacity on long semi-finished products and generally moving further into the higher value-added product market,

(vii) PHS investing in order to achieve a higher quality of finished products; special attention shall be given to attaining by the date set in the timetable for the implementation of the PHS restructuring programme and at the latest by the end of 2006 3-Sigma production quality level at the PHS site in Kraków;

(b) cost savings shall be maximised in PHS during the restructuring period through energy efficiency gains, improved purchasing and ensuring productivity yields comparable to Union levels;

(c) employment restructuring shall be implemented; levels of productivity comparable to those obtained by Union steel industry product groups shall be reached as at 31 December 2006, based on consolidated figures including indirect employment in the wholly owned service companies;

(d) any privatisation shall be on a basis that respects the need for transparency and fully respects the commercial value of PHS. No further State aid shall be granted as part of the sale.

9. The business plan for the other benefiting companies shall be implemented. In particular:

(a) for all of the other benefiting companies, restructuring efforts shall concentrate on the following:

(i) evolving the strategic focus from being production-oriented to being marketing-oriented,

(ii) improving the efficiency and effectiveness of the companies' business management and also ensuring better control of direct sales,

(iii) reviewing, on the basis of sound economic considerations, the strategy of spin-off companies and, where appropriate, reintegrating services into the parent companies;

(b) for Huta Bankowa, implementing the cost savings programme;

(c) for Huta Buczek, obtaining the necessary financial support from creditors and local financial institutions and implementing the cost savings programme, including reducing the investment cost by adapting existing production facilities;

(d) for Huta Łabędy, implementing the cost savings programme and reducing reliance on the mining industry;

(e) for Huta Pokój, achieving international productivity standards in the subsidiaries, implementing energy consumption savings and cancelling the proposed investment in the processing and construction department;

(f) for Huta Batory, reaching agreement with creditors and financial institutions on debt rescheduling and investment loans. The company shall also ensure substantial additional cost savings associated with employment restructuring and improved yields;

(g) for Huta Andrzej, securing a stable financial base for its development by negotiating an agreement between the company's current lenders, long-term creditors, trade creditors and financial institutions. Additional investments in the hot tube mill as well as the implementation of the staff reduction programme must take place;

(h) for Huta L.W., carrying out investments in relation to the company's hot-rolling mills project, lifting equipment, and environmental standing. This company shall also achieve higher productivity levels, through staff restructuring and reducing the costs of external services.

10. Any subsequent changes in the overall restructuring plan and the individual plans must be agreed by the Commission and, where appropriate, by the Council.

11. The implementation of the restructuring shall take place under conditions of full transparency and on the basis of sound market economy principles.

12. The Commission and the Council shall closely monitor the implementation of the restructuring and the fulfilment of the conditions set out in this Title concerning viability, State aid and capacity reductions before and after 1 May 2004, until the end of the restructuring period, in accordance with paragraphs 13 to 18. For this purpose the Commission shall report to the Council.

13. In addition to the monitoring of State aid, the Commission and the Council shall monitor the restructuring benchmarks set out in Annex 3 to Protocol No 8 to the Act of Accession of 16 April 2003. References made in that Annex to paragraph 14 of the Protocol shall be construed as being made to paragraph 14 of this Article.

14. Monitoring shall include an independent evaluation to be carried out in 2003, 2004, 2005 and 2006. The Commission's viability test shall be applied and productivity shall be measured as part of the evaluation.

15. Poland shall cooperate fully with all the arrangements for monitoring. In particular:

(a) Poland shall supply the Commission with six-monthly reports concerning the restructuring of the benefiting companies, no later than 15 March and 15 September of each year, until the end of the restructuring period;

(b) the first report shall reach the Commission by 15 March 2003 and the last report by 15 March 2007, unless the Commission decides otherwise;

(c) the reports shall contain all the information necessary to monitor the restructuring process, the State aid and the reduction and use of capacity and shall provide sufficient financial data to allow an assessment to be made of whether the conditions and requirements contained in this Title have been fulfilled. The reports shall at the least contain the information set out in Annex 4 to Protocol No 8 to the Act of Accession of 16 April 2003, which the Commission reserves the right to modify in line with its experiences during the monitoring process. In Annex 4 to Protocol No 8 to the Act of Accession of 16 April 2003, the reference to

paragraph 14 of the Protocol shall be construed as being to paragraph 14 of this Article. In addition to the individual business reports of the benefiting companies there shall also be a report on the overall situation of the Polish steel sector, including recent macroeconomic developments;

(d) all additional information necessary for the independent evaluation provided for in paragraph 14 must, furthermore, be provided by Poland;

(e) Poland shall oblige the benefiting companies to disclose all relevant data which might, under other circumstances, be considered as confidential. In its reporting to the Council, the Commission shall ensure that company-specific confidential information is not disclosed.

16. The Commission may at any time decide to mandate an independent consultant to evaluate the monitoring results, undertake any research necessary and report to the Commission and the Council.

17. If the Commission establishes, on the basis of the monitoring, that substantial deviations from the financial data on which the viability assessment has been made have occurred, it may require Poland to take appropriate measures to reinforce or modify the restructuring measures of the benefiting companies concerned.

18. Should the monitoring show that:

(a) the conditions for the transitional arrangements contained in this Title have not been fulfilled, or that

(b) the commitments made in the framework of the extension of the period during which Poland may exceptionally grant State support for the restructuring of its steel industry under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, have not been fulfilled, or that

(c) Poland in the course of the restructuring period has granted additional incompatible State aid to the steel industry and to the benefiting companies in particular,

the transitional arrangements contained in this Title shall not have effect.

The Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Title.

TITLE IX
PROVISIONS ON UNIT 1 AND UNIT 2 OF THE BOHUNICE V1 NUCLEAR POWER PLANT IN SLOVAKIA

ARTICLE 64

Slovakia has undertaken to close Unit 1 of the Bohunice V1 Nuclear Power Plant by 31 December 2006 at the latest and Unit 2 of this plant by 31 December 2008 at the latest and subsequently decommission these units.

ARTICLE 65

1. During the period 2004-2006, the Union shall provide Slovakia with financial assistance in support of its efforts to decommission, and to address the consequences of

the closure and decommissioning of, Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant (hereinafter referred to as "the Assistance").

2. The Assistance shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe [54].

3. For the period 2004-2006 the Assistance shall amount to 90 million euro in commitment appropriations, to be committed in equal annual tranches.

4. The Assistance or parts thereof may be made available as a Union contribution to the Bohunice International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.

ARTICLE 66

The Union acknowledges that the decommissioning of the Bohunice V1 Nuclear Power plant must continue beyond the Financial Perspective as defined in the Interinstitutional Agreement of 6 May 1999, and that this effort represents for Slovakia a significant financial burden. Decisions on the continuation of Union assistance in this field after 2006 will take the situation into account.

ARTICLE 67

The provisions of this Title shall apply in the light of the Declaration on Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant in Slovakia which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 9 to the Act of Accession of 16 April 2003.

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[54] *OJ L 375, 23.12.1989, p. 11.*

TITLE X
PROVISIONS ON CYPRUS

ARTICLE 68

1. The application of the Community and Union *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

2. The Council, on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1. It shall act unanimously.

ARTICLE 69

1. The Council, on the basis of a proposal from the Commission, shall define the terms under which the provisions of Union law shall apply to the line between those areas referred to in Article 68 and the areas in which the Government of the Republic of Cyprus exercises effective control. The Council shall act unanimously.

2. The boundary between the Eastern Sovereign Base Area and those areas referred to in Article 68 shall be treated as part of the external borders of the Sovereign Base Areas for the purpose of Part Four of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus for the duration of the suspension of the application of the Community and Union *acquis* according to Article 68.

ARTICLE 70

1. Nothing in this Title shall preclude measures with a view to promoting the economic development of the areas referred to in Article 68.

2. Such measures shall not affect the application of the Community and Union *acquis* under the conditions set out in this Protocol in any other part of the Republic of Cyprus.

ARTICLE 71

In the event of settlement of the Cyprus problem, the Council, on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the Union with regard to the Turkish Cypriot Community. The Council shall act unanimously.

ARTICLE 72

This Title shall apply in the light of the declaration on Cyprus which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 10 to the Act of Accession of 16 April 2003.

PART THREE
PROVISIONS ON THE ANNEXES
TO THE ACT OF ACCESSION OF 16 APRIL 2003

ARTICLE 73

Annex I and Annexes III to XVII to the Act of Accession of 16 April 2003, their appendices, and the Annexes to Protocols 2, 3 and 8 to the Act of Accession of 16 April 2003 [55] form an integral part of this Protocol.

ARTICLE 74

[55] *OJ L 236, 23.9.2003, p. 33.*

1. The references made to the "Treaty of Accession" in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to the Treaty referred to in Article III-315(2)(e) of the *european Treaty*, those made to the date or time of signing of that Treaty shall be construed as being made to 16 April 2003 and those made to the date of accession shall be construed as being made to 1 May 2004.

2. Without prejudice to the second subparagraph, the references made to "this Act" in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to the Act of Accession of 16 April 2003.

The references made to the provisions of the Act of Accession of 16 April 2003 in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to this Protocol, in accordance with the following table of equivalence.

Act of Accession of 16 April 2003	Protocol
Article 21	Article 12
Article 22	Article 13
Article 24	Article 15
Article 32	Article 21
Article 37	Article 26
Article 52	Article 32

3. The expressions, which appear in the Annexes referred to in Article 73, shall be construed as having the meaning assigned to them in the following table of equivalence, unless they refer exclusively to legal situations preceding the entry into force of the Constitution and the *european Treaty*.

Expressions used in the Annexes	Meaning
Treaty establishing the European Community	Constitution
Treaty on European Union	Constitution
Treaties on which the European Union is founded	Constitution
(European) Community	Union
Enlarged Community	Union
Community	Union
EU	Union
Enlarged Union or enlarged EU	Union

By way of derogation from the first subparagraph, the meaning of the expression "Community" where it is used to qualify the terms "preference" and "fisheries" shall remain unchanged.

4. The references made to parts or to provisions of the Treaty establishing the European Community in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to parts or to provisions of the *european Treaty*, in accordance with the following table of equivalence.

EC Treaty	*european Treaty*
Part Three, Title I	Part III, Title III, Chapter I, Section 3
Part Three, Title I, Chapter 1	Part III, Title III, Chapter I, Section 3 Sub-Section 1
Part Three, Title II	Part III, Title III, Chapter III, Section 4
Part Three, Title III	Part III, Title III, Chapter I, Sections 2 and 4
Part Three, Title VI, Chapter 1	Part III, Title III, Chapter I, Section 5
Article 31	Article I-41
Article 39	Article I-19
Article 49	Article I-30
Article 58	Article I-44
Article 87	Article I-53
Article 88	Article I-54
Article 226	Article I-31 of the Constitution
Annex I	Annex I

5. Where the Annexes referred to in Article 73 of this Protocol provide that the Council or the Commission shall adopt legal acts, those acts shall take the form of European regulations or decisions.

10. PROTOCOL
ON THE EXCESSIVE DEFICIT PROCEDURE

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the excessive deficit procedure referred to in Article I-70 of the *european Treaty*,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

The reference values referred to in Article I-70(2) of the *european Treaty* are:

(a) 3% for the ratio of the planned or actual government deficit to gross domestic product at market prices;

(b) 60% for the ratio of government debt to gross domestic product at market prices.

ARTICLE 2

For the purposes of Article I-70 of the *european Treaty* and of this Protocol:

(a) "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;

(b) "deficit" means net borrowing as defined in the European System of Integrated Economic Accounts;

(c) "investment" means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;

(d) "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 point (a).

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 Article 2(a). The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from the Constitution. 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.

11. PROTOCOL
ON THE CONVERGENCE CRITERIA

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Union in taking decisions referred to in Article I-84 of the *european Treaty* to end the derogations of those Member States with a derogation,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

The criterion on price stability referred to in Article I-84(1)(a) of the *european Treaty* shall mean that the Member State concerned 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 1,5 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 Article I-84(1)(b) of the *european Treaty* shall mean that at the time of the examination the Member State concerned is not the subject of a European decision of the Council under Article I-70(6) of the *european 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 Article I-84(1)(c) of the *european Treaty* shall mean that the Member State concerned has respected the normal fluctuation margins provided for by the exchange-rate mechanism of 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 the euro on its own initiative for the same period.

ARTICLE 4

The criterion on the convergence of interest rates referred to in Article I-84(1)(d) of the *european Treaty* shall mean that, observed over a period of one year before the examination, the Member State concerned 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 European Central Bank, and the Economic and Financial Committee referred to in Article I-78 of the *european Treaty*, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article I-84 of

the *european Treaty*, which shall then replace this Protocol.

12. PROTOCOL
ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED upon the following provisions, which are annexed to the *european Treaty*:

ARTICLE 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

ARTICLE 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

13. PROTOCOL ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AS REGARDS ECONOMIC AND MONETARY UNION

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and Parliament;

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union, under the terms of paragraph 1 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, annexed to the Treaty establishing the European Community;

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 upon the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

Unless the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so.

ARTICLE 2

In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, Articles 3 to 8 and 10 shall apply to the United Kingdom.

ARTICLE 3

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

ARTICLE 4

Articles I-35(2), with the exception of the first and last sentences thereof, I-35(5) and I-36 of the Constitution, I-63, second paragraph, I-70(1), (9) and (10), I-71(1) to (5), I-72, I-74, I-75, I-76, I-77, I-82, I-84(3), and II-212 of the *european Treaty* shall not apply to the United Kingdom. The same applies to Article I-65(2) of the *european Treaty* as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally.

In the provisions referred to in the first paragraph, references to the Union or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

ARTICLE 5

The United Kingdom shall endeavour to avoid an excessive government deficit.

Articles I-78(4) and I-86 of the *european Treaty* shall apply to the United Kingdom as if it had a derogation. Articles I-87 and I-88 of the *european Treaty* shall continue to apply to the United Kingdom.

ARTICLE 6

The voting rights of the United Kingdom shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in Article 4 and in the instances referred to in the first subparagraph of Article I-83(4) of the *european Treaty*. For this purpose the second and third subparagraphs of Article I-83(4) of the *european Treaty* shall apply.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the European Central Bank under the second, third and fourth subparagraphs of Article I-36 (2) of the Constitution.

ARTICLE 7

Articles 3, 4, 6, 7, 9(2), 10(1), (2) and (3), 11(2), 12(1), 14, 16, 18, 19, 20, 22, 23, 26, 27, 30, 31, 32, 33, 34 and 50 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 Union or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10(3) and 30(2) of the Statute to "subscribed capital of the European Central Bank" shall not include capital subscribed by the Bank of England.

ARTICLE 8

Article I-85 of the *european Treaty* and Articles 43 to 47 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

(a) References in Article 43 of the Statute to the tasks of the European Central Bank and the European Monetary Institute shall include those tasks that still need to be performed after the introduction of the euro owing to the decision of the United Kingdom not to adopt the euro.

(b) In addition to the tasks referred to in Article 46 of the Statute, the European Central Bank shall also give advice in relation to and contribute to the preparation of any European regulation or any European decision of the Council with regard to the United Kingdom taken in accordance with Article 9(a) and (c) of this Protocol.

(c) The Bank of England shall pay up its subscription to the capital of the European Central Bank as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

ARTICLE 9

The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:

(a) The United Kingdom shall have the right to adopt the euro provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article I-84(1) and (2) of the *european Treaty*, shall decide whether it fulfils the necessary conditions.

(b) The Bank of England shall pay up its subscribed capital, transfer to the European Central Bank 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 I-84(3) of the *european Treaty*, shall take all other necessary decisions to enable the United Kingdom to adopt the euro.

If the United Kingdom adopts the euro pursuant to the provisions of this Article, Articles 3 to 8 shall cease to have effect.

ARTICLE 10

Notwithstanding Article I-67 of the *european 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 adopt the euro.

14. PROTOCOL
ON CERTAIN PROVISIONS RELATING TO DENMARK AS REGARDS ECONOMIC AND MONETARY UNION

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Denmark renouncing its exemption;

GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union, under the terms of paragraph 1 of the Protocol on certain provisions relating to Denmark, annexed to the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

In view of the notice given to the Council by the Danish Government on 3 November 1993, Denmark shall have an exemption. The effect of the exemption shall be that all provisions of the Constitution and the Statute of the European System of Central Banks and the European Central Bank referring to a derogation shall be applicable to Denmark.

ARTICLE 2

As for the abrogation of the exemption, the procedure referred to in Article I-84 of the *european Treaty* shall only be initiated at the request of Denmark.

ARTICLE 3

In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

15. PROTOCOL ON CERTAIN TASKS OF THE NATIONAL BANK OF DENMARK

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 *european Treaty*:

SOLE ARTICLE

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 Denmark which are not part of the Union.

16. PROTOCOL ON THE PACIFIC FINANCIAL COMMUNITY FRANC SYSTEM

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 *european Treaty*:

SOLE ARTICLE

France may keep the privilege of monetary emission in New Caledonia, French Polynesia and Wallis and Futuna under the terms established by its national laws and shall be solely entitled to determine the parity of the Pacific Financial Community franc.

17. PROTOCOL
ON THE SCHENGEN *ACQUIS* INTEGRATED INTO THE FRAMEWORK OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the provisions of the Schengen *acquis* consisting of 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 rules adopted on the basis of these agreements, have been integrated into the framework of the European Union by a Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community;

DESIRING to preserve the Schengen *acquis*, as developed since the entry into force of the abovementioned Protocol, within the framework of the Constitution and the *european Treaty*, and to develop this *acquis* in order to contribute towards achieving the objective of offering citizens of the Union an area of freedom, security and justice without internal borders;

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 do not participate in all the provisions of the Schengen *acquis*; provision should, however, be made to allow those Member States to accept other provisions of this *acquis* in full or in part;

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Constitution concerning closer cooperation between some Member States;

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the

European Union;

HAVE AGREED UPON the following provisions, which shall be annexed to *european Treaty*,

ARTICLE 1

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, 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 and the Kingdom of Sweden shall be authorised to implement closer cooperation among themselves in areas covered by provisions defined by the Council which constitute the Schengen *acquis*. This cooperation shall be conducted within the institutional and legal framework of the Union and with respect for the relevant provisions of the Constitution.

ARTICLE 2

The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Protocol on the Treaty and the Act 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. The Council will substitute itself for the Executive Committee established by the Schengen agreements.

ARTICLE 3

The participation of Denmark in the adoption of measures constituting a development of the Schengen *acquis*, as well as the implementation of these measures and their

application to Denmark, shall be governed by the relevant provisions of the Protocol on the position of Denmark.

ARTICLE 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, may at any time request to take part in some or all of the provisions of the Schengen *acquis*.

The Council shall adopt a European decision on this request. It shall act by a unanimous decision of the members referred to in Article 1 and of the member representing the government of the Member State concerned.

ARTICLE 5

Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Constitution and the *european Treaty*.

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 II-297(1) of the *european Treaty* 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.

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. 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. That 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 by the Council, acting unanimously, with Iceland and Norway 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

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures adopted by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

18. PROTOCOL ON THE APPLICATION OF CERTAIN ASPECTS OF ARTICLE I-16 OF THE EUROPEAN TREATY TO THE UNITED KINGDOM AND TO IRELAND

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 *european Treaty*:

ARTICLE 1

The United Kingdom shall be entitled, notwithstanding Articles I-16 and I-151 of the *european Treaty*, any other provision of the Constitution, any measure adopted under the Constitution, or any international agreement concluded by the Union or by the Union and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

(a) of verifying the right to enter the United Kingdom of citizens of Member States and of their dependants exercising rights conferred by Union law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and

(b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Articles I-16 and I-151 of the *european Treaty* or in any other provision of the Constitution or in any measure adopted under it 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 Articles I-16 and I-151 of the *european Treaty*, in any other provision of the Constitution or in any measure adopted under it 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 Articles I-16 and I-151 of the *european Treaty* or in any other provision of the Constitution or in any measure adopted under it shall prejudice the right of the other Member States to adopt or exercise any such controls.

ARTICLE 4

This Protocol shall also apply to acts which remain in force by virtue of Article II-316 of the *european Treaty*.

19. PROTOCOL ON THE POSITION OF THE UNITED KINGDOM AND IRELAND ON POLICIES IN RESPECT OF BORDER CONTROLS, ASYLUM AND IMMIGRATION, JUDICIAL COOPERATION IN CIVIL MATTERS AND ON POLICE COOPERATION

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 I-16 of the *european Treaty* to the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the *european Treaty*:

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 Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty* or to Article I-146 thereof, insofar as that Article relates to the areas covered by those Sections, to Article I-149 or to Article I-161(2)(a) of the *european Treaty*. 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 acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

ARTICLE 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty* or of Article I-146 of the *european Treaty*, insofar as that Article relates to the areas covered by those Sections, or of Article I-149 or Article I-161(2)(a) of the *european Treaty*, no

measure adopted pursuant to those Sections or Articles, no provision of any international agreement concluded by the Union pursuant to those Sections or Articles, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

ARTICLE 3

1. The United Kingdom or Ireland may notify the Council in writing, within three months after a proposal has been presented to the Council pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty* or after a proposal or initiative has been presented to the Council pursuant to Article I-149 or to Article I-161(2)(a) of the *european Treaty*, 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. 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 acts 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. The European regulations or decisions adopted pursuant to Article I-146 of the *european Treaty* shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty*.

For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third subparagraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

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 pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty* or to Article I-149 or to Article I-161(2)(a) of the *european Treaty*, 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 II-298(1) of the *european Treaty* shall apply *mutatis mutandis*.

ARTICLE 5

A Member State which is not bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty*, to Article I-149 or to Article I-161(2)(a) of the *european Treaty*, shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

ARTICLE 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a

measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part I of the *european Treaty*, to Article I-146 of the *european Treaty*, insofar as that Article relates to the areas covered by those Sections, to Article I-149 or to Article I-161(2)(a) of the *european Treaty*, the relevant provisions of the Constitution and *european Treaty* shall apply to that State in relation to that measure.

ARTICLE 7

Articles 3 and 4 shall be without prejudice to the Protocol on the Schengen *acquis* integrated into the framework of the European Union.

ARTICLE 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, this Protocol shall no longer apply to Ireland.

20. PROTOCOL
ON THE POSITION OF DENMARK

THE HIGH CONTRACTING PARTIES,

RECALLING the decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union;

HAVING NOTED the position of Denmark with regard to citizenship, economic and monetary union, defence policy, and justice and home affairs as laid down in the Edinburgh decision;

CONSCIOUS of the fact that a continuation under the Constitution and the *european Treaty* of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice;

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Chapter IV of Title III of Part I of the *european Treaty* and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements;

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark;

BEARING IN MIND the Protocol on the Schengen *acquis* integrated into the framework of the
European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

PART I

ARTICLE 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Chapter IV of Title III of Part I of the *european Treaty*. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

ARTICLE 2

None of the provisions of Chapter IV of Title III of Part I of the *european Treaty*, no measure adopted pursuant to that Chapter, no provision of any international agreement concluded by the Union pursuant to that Chapter, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

ARTICLE 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

ARTICLE 4

1. Denmark shall decide within a period of six months after the adoption of a measure to build upon the Schengen *acquis* covered by Part I whether it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.

If Denmark decides not to implement such a measure, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. Denmark shall maintain the rights and obligations existing before the entry into force of the *european Treaty* with regard to the Schengen *acquis*.

PART II

ARTICLE 5

With regard to measures adopted by the Council pursuant to Article I-50, Article I-181(1) and Articles I-195 to I-199 of the *european Treaty*, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the third and fourth paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

PART III

ARTICLE 6

This Protocol shall also apply to measures remaining in force by virtue of Article III-319 of the *european Treaty,* which were covered, prior to the entry into force of the *european Treaty*, by the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community.

ARTICLE 7

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

PART IV

ARTICLE 8

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 Union.

ARTICLE 9

1. At any time and without prejudice to Article 8, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 9 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

ANNEX

ARTICLE 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Chapter IV of Title III of Part I of the *european Treaty*. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

ARTICLE 2

Pursuant to Article 1 and subject to Articles 3, 4 and 6, none of the provisions in Chapter IV of Title III of Part I of the *european Treaty*, no measure adopted pursuant to that Chapter, no provision of any international agreements concluded by the Union pursuant to that Chapter, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

ARTICLE 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Chapter IV of Title III of Part I of the *european Treaty*, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt that measure referred to in paragraph 1 in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.

ARTICLE 4

Denmark may at any time after the adoption of a measure pursuant to Chapter IV of Title III of Part I of the *european Treaty* notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article I-298(1) of the *european Treaty* shall apply *mutatis mutandis*.

ARTICLE 5

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

ARTICLE 6

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Chapter IV of Title III of Part I of the *european Treaty*, the relevant provisions of the Constitution and the *european Treaty* shall apply to Denmark in relation to that measure.

ARTICLE 7

Where Denmark is not bound by a measure adopted pursuant to Chapter IV of Title III of

Part I of the *european Treaty*, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, acting unanimously after consulting the European Parliament, decides otherwise.

21. PROTOCOL
ON EXTERNAL RELATIONS OF THE MEMBER STATES WITH REGARD TO THE CROSSING OF EXTERNAL BORDERS

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 *european Treaty*:

SOLE ARTICLE

The provisions on the measures on the crossing of external borders included in Article II-246(2)(b) of the *european Treaty* shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Union law and other relevant international agreements.

22. PROTOCOL
ON ASYLUM FOR NATIONALS OF MEMBER STATES

THE HIGH CONTRACTING PARTIES,

WHEREAS, in accordance with Article I-9(1) of the Constitution, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS pursuant to Article I-9(3) of the Constitution, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitute part of the Union's law as general principles;

WHEREAS the Court of Justice of the European Union has jurisdiction to ensure that in the interpretation and application of Article I-9(1) and (3) of the Constitution the law is observed by the Union;

WHEREAS pursuant to Article I-67 of the Constitution, any European State, when applying to become a member of the Union, must respect the values set out in Article I-2 of the Constitution;

BEARING IN MIND that Article I-68 of the Constitution establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those values;

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Title II of Part I of the Constitution and Title II of Part I of the *european Treaty*;

BEARING IN MIND that the Constitution 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;

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 *european Treaty*:

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, availing itself of the provisions of Article 15 of the European 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 I-68(1) or (2) of the Constitution has been initiated and until the Council, or, where appropriate, the European Council, adopts a European decision in respect thereof with regard to the Member State of which the applicant is a national;

(c) if the Council has adopted a European decision in accordance with Article I-68(1) of the Constitution in respect of the Member State of which the applicant is a national or if the European Council has adopted a European decision in accordance with Article I-68(2) of the Constitution in respect of the Member State of which the applicant is a national;

(d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the case may be, the decision-making power of the Member State.

23. PROTOCOL ON PERMANENT STRUCTURED COOPERATION ESTABLISHED BY ARTICLE I-50(6) AND ARTICLE I-198 OF THE EUROPEAN TREATY

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article I-50(6) and Article I-198 of the *european Treaty*,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States;

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article I-195 of the *european Treaty* outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice

the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States, which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;

RECALLING the importance of the Minister for Foreign Affairs being fully involved in proceedings relating to permanent structured cooperation,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

The permanent structured cooperation referred to in Article I-50(6) of the *european Treaty*

shall be open to any Member State which undertakes, from the date of entry into force of the *european Treaty*, to:

(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and

(b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article I-195 of the *european Treaty*, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

ARTICLE 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

(a) cooperate, as from the entry into force of the *european Treaty*, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;

(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;

(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding

the commitment of forces, including possibly reviewing their national decision-making procedures;

(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

ARTICLE 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established *inter alia* on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and European decisions adopted in accordance with Article I-198 of the *european Treaty*.

24. PROTOCOL
ON ARTICLE I-50(2) OF THE CONSTITUTION

THE HIGH CONTRACTING PARTIES,

BEARING IN MIND the need to implement fully the provisions of Article I-50(2) of the Constitution;

BEARING IN MIND that the policy of the Union in accordance with Article I-41(2) of the Constitution 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, 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 *european Treaty*:

SOLE ARTICLE

The Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them.

25. PROTOCOL CONCERNING IMPORTS INTO THE EUROPEAN UNION OF PETROLEUM PRODUCTS REFINED IN THE NETHERLANDS ANTILLES

THE HIGH CONTRACTING PARTIES,

BEING DESIROUS of giving fuller details about the system of trade applicable to imports into the Union of petroleum products refined in the Netherlands Antilles,

HAVE AGREED on the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

This Protocol is applicable to petroleum products coming under the Combined Nomenclature numbers 27.10, 27.11, 27.12 (paraffin wax and petroleum wax), ex 27.13 (paraffin residues) and 27.14 (shale wax), imported for use in the 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 Union, under the conditions provided for by 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 Union of petroleum products refined in the Netherlands Antilles under the system provided for in Article 2 are giving rise to real difficulties on the market of one or more Member States, it shall adopt a European decision establishing 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 Union of petroleum products refined in the Netherlands Antilles reach two million tonnes a year.

3. The Council shall be informed of European decisions adopted 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 adopt a European decision to amend or revoke such decisions.

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, 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 within one month adopt a European decision establishing whether the measures taken by the State should be maintained or must be amended or cancelled. 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, into a Member State or States 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 Union decides to apply quantitative restrictions to petroleum products, no matter whence they are imported, these restrictions may also be applied to imports of such products from the Netherlands Antilles. In this case preferential treatment shall be granted to the Netherlands Antilles as compared with third countries.

ARTICLE 6

1. Articles 2 to 5 may 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 shall in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 2½ million tonnes of petroleum products.

3. The Union's commitments in regard to equivalent preferences as referred to in paragraph 2 may, if necessary, be broken down State by State 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.

ANNEX

For the implementation of Article 4(2), the High Contracting Parties have decided that the quantity of 2 million tonnes of petroleum products from the Antilles shall be allocated among the following Member States as follows:

Germany	625 000 tonnes
Belgo/Luxembourg Economic Union	200 000 tonnes
France	75 000 tonnes
Italy	100 000 tonnes
Netherlands	1 000 000 tonnes

26. PROTOCOL
ON THE ACQUISITION OF PROPERTY
IN DENMARK

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 *european Treaty*:

SOLE ARTICLE

Notwithstanding the provisions of the Constitution and the *european Treaty*, Denmark may maintain the existing legislation on the acquisition of second homes.

27. PROTOCOL
ON THE SYSTEM OF PUBLIC BROADCASTING
IN THE MEMBER STATES

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 a Constitution for Europe:

SOLE ARTICLE

The provisions of the Constitution 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 Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

28. PROTOCOL CONCERNING ARTICLE I-100 OF THE EUROPEAN TREATY

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the *european Treaty*:

SOLE ARTICLE

For the purposes of Article I-100 of the *european Treaty*, benefits under occupational social security schemes shall not be considered as remuneration if and insofar 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.

29. PROTOCOL
ON ECONOMIC, SOCIAL AND TERRITORIAL COHESION

THE HIGH CONTRACTING PARTIES,

RECALLING that Article I-3 of the Constitution includes the objective of promoting economic, social and territorial cohesion and solidarity between Member States and that the said cohesion figures among the areas of shared competence of the Union listed in Article I-14(2)(c) of the Constitution;

RECALLING that the provisions of Section 3 of Chapter III of Title III of Part I of the *european Treaty*, on economic, social and territorial cohesion as a whole provide the legal basis for consolidating and further developing the Union's action in this field, including the creation of a fund;

RECALLING that Article I-109 of the *european Treaty* envisages setting up a Cohesion Fund;

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 Union participation in programmes and projects in certain Member States;

NOTING the proposal to take greater account of the relative prosperity of Member States in the system of own resources,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

SOLE ARTICLE

1. The Member States reaffirm that the promotion of economic, social and territorial cohesion is vital to the full development and enduring success of the Union.

2. The Member States reaffirm their conviction that the Structural Funds should continue to play a considerable part in the achievement of Union objectives in the field of cohesion.

3. The Member States reaffirm their conviction that the European Investment Bank should continue to devote the majority of its resources to the promotion of economic, social and territorial cohesion, and declare their willingness to review the capital needs of the European Investment Bank as soon as this is necessary for that purpose.

4. The Member States agree that the Cohesion Fund shall provide Union financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90% of the Union average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article I-70 of the *european Treaty*.

5. The Member States 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.

6. The Member States declare their willingness to modulate the levels of Union participation in the context of programmes and projects of the Structural Funds, with a view to avoiding excessive increases in budgetary expenditure in the less prosperous Member States.

7. The Member States recognise the need to monitor regularly the progress made towards achieving economic, social and territorial cohesion, and state their willingness to study all necessary measures in this respect.

8. The Member States 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.

30. PROTOCOL
ON SPECIAL ARRANGEMENTS FOR GREENLAND

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provisions, which shall be annexed to the *european Treaty*:

SOLE ARTICLE

1. The treatment on import into the Union of products subject to the common organisation of the market in fishery products and 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 Union pursuant to an agreement between the Union and the authority responsible for Greenland are satisfactory to the Union.

2. The measures relating to the import arrangements for the products referred to in paragraph 1 shall be adopted in accordance with the procedures laid down in Article I-117 of the *european Treaty*.

31. PROTOCOL
ON ARTICLE 40.3.3 OF THE CONSTITUTION OF IRELAND

THE HIGH CONTRACTING PARTIES

HAVE AGREED upon the following provision, which shall be annexed to the *european Treaty* and to the Treaty establishing the European Atomic Energy Community:

SOLE ARTICLE

Nothing in the *european Treaty* or in the Treaties or Acts modifying or supplementing it shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

32. PROTOCOL
RELATING TO ARTICLE I-9(2) OF THE CONSTITUTION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES

HAVE AGREED on the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article I-9(2) of the Constitution shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

(a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;

(b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

ARTICLE 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

ARTICLE 3

Nothing in the agreement referred to in Article 1 shall affect Article II-256(2) of the *european Treaty*.

33. PROTOCOL
ON THE ACTS AND TREATIES WHICH HAVE SUPPLEMENTED OR AMENDED THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY AND THE TREATY ON EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

WHEREAS Article III-315(1) of the *european Treaty* repeals the Treaty establishing the European Community and the Treaty on European Union and the Acts and Treaties which have supplemented or amended them;

WHEREAS a list should be drawn up of the acts and treaties referred to in Article III-315 (1);

WHEREAS the substance of Article 9(7) of the Treaty of Amsterdam should be incorporated;

RECALLING that the Act of 20 September 1976 concerning the election of representatives of the European Parliament by direct universal suffrage is to remain in force,

HAVE AGREED upon the following provisions, which are annexed to the *european Treaty* and to the Treaty establishing the European Atomic Energy Community:

ARTICLE 1

1. The following Acts and Treaties which have supplemented or amended the Treaty establishing the European Community are hereby repealed:

(a) the Protocol of 8 April 1965 on the privileges and immunities of the European Communities annexed to the Treaty establishing a single Council and a single Commission (OJ 152, 13.7.1967, p. 13);

(b) the Treaty of 22 April 1970 amending certain budgetary provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities (OJ L 2, 2.1.1971, p. 1);

(c) the Treaty of 22 July 1975 amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities (OJ L 359, 31.12.1977, p. 4);

(d) the Treaty of 10 July 1975 amending certain provisions of the Protocol on the Statute of the European Investment Bank (OJ L 91, 6.4.1978, p. 1);

(e) the Treaty of 13 March 1984 amending, with regard to Greenland, the Treaties establishing the European Communities (OJ L 29, 1.2.1985, p. 1);

(f) the Single European Act of 17 February 1986 and 28 February 1986 (OJ L 169, 29.6.1987, p. 1);

(g) the Act of 25 March 1993 amending the Protocol on the Statute of the European Investment Bank, empowering the Board of Governors to establish a European Investment Fund (OJ L 173, 7.7.1994, p. 14);

(h) Decision 2003/223/EC of the Council, meeting in the composition of the Heads of State or Government, of 21 March 2003 on an amendment to Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank (OJ L 83, 1.4.2003, p. 66).

2. The Treaty of Amsterdam of 2 October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts is hereby

repealed (OJ C 340, 10.11.1997, p. 1).

3. The Treaty of Nice of 26 February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts is hereby repealed (OJ C 80, 10.3.2001, p. 1).

ARTICLE 2

1. Without prejudice to the application of Article II-310 of the *european Treaty* and Article 189 of the Treaty establishing the European Atomic Energy Community, the representatives of the Governments of the Member States shall adopt by common accord the necessary provisions for the purpose of dealing with certain problems particular to the Grand Duchy of Luxembourg which arise from the creation of a Single Council and a Single Commission of the European Communities.

2. The Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom (OJ L 278, 8.10.1976, p. 1), as it stands at the time of entry into force of the *european Treaty* remains in force. In order to bring it into line with the Constitution and the *european Treaty*, this Act is hereby amended as follows:

(a) Article 1(3) shall be deleted.

(b) This amendment does not concern the English text.

(c) In Article 6(2), the words "of 8 April 1965" shall be deleted; and the term "European Communities" shall be replaced by "European Union".

(d) In the second indent of Article 7(1), the term "Commission of the European Communities" shall be replaced by "European Commission".

(e) In the third indent of Article 7(1), the phrase "Court of Justice of the European Communities or of the Court of First Instance" shall be replaced by "Court of Justice of the European Union".

(f) In the fifth indent of Article 7(1), the term "Court of Auditors of the European Communities" shall be replaced by "Court of Auditors".

(g) In the sixth indent of Article 7(1), the term "Ombudsman of the European Communities" shall be replaced by "European Ombudsman".

(h) In the seventh indent of Article 7(1), the phrase "of the European Economic Community and of the European Atomic Energy Community" shall be replaced by "of the European Union".

(i) In the ninth indent of Article 7(1), the phrase "pursuant to the Treaties establishing the European Economic Community and the European Atomic Energy Community" shall be replaced by "pursuant to the *european Treaty* and the Treaty establishing the European Atomic Energy Community"; and the term "Communities' " shall be replaced by "Union's".

(j) In the eleventh indent of Article 7(1), the phrase "institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank" shall be replaced by "institutions, bodies, offices or agencies of the European Union".

(k) The indents of Article 7(1) shall become points (a) to (k) respectively.

(l) The indents of the second subparagraph of Article 7(2) shall become points (a) and (b) respectively.

(m) In the second subparagraph of Article 11(2), the term "Community" shall be replaced by "Union"; the word "determine" shall be replaced by "adopt a European decision which shall determine"; and the words "preceding subparagraph" shall be replaced by "first subparagraph".

(n) In Article 11(3), the phrase "without prejudice to Article 139 of the Treaty establishing the European Community" shall be replaced by "without prejudice to Article I-21 of the Constitution".

(o) In Article 14, the term "a proposal" shall be replaced by "an initiative"; and the phrase "adopt such measures" shall be replaced by "adopt the necessary European regulations or decisions".

34. PROTOCOL ON THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS AND BODIES OF THE UNION

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the European Union established by the Treaty on European Union and the European Community to the European Union established by the Constitution and the *european Treaty* which is their successor, it is necessary to lay down transitional provisions which will apply before all the provisions of the Constitution and the instruments necessary for their implementation take full effect,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty* and to the Treaty establishing the European Atomic Energy Community:

TITLE I
PROVISIONS CONCERNING THE EUROPEAN PARLIAMENT

ARTICLE 1

1. In accordance with the second subparagraph of Article I-20(2) of the Constitution, the

European Council shall adopt a European decision determining the composition of the European Parliament sufficiently in advance of the 2009 European Parliament elections.

2. During the 2004-2009 parliamentary term, the composition and the number of representatives elected to the European Parliament in each Member State shall remain the same as on the date of the entry into force of the *european Treaty*, the number of representatives being 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

TITLE II
PROVISIONS CONCERNING THE EUROPEAN COUNCIL AND THE COUNCIL

ARTICLE 2

1. The provisions of Article I-29(1), (2) and (3) of the Constitution on the definition of the qualified majority in the European Council and the Council shall take effect on 1 November 2009, after the 2009 European Parliament elections have taken place in accordance with Article I-20(2) of the Constitution.

2. The following provisions shall remain in force until 31 October 2009, without prejudice to Article I-29(4) of the Constitution.

For acts of the European Council and of the Council requiring a qualified majority, members' votes 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

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

Acts shall be adopted if there are at least 232 votes in favour representing a majority of the members where, under the Constitution, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 232 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council may request that, where an act is adopted by the European Council or the Council by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62% of the total population of the Union. If that proves not to be the case, the act shall not be adopted.

3. For subsequent accessions, the threshold referred to in paragraph 2 shall be calculated to ensure that the qualified majority threshold expressed in votes does not exceed that resulting from the table in the Declaration on the enlargement of the European Union in the Final Act of the Conference which adopted the Treaty of Nice.

4. The provisions of the following Articles shall take effect on 1 November 2009:

- Article I-53(3), third, fourth and fifth subparagraphs, of the Constitution,

- Article I-68(5), second and third subparagraphs, of the Constitution,

- Article I-69(4), second subparagraph, of the Constitution,

- Article I-65(4), third and fourth subparagraphs, of the *european Treaty*,

- Article I-70(6), third and fourth subparagraphs, of the *european Treaty*,

- Article I-80(7), third and fourth subparagraphs, of the *european Treaty*,

- Article I-82(2), second and third subparagraphs, of the *european Treaty*,

- Article I-83(3), second and third subparagraphs, of the *european Treaty*,

- Article I-84(4), second and third subparagraphs, of the *european Treaty*,

- Article I-84(2), third subparagraph, of the *european Treaty*,

- Article I-198(3), third and fourth subparagraphs, of the *european Treaty*,

- Article I-1984), third and fourth subparagraphs, of the *european Treaty*,

- Article 1, second, third and fourth paragraphs, and Article 3(1), second, third and fourth subparagraphs, of the Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation,

- Article 1, second, third and fourth paragraphs and Article 5, third, fourth and fifth paragraphs, of the Protocol on the position of Denmark.

Until 31 October 2009, the qualified majority shall, in cases where not all the members of the Council participate in voting, namely in the cases referred to in the articles mentioned in the first subparagraph, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 2.

ARTICLE 3

Until the entry into force of the European decision referred to in Article I-28(4) of the Constitution, the Council may meet in the configurations laid down in Article I-28(2) and (3) and in the other configurations on the list established by a European decision of the General Affairs Council, acting by a simple majority.

TITLE III
PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE UNION MINISTER FOR FOREIGN AFFAIRS

ARTICLE 4

The members of the Commission in office on the date of entry into force of the *european Treaty* shall remain in office until the end of their term of office. However, on the day of the appointment of the Union Minister for Foreign Affairs, the term of office of the member having the same nationality as the Union Minister for Foreign Affairs shall end.

TITLE IV
PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL

ARTICLE 5

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the *european Treaty*. The Council shall appoint a Secretary-General in conformity with Article II-227(2) of the *european Treaty*.

TITLE V
PROVISIONS CONCERNING ADVISORY BODIES

ARTICLE 6

Until entry into force of the European decision referred to in Article II-266 of the *european Treaty*, the allocation of members of the Committee of the Regions 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

ARTICLE 7

Until entry into force of the European decision referred to in Article II-269 of the *european Treaty*, the allocation of members of the Economic and Social 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

35. PROTOCOL
ON THE FINANCIAL CONSEQUENCES OF THE EXPIRY OF THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY AND ON THE RESEARCH FUND FOR COAL AND STEEL

THE HIGH CONTRACTING PARTIES,

RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the European Community on 24 July 2002;

TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and therefore the necessity to provide for certain special rules in this regard,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty*:

ARTICLE 1

1. The net worth of the assets and liabilities of the European Coal and Steel Community, as they appear in the balance sheet of the European Coal and Steel Community of 23 July 2002, subject to any increase or decrease which may occur as a result of the liquidation operations, shall be considered as Union assets intended for research in sectors related to the coal and steel industry, referred to as the "European Coal and Steel Community in liquidation". On completion of the liquidation they shall be referred to as the "Assets of the Research Fund for Coal and Steel".

2. The revenue from these assets, referred to as the "Research Fund for Coal and Steel", shall be used exclusively for research, outside the research framework programme, in sectors related to the coal and steel industry in accordance with this

Protocol and with acts adopted under it.

ARTICLE 2

1. A European law of the Council shall lay down all the necessary provisions for the implementation of this Protocol, including essential principles. The Council shall act after obtaining the consent of the European Parliament.

2. The Council shall adopt, on a proposal from the Commission, the European regulations or decisions establishing multiannual financial guidelines for managing the assets of the Research Fund for Coal and Steel and technical guidelines for the research programme of the Research Fund for Coal and Steel. It shall act after consulting the European Parliament.

ARTICLE 3

Except as otherwise provided in this Protocol and in the acts adopted under it, the provisions of the Constitution shall apply.

36. PROTOCOL
AMENDING THE TREATY ESTABLISHING
THE EUROPEAN ATOMIC ENERGY COMMUNITY

THE HIGH CONTRACTING PARTIES,

RECALLING the necessity that the provisions of the Treaty establishing the European Atomic Energy Community should continue to have full legal effect;

DESIRING to adapt that Treaty to the new rules laid down by the Treaty establishing a

Constitution for Europe, in particular in the institutional and financial fields,

HAVE AGREED UPON the following provisions, which shall be annexed to the *european Treaty* and which amend the Treaty establishing the European Atomic Energy Community as follows:

ARTICLE 1

This Protocol shall amend the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the "EAEC Treaty") in its version in force at the time of entry into force of the *european Treaty*.

Notwithstanding the provisions of Article III-315 of the *european Treaty* and without prejudice to the other provisions of this Protocol, the legal effects of the amendments made to the EAEC Treaty by the Treaties and Acts repealed pursuant to Article III-315 of the *european Treaty* the legal effects of the acts in force adopted on the basis of the EAEC Treaty shall not be affected.

ARTICLE 2

The heading of Title III of the EAEC Treaty "Institutional provisions" shall be replaced by the heading: "Institutional and financial provisions".

ARTICLE 3

The following chapter shall be inserted at the beginning of Title III of the EAEC Treaty:

"CHAPTER I
APPLICATION OF CERTAIN PROVISIONS OF THE CONSTITUTION AND THE EUROPEAN TREATY

ARTICLE 106a

1. Articles I-19 to I-34, Articles I-37 to I-48, Articles I-58 and I-59, Articles I-62 to I-65, Articles I-67 to I-69,Article III-126, Articles II-216 to II-253, Articles II-255 and II-256, Articles II-259 to II-262, Articles II-264 and II-265, Articles II-269 to II-272, Articles II-275 to II-288, and Articles II-305, II-311, II-317 and III-321 of the *european Treaty* shall apply to this Treaty.

2. Within the framework of this Treaty, the references to the Union and to the Constitution and the *european Treaty* in the provisions referred to in paragraph 1 and those in the protocols annexed both to the *european Treaty* and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.

3. The provisions of the *european Treaty* shall not derogate from the provisions of this Treaty."

ARTICLE 4

Chapters I, II and III of Title III of the EAEC Treaty shall be renumbered II, III and IV.

ARTICLE 5

1. Article 3, Articles 107 to 132, Articles 136 to 143, Articles 146 to 156, Articles 158 to 163, Articles 165 to 170, Articles 173 and 173A, Article 175, Articles 177 to 179a, and Articles 180b, 181, 183, 183A, 190 and 204 of the EAEC Treaty shall be repealed.

2. The Protocols previously annexed to the EAEC Treaty shall be repealed.

ARTICLE 6

The heading of Title IV of the EAEC Treaty "Financial provisions" shall be replaced by the heading: "Specific financial provisions".

ARTICLE 7

1. In the third paragraph of Article 38 and the third paragraph of Article 82 of the EAEC Treaty the references to Articles 141 and 142 shall be replaced by references to Articles I-31 of the Constitution and II-242 of the *european Treaty*.

2. In Article 171(2) and Article 176(3) of the EAEC Treaty the references to Article 183 shall be replaced by references to Article II-290 of the *european Treaty*.

3. In Article 172(4) of the EAEC Treaty the reference to Article 177(5) shall be replaced by a reference to Article II-282 of the *european Treaty*.

4. In Articles 38, 82, 96 and 98 of the EAEC Treaty the term "directive" shall be replaced by the term "European regulation".

5. In the EAEC Treaty the term "decision" shall be replaced by "European decision" save in Articles 18, 20 and 23 and the first paragraph of Article 53 and in cases where a decision is taken by the Court of Justice of the European Union.

6. In the EAEC Treaty the term "Court of Justice" shall be replaced by "Court of Justice of the European Union".

ARTICLE 8

Article 191 of the EAEC Treaty shall be replaced by the following:

"ARTICLE 191

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 on the privileges and immunities of the European Union."

ARTICLE 9

Article 198 of the EAEC Treaty shall be replaced by the following:

"ARTICLE 198

Save as otherwise provided, the provisions of this Treaty shall apply to the European territories of the Member States and to the non-European territories under their jurisdiction.

They shall also apply to the European territories for whose external relations a Member State is responsible.

The provisions of this Treaty shall apply to the Åland Islands with the derogations which were originally set out in the Treaty referred to in Article III-315(2)(d) of the *european Treaty* and which have been incorporated in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Notwithstanding the first, second and third paragraphs:

(a) this Treaty shall not apply to the Faroe Islands or to Greenland;

(b) this Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;

(c) this Treaty shall not apply to the overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not mentioned in the list in Annex II to the *european Treaty*;

(d) 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 originally set out in the Treaty referred to in Article III-315(2)(a) of the *european Treaty* and which have been incorporated in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden."

ARTICLE 10

Article 206 of the EAEC Treaty shall be replaced by the following:

"ARTICLE 206

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 procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article III-126 of the Constitution and III-321 of the *european Treaty*.

ARTICLE 11

In Article 225 of the EAEC Treaty, the second paragraph shall be replaced by the following:

"The Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian,

Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish versions of the Treaty shall also be authentic."

ARTICLE 12

The revenue and expenditure of the European Atomic Energy Community, except for those of the Supply Agency and Joint Undertakings, shall be shown in the budget of the Union.

ANNEXES
TO THE TREATY ESTABLISHING
A CONSTITUTION FOR EUROPE

ANNEX I

LIST REFERRED TO IN
ARTICLE I-112 OF THE EUROPEAN TREATY

– 1 – Number in the Combined 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

– 1 – Number in the Combined nomenclature	– 2 – Description of products
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 09.03)
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

– 1 – Number in the Combined nomenclature	– 2 – Description of products

CHAPTER 15

15.01	Lard and other rendered pig fat; rendered poultry fat
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

– 1 – Number in the Combined nomenclature	– 2 – Description of products
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 – Number in the Combined 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 this Annex, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as "concentrated extracts") for the manufacture of beverages
ex22.10 *	Vinegar and substitutes for vinegar

– 1 – Number in the Combined nomenclature	– 2 – Description of products
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 *(Cannabis sativa)*, raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

(*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community of 18 December 1959 (OJ No 7, 30.1.1961, p. 71. Special edition (English edition) 1959-1962, p. 68).

ANNEX II

OVERSEAS COUNTRIES AND TERRITORIES
TO WHICH
TITLE IV OF PART I OF THE EUROPEAN TRETY APPLIES

- 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.

ADDENDUM 2 TO CIG 87/04 REV 2

Subject :	Declarations to be annexed to the Final Act of the Intergovernmental Conference and the Final Act

FINAL ACT

THE CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, convened in […]on […] to adopt by common accord the European Constitution and the *european Treaty*, has adopted the following texts:

I. European Constitution

II. European Treaty

1. Protocol on the role of national Parliaments in the European Union

2. Protocol on the application of the principles of subsidiarity and proportionality

3. Protocol on the Statute of the Court of Justice of the European Union

4. Protocol on the Statute of the European System of Central Banks and of the European Central Bank

5. Protocol on the Statute of the European Investment Bank

6. Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union

7. Protocol on the privileges and immunities of the European Union

8. Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of

Sweden

9. Protocol on the Treaty and the Act 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

10. Protocol on the excessive deficit procedure

11. Protocol on the convergence criteria

12. Protocol on the Euro Group

13. Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland as regards economic and monetary union

14. Protocol on certain provisions relating to Denmark as regards economic and monetary union

15. Protocol on certain tasks of the National Bank of Denmark

16. Protocol on the Pacific Financial Community franc system

17. Protocol on the Schengen *acquis* integrated into the framework of the European Union

18. Protocol on the application of certain aspects of Article I-16 of the *european Treaty* to the United Kingdom and to Ireland

19. Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation

20. Protocol on the position of Denmark

21. Protocol on external relations of the Member States with regard to the crossing of external borders

22. Protocol on asylum for nationals of Member States

23. Protocol on permanent structured cooperation established by Article I-50(6) of the Constitution and Article I-198 of the *european Treaty*

24. Protocol on Article I-50(2) of the Constitution

25. Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles

26. Protocol on the acquisition of property in Denmark

27. Protocol on the system of public broadcasting in the Member States

28. Protocol concerning Article I-100 of the *european Treaty*

29. Protocol on economic, social and territorial cohesion

30. Protocol on special arrangements for Greenland

31. Protocol on Article 40.3.3 of the Constitution of Ireland

32. Protocol relating to Article I-9(2) of the Constitution on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms

33. Protocol on the Acts and Treaties which have supplemented or amended the Treaty establishing the European Community and the Treaty on European Union

34. Protocol on the transitional provisions relating to the institutions and bodies of the Union

35. Protocol on the financial consequences of the expiry of the Treaty establishing the European Coal and Steel Community and on the Research Fund for Coal and Steel

36. Protocol amending the Treaty establishing the European Atomic Energy Community

III. Annexes to the *european Treaty*:

1. Annex I – List referred to in Article I-112 of the *european Treaty*

2. Annex II – Overseas countries and territories to which Title IV of Part I of the *european Treaty* applies

The Conference has adopted the following declarations annexed to this Final Act.

A. Declarations concerning provisions of the Constitution and the *european Treaty*

1. Declaration on Article I-6

2. Declaration on Article I–9(2)

3. Declaration on Articles I-25, 1-32 and 1-33

4. Declaration on Article I-28(7) concerning the European Council decision on the exercise of the Presidency of the Council

5. Declaration on Article I-29

6. Declaration on Article I-30

7. Declaration on Article I-32

8. Declaration on Article I-45

9. Declaration on Articles I-52 of the Constitution and I-215 of the *european Treaty*

10. Declaration on Article I-60

11. Declaration on Article I-66

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

13. Declaration on Article I-2 of the *European Treaty*

14. Declaration on Articles I-22 and I-153 of the *European Treaty*

15. Declaration on Articles I-46 and I-208 of the *European Treaty*

16. Declaration on Article I-53(2)(c) of the *European Treaty*

17. Declaration on Article I-70 of the *European Treaty*

18. Declaration on Article I-99 of the *European Treaty*

19. Declaration on Article I-106 of the *European Treaty*

20. Declaration on Article I-109 of the *European Treaty*

21. Declaration on Article I-134 of the *European Treaty*

22. Declaration on Article I-142 of the *European Treaty*

23. Declaration on Article I-159(1), second subparagraph of the *European Treaty*

24. Declaration on Article I-182 of the *European Treaty*

25. Declaration on Article I-211 of the *European Treaty* concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

26. Declaration on Article II–280(4) of the *European Treaty*

27. Declaration on Article II-297 of the *European Treaty*

28. Declaration on Article III-124(7) of the Constitution and III-326(2) of the *European Treaty*

29. Declaration on Article III-129(2) of the Constitution and III-326(2) of the *European Treaty*

30. Declaration on the ratification of the Constitution and of the *European Treaty*

B. Declarations concerning Protocols annexed to the *European Treaty*

Declarations concerning the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden

31. Declaration on the Åland islands

32. Declaration on the Sami people

Declarations concerning the Protocol on the Treaty and the Act 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

33. Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus

34. Declaration by the Commission on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus

35. Declaration on the Ignalina Nuclear Power Plant in Lithuania

36. Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation

37. Declaration on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia

38. Declaration on Cyprus

39. Declaration concerning the Protocol on the position of Denmark

40. Declaration concerning the Protocol on the transitional provisions relating to the institutions and bodies of the Union

41. Declaration concerning Italy

Furthermore, the Conference has noted the declarations listed hereafter and annexed to this Final Act:

42. Declaration by the Kingdom of the Netherlands on Article I-64 of the Constitution

43. Declaration by the Kingdom of the Netherlands on Article III-124 of the Constitution and III-318 of the *European Treaty*

44. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden

45. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain

and Northern Ireland

46. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"

47. Declaration by the Kingdom of Spain on the definition of the term "nationals"

48. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

49. Declaration by the Kingdom of Belgium on national parliaments

50. Declaration by the Republic of Latvia and the Republic of Hungary on the spelling of the name of the single currency in the *European Treaty*.

Done at […], this [….]

.....

(all languages)

For .....

.....

The following have also signed this Final Act, in their capacity as candidate States for accession to the European Union, having been observers to the Conference:

For Bulgaria, ...

For Romania, ...

For Turkey, ...

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50. Declaration by the Republic of Latvia and the Republic of Hungary on the spelling of the name of the single currency in the Treaty establishing a Constitution for Europe.

A. DECLARATIONS CONCERNING PROVISIONS OF THE CONSTITUTION

1. Declaration on Article I-6

The Conference notes that Article I-6 reflects existing case law of the Court of Justice of the European Communities and of the Court of First Instance.

2. Declaration on Article I-9(2)

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Articles I-22, I-27 and I-28

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

4. Declaration on Article I-24(7)
concerning the European Council decision
on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the European decision establishing the measures for applying the European decision of the European Council on the exercise of the Presidency of the Council as soon as the Treaty establishing a Constitution for Europe is signed and should give its political approval within six months.

A draft European decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft European decision of the European Council on the exercise of the Presidency of the Council

ARTICLE 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

ARTICLE 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

ARTICLE 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

ARTICLE 4

The Council shall adopt a European decision establishing the measures for the implementation of this decision.

5. Declaration on Article I-25

The Conference declares that the European decision relating to the implementation of Article I-25 will be adopted by the Council on the day the Treaty establishing a Constitution for Europe enters into force. The draft decision is set out below:

Draft European decision of the Council relating to the implementation of Article I-25

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in the Treaty of Nice and set out in Article 2(2) of the Protocol on the transitional provisions relating to the institutions and bodies of the Union annexed to the Constitution, which will continue to apply until 31 October 2009, to the voting system provided for in Article I-25 of the Constitution, which will apply with effect from 1 November 2009.

(2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority.

(3) It is judged appropriate to maintain this decision as long as is necessary to ensure smooth transition to the new voting system provided for in the Constitution,

HAS DECIDED AS FOLLOWS:

ARTICLE 1

If members of the Council, representing:

(a) at least three quarters of the population, or

(b) at least three quarters of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article I-25(1), first subparagraph, or Article I-25(2), indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

ARTICLE 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

ARTICLE 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

ARTICLE 4

This decision shall take effect on 1 November 2009. It shall remain in force at least until 2014. Thereafter the Council may adopt a European decision repealing it.

6. Declaration on Article I-26

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

7. Declaration on Article I-27

The Conference considers that, in accordance with the provisions of the Constitution, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with Article I-27(1). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

8. Declaration on Article I-36

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated European regulations in the financial services area, in accordance with its established practice.

9. Declaration on Articles I-43 and III-329

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Articles I-43 and III-329 of the Constitution is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

10. Declaration on Article I-51

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article I-51 could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

11. Declaration on Article I-57

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

12. Declaration concerning the explanations relating
to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the

Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52 [56]) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

[56] Articles II-111 and II-112 of the Constitution.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I
DIGNITY

ARTICLE 1 [57]

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights

[57] Article II-61 of the Constitution.

enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds No 70 - 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

ARTICLE 2 [58]

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:
   "1. Everyone's right to life shall be protected by law…"

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:
   "The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."
   Article 2(2) of the Charter [59] is based on that provision.

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58 Article II-62 of the Constitution.

59 Article II-62(2) of the Constitution.

3. The provisions of Article 2 of the Charter [1] correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter [60]. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

(a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

(b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions…"

ARTICLE 3 [61]

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

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60 Article II-112(3) of the Constitution.

61 Article II-63 of the Constitution.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Explanation

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds No 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.

2. The principles of Article 3 of the Charter [62] are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

[62] Article II-63 of the Constitution.

ARTICLE 4 [63]

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 [1] is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter [64], it therefore has the same meaning and the same scope as the ECHR Article.

ARTICLE 5 [65]

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

Explanation

1. The right in Article 5(1) and (2) [66] corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter [67]. Consequently:

63 Article II-64 of the Constitution.
64 Article II-112(3) of the Constitution.
65 Article II-65 of the Constitution.

66 Article II-65 of the Constitution.
67 Article II-112(3) of the Constitution.

– no limitation may legitimately affect the right provided for in paragraph 1;

– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's acquis, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who,

for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II
FREEDOMS

ARTICLE 6 [68]

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 [1] are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter [69], they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

68 Article II-66 of the Constitution.
69 Article II-112(3) of the Constitution.

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The rights enshrined in Article 6 [70] must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles III-270, III-271 and III-273 of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

ARTICLE 7 [71]

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 [2] correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3) [72], the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the

[70] Article II-66 of the Constitution.

[71] Article II-67 of the Constitution.

[72] Article II-112(3) of the Constitution.

protection of the rights and freedoms of others."

ARTICLE 8 [73]

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article I-51 of the Constitution. Reference is also made to Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

ARTICLE 9 [74]

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[73] Article II-68 of the Constitution.

[74] Article II-69 of the Constitution.

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

ARTICLE 10 [75]

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the

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[75] Article II-70 of the Constitution.

ECHR and, in accordance with Article 52(3) of the Charter [76], has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

ARTICLE 11 [77]

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Explanation

1. Article 11 [78] corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities,

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76 Article II-112(3) of the Constitution.

77 Article II-71 of the Constitution.

78 Article II-71 of the Constitution.

may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Pursuant to Article 52(3) of the Charter [79], the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).

ARTICLE 12 [80]

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens

[79] Article II-112(3) of the Constitution.

[80] Article II-72 of the Constitution.

of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter [81], limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

3. Paragraph 2 of this Article corresponds to Article I-46(4) of the Constitution.

ARTICLE 13 [82]

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be

[81] Article II-112(3) of the Constitution.

[82] Article II-73 of the Constitution.

respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 [83] and may be subject to the limitations authorised by Article 10 of the ECHR.

ARTICLE 14 [84]

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

   "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

[83] Article II-61 of the Constitution.
[84] Article II-74 of the Constitution.

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24 [85].

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

ARTICLE 15 [86]

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the

[85] Article II-84 of the Constitution.

[86] Article II-75 of the Constitution.

Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1) [1], is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article III-213 of the Constitution.

Paragraph 2 deals with the three freedoms guaranteed by Articles I-4 and III-133, III-137 and III-144 of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on TEC Article 137(3), fourth indent, now replaced by Article III-210(1)(g) of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter [87] is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

ARTICLE 16 [88]

Freedom to conduct a business

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87 Article II-112(2) of the Constitution.

88 Article II-76 of the Constitution.

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article I-3(2) of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter [89].

ARTICLE 17 [90]

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.

2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

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[89] Article II-112(1) of the Constitution.

[90] Article II-77 of the Constitution.

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3) [91], the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

ARTICLE 18 [92]

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

The text of the Article has been based on TEC Article 63, now replaced by Article III-266

[91] Article II-112(3) of the Constitution.

[92] Article II-78 of the Constitution.

of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

ARTICLE 19 [93]

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see Ahmed v. Austria, judgment of 17 December 1996, [1996] ECR VI-2206 and Soering, judgment of 7 July 1989).

[93] Article II-79 of the Constitution.

TITLE III
EQUALITY

ARTICLE 20 [94]

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I–1961, and judgment of 13 April 2000, Case 292/97 Karlsson [2000] ECR 2737).

ARTICLE 21 [95]

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

[94] Article II-80 of the Constitution.
[95] Article II-81 of the Constitution.

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-124 of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article III-124 of the Constitution which has a different scope and purpose: Article III-124 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article III-124 nor the interpretation given to that Article.

Paragraph 2 corresponds to Article I-4(2) of the Constitution and must be applied in compliance with that Article.

ARTICLE 22 [96]

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article III-280(1) and (4) of the

[96] Article II-82 of the Constitution.

Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article I-3(3) of the Constitution. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article I-52 of the Constitution.

ARTICLE 23 [97]

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles I-3 and III-116 of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141(1) of the EC Treaty, now replaced by Article III-214(1) of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article III-214(3) of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article III-214(4) of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for

[97] Article II-83 of the Constitution.

disadvantages in professional careers. In accordance with Article 52(2) [98], the present paragraph does not amend Article III-214(4).

ARTICLE 24 [99]

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-269 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

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98 Article II-112(2) of the Constitution.

99 Article II-84 of the Constitution.

ARTICLE 25 [100]

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

ARTICLE 26 [101]

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

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100 Article II-85 of the Constitution.

101 Article II-86 of the Constitution.

TITLE IV
SOLIDARITY

ARTICLE 27 [102]

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by–Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when –Union legislation so provides. There is a considerable Union acquis in this field: Articles III-211 and III-212 of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

ARTICLE 28 [103]

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take

[102] Article II-87 of the Constitution.

[103] Article II-88 of the Constitution.

collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

ARTICLE 29 [104]

Right of access to placement services

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

ARTICLE 30 [105]

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

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[104] Article II-89 of the Constitution.

[105] Article II-90 of the Constitution.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

ARTICLE 31 [106]

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article III-213 of the Constitution.

2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

ARTICLE 32 [107]

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[106] Article II-91 of the Constitution.

[107] Article II-92 of the Constitution.

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

ARTICLE 33 [108]

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) [109] is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to

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108 Article II-93 of the Constitution.

109 Article II-93 of the Constitution.

encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity)
of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

ARTICLE 34 [110]

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) [111] is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles III-210 and III-213 and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must

[110] Article II-94 of the Constitution.

[111] Article II-94 of the Constitution.

respect it when exercising the powers conferred on it by Articles III-210 and III-213 of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article III-210 of the Constitution .

ARTICLE 35 [112]

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article III-278 of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

ARTICLE 36 [113]

Access to services of general economic interest

[112] Article II-95 of the Constitution.
[113] Article II-96 of the Constitution.

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article III-122 of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

ARTICLE 37 [114]

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles I-3(3), III-119 and III-233 of the Constitution.

It also draws on the provisions of some national constitutions.

[114] Article II-97 of the Constitution.

ARTICLE 38 [115]

Consumer protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article III-235 of the Constitution.

TITLE V
CITIZENS' RIGHTS

ARTICLE 39 [116]

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 [117] applies under the conditions laid down in Parts I and III of the Constitution, in

[115] Article II-98 of the Constitution.

[116] Article II-99 of the Constitution.

[117] Article II-99 of the Constitution.

accordance with Article 52(2) of the Charter [118]. Article 39(1) [1] corresponds to the right guaranteed in Article I-10(2) of the Constitution (cf. also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) [1] corresponds to Article I-20(2) of the Constitution. Article 39(2) [1] takes over the basic principles of the electoral system in a democratic State.

ARTICLE 40 [119]

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article I-10(2) of the Constitution (cf. also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter [2], it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

ARTICLE 41 [120]

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

[118] Article II-112(2) of the Constitution.

[119] Article II-100 of the Constitution.

[120] Article II-101 of the Constitution.

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Explanation

Article 41 [121] is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burban [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article I-38(2) of the Constitution (cf. also the legal base in Article III-398 of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).

[121] Article II-101 of the Constitution.

Paragraph 3 reproduces the right now guaranteed by Article III-431 of the Constitution. Paragraph 4 reproduces the right now guaranteed by Articles I-10(2)(d) and III-129 of the Constitution. In accordance with Article 52(2) of the Charter [122], those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter [123].

ARTICLE 42 [124]

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article I-50(3) of the Constitution. In accordance with Article 52(2) of the Charter [125], the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles I-50(3) and III-399.

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[122] Article II-112(2) of the Constitution.

[123] Article II-107 of the Constitution.

[124] Article II-102 of the Constitution.

[125] Article II-112(2) of the Constitution.

ARTICLE 43 [126]

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-335 of the Constitution. In accordance with Article 52(2) of the Charter [127], it applies under the conditions defined in these two Articles.

ARTICLE 44 [128]

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-334 of the Constitution. In accordance with Article 52(2) of the Charter [1], it applies under the conditions defined in these two Articles.

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126 Article II-103 of the Constitution.

127 Article II-112(2) of the Constitution.

128 Article II-104 of the Constitution.

ARTICLE 45 [129]

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article I-10(2)(a) of the Constitution (cf. also the legal base in Article III-125; and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter [130], it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles III-265 to III-267 of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

ARTICLE 46 [131]

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she 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

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129 Article II-105 of the Constitution.

130 Article II-112(2) of the Constitution.

131 Article II-106 of the Constitution.

the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article I-10 of the Constitution; cf. also the legal base in Article III-127. In accordance with Article 52(2) of the Charter [132], it applies under the conditions defined in these Articles.

TITLE VI

JUSTICE

ARTICLE 47 [133]

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

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132 Article II-112(2) of the Constitution.

133 Article II-107 of the Constitution.

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles III-353 to III-381 of the Constitution, and in particular in Article III-365(4). Article 47 [134] applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v.

[134] Article II-107 of the Constitution.

European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

ARTICLE 48 [135]

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48 [1] is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

[135] Article II-108 of the Constitution.

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In accordance with Article 52(3) [136], this right has the same meaning and scope as the right guaranteed by the ECHR.

ARTICLE 49 [137]

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

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136 Article II-112(3) of the Constitution.

137 Article II-109 of the Constitution.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3) [138], the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

ARTICLE 50 [139]

Right not to be tried or punished twice in criminal proceedings for the same criminal

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138 Article II-112(3) of the Constitution.

139 Article II-110 of the Constitution.

offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention."

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50 [140], the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the acquis in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The

[140] Article II-110 of the Constitution.

very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter [141] concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

TITLE VII
GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

ARTICLE 51 [142]

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.

2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

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141 Article II-112(1) of the Constitution.

142 Article II-111 of the Constitution.

Explanation

The aim of Article 51 [143] is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution. The expression "bodies, offices and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Articles I-50 or I-51 of the Constitution).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

[143] Article II-111 of the Constitution.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

ARTICLE 52 [144]

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

[144] Article II-112 of the Constitution.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Explanation

The purpose of Article 52 [145] is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "... it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article I-2 of the Constitution and other interests protected by specific provisions of the Constitution such as Articles I-5(1), III-133(3), III-154 and III-436.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights

[145] Article II-112 of the Constitution.

conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles I-5 (1), III-131, III-262 of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

Article 2 [146] corresponds to Article 2 of the ECHR

Article 4 [147] corresponds to Article 3 of the ECHR

Article 5(1) and (2) [148] correspond to Article 4 of the ECHR

Article 6 [149] corresponds to Article 5 of the ECHR

Article 7 [150] corresponds to Article 8 of the ECHR

Article 10(1) [151] corresponds to Article 9 of the ECHR

Article 11 [152] corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR

Article 17 [153] corresponds to Article 1 of the Protocol to the ECHR

Article 19(1) [154] corresponds to Article 4 of Protocol No 4

Article 19(2) [1] corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights

Article 48 [155] corresponds to Article 6(2) and(3) of the ECHR

– Article 49(1) (with the exception of the last sentence) and (2) [156] correspond to

146 Article II-62 of the Constitution.
147 Article II-64 of the Constitution.
148 Article II-65 of the Constitution.
149 Article II-66 of the Constitution.
150 Article II-67 of the Constitution.
151 Article II-70 of the Constitution.
152 Article II-71 of the Constitution.
153 Article II-77 of the Constitution.

154 Article II-79 of the Constitution.
155 Article II-108 of the Constitution.
156 Article II-109 of the Constitution.

Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

Article 9 [157] covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation

– Article 12(1) [158] corresponds to Article 11 of the ECHR, but its scope is extended to European Union level

Article 14(1) [159] corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training

– Article 14(3) [1] corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents

– Article 47(2) and (3) [160] correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation

– Article 50 [161] corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.

Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

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157 Article II-69 of the Constitution.
158 Article II-72 of the Constitution.

159 Article II-74 of the Constitution.
160 Article II-107 of the Constitution.
161 Article II-110 of the Constitution.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(2) of the Treaty on European Union (cf. now the wording of Article I-9(3) of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)) [162]. Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by Article III-233 of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37 [163]. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34 [164].

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162 Article II-111 of the Constitution.

163 Articles II-85, II-86 and II-97 of the Constitution.

164 Articles II-83, II-93 and II-94 of the Constitution.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

ARTICLE 53 [165]

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

ARTICLE 54 [166]

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

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165 Article II-113 of the Constitution.

166 Article II-114 of the Constitution.

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

13. Declaration on Article III-116

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

14. Declaration on Articles III-136 and III-267

The Conference considers that in the event that a draft European law or framework law based on Article III-267(2) would affect fundamental aspects of the social security system of a Member State, including its scope, cost or financial structure, or would affect the financial balance of that system as set out in Article III-136(2), the interests of that Member State will be duly taken into account.

15. Declaration on Articles III-160 and III-322

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of European decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

16. Declaration on Article III-167(2)(c)

The Conference notes that Article III-167(2)(c) shall be interpreted in accordance with the

existing case law of the Court of Justice of the European Communities and of the Court of First Instance regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

17. Declaration on Article III-184

With regard to Article III-184, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Constitution and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the

necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudge the future debate on the Stability and Growth Pact.

18. Declaration on Article III-213

The Conference confirms that the policies described in Article III-213 fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

This Declaration is without prejudice to the provisions of the Constitution conferring competence on the Union, including in social matters.

19. Declaration on Article III-220

The Conference considers that the reference in Article III-220 to island regions can include island States in their entirety, subject to the necessary criteria being met.

20. Declaration on Article III-243

The Conference notes that the provisions of Article III-243 shall be applied in accordance with the current practice. The terms "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" shall be interpreted in accordance with the existing case law of the Court of Justice of the European Communities and of the Court of First Instance.

21. Declaration on Article III-248

The Conference agrees that the Union's action in the area of research and technological development will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

22. Declaration on Article III-256

The Conference believes that Article III-256 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article III-131.

23. Declaration on Article III-273(1), second subparagraph

The Conference considers that the European laws referred to in the second subparagraph of Article III-273(1) should take into account national rules and practices relating to the initiation of criminal investigations.

24. Declaration on Article III-296

The Conference declares that, as soon as the Treaty establishing a Constitution for Europe is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

25. Declaration on Article III-325 concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Sections 3, 4 and 5 of Chapter IV of Title III of Part III of the Treaty establishing a Constitution for Europe insofar as such agreements comply with Union law.

26. Declaration on Article III-402(4)

Article III-402(4) of the Constitution provides that where no European law of the Council establishing a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that law is adopted.

The Conference states that if no European law of the Council establishing a new financial framework has been adopted by the end of 2006 and where the Treaty of Accession of 16 April 2003 provides for a phasing-in period for the allocation of appropriations to the new Member States ending in 2006, the allocation of funds as from 2007 will be established on the basis of the same criteria being applied for all Member States .

27. Declaration on Article III-419

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article III-422 providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

28. Declaration on Article IV-440(7)

The High Contracting Parties agree that the European Council, pursuant to Article IV-440 (7), will take a European decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article IV-440(2) and Article III-424, when the French authorities notify the European Council and the Commission that the evolution currently underway in the internal status of the island so allows.

29. Declaration on Article IV-448(2)

The Conference considers that the possibility of producing translations of the Treaty establishing a Constitution for Europe in the languages mentioned in Article IV-448(2) contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in the fourth subparagraph of Article I-3(3) of that Treaty. In this

context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages.

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in Article IV-448(2) communicate to the Council, within six months from the date of the signature of that Treaty, the language or languages into which translations of that Treaty will be made.

30. Declaration on the ratification of the Treaty establishing a Constitution for Europe

The Conference notes that if, two years after the signature of the Treaty establishing a Constitution for Europe, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council.

B. DECLARATIONS CONCERNING PROTOCOLS ANNEXED TO THE CONSTITUTION

Declarations concerning the Protocol
on the Treaties and Acts of Accession of the Kingdom of Denmark,
Ireland and the United Kingdom of Great Britain and Northern Ireland,
of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic,
and of the Republic of Austria, the Republic of Finland
and the Kingdom of Sweden

31. Declaration on the Åland islands

The Conference acknowledges that the regime applicable to the Åland islands, referred to in Article IV-440(5), is established taking into account the special status that these islands enjoy under international law.

To that end, the Conference stresses that specific provisions have been included in

Section 5 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

32. Declaration on the Sami people

Having regard to Articles 60 and 61 of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, the Conference recognises the obligations and commitments of Sweden and Finland with regard to the Sami people under national and international law.

The Conference notes that Sweden and Finland are committed to preserving and developing the means of livelihood, language, culture and way of life of the Sami people and considers that traditional Sami culture and livelihood depend on primary economic activities, such as reindeer husbandry in the traditional areas of Sami settlement.

To that end, the Conference stresses that specific provisions have been included in Section 6 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Declarations concerning the Protocol on the Treaty
and the Act 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

33. Declaration on the Sovereign Base Areas
of the United Kingdom of Great Britain

and Northern Ireland in Cyprus

THE CONFERENCE,

Recalling that the Joint Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Final Act of the Treaty concerning the Accession of the United Kingdom to the European Communities provided that the arrangements applicable to relations between the European Economic Community and the Sovereign Base Areas will be defined within the context of any agreement between the Community and the Republic of Cyprus,

Taking account of the provisions concerning the Sovereign Base Areas set out in the Treaty concerning the Establishment of the Republic of Cyprus (hereinafter referred to as the "Treaty of Establishment") and the associated Exchanges of Notes dated 16 August 1960,

Noting the Exchange of Notes between the Government of the United Kingdom and the Government of the Republic of Cyprus concerning the administration of the Sovereign Base Areas, dated 16 August 1960, and the attached Declaration by the United Kingdom Government that one of the main objects to be achieved is the protection of the interests of those resident or working in the Sovereign Base Areas, and considering in this context that the said persons should have, to the extent possible, the same treatment as those resident or working in the Republic of Cyprus;

Noting further the provisions of the Treaty of Establishment regarding customs arrangements between the Sovereign Base Areas and the Republic of Cyprus and in particular those of Annex F to the said Treaty;

Noting also the commitment of the United Kingdom not to create customs posts or other frontier barriers between the Sovereign Base Areas and the Republic of Cyprus and the arrangements made pursuant to the Treaty of Establishment whereby the authorities of the Republic of Cyprus administer a wide range of public services in the Sovereign Base Areas, including in the fields of agriculture, customs and taxation;

Confirming that the accession of the Republic of Cyprus to the Union should not affect the

rights and obligations of the parties to the Treaty of Establishment;

Recognising therefore the need to apply certain provisions of the Constitution and acts of the Union to the Sovereign Base Areas and to make special arrangements regarding the implementation of these provisions in the Sovereign Base Areas;

Points out that specific provisions to that end have been included in Title III of Part Two of the Protocol on the Treaty and Act 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.

34. Declaration by the Commission on the Sovereign Base Areas
of the United Kingdom of Great Britain
and Northern Ireland in Cyprus

The Commission confirms its understanding that the provisions of Union law applicable to the Sovereign Base Areas pursuant to Title III of Part Two of the Protocol on the Treaty and Act 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 include:

(a) Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products;

(b) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, to the extent required by Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) for the purpose of financing rural development measures in the Sovereign Base Areas under the EAGGF Guarantee Section.

35. Declaration on the Ignalina Nuclear Power Plant in Lithuania

THE CONFERENCE,

Declaring the Union's willingness to continue to provide adequate additional assistance to Lithuania's decommissioning effort also after Lithuania's accession to the Union for the period until 2006 and beyond and noting that Lithuania, bearing in mind this expression of Union solidarity, has committed to close Unit 1 of the Ignalina Nuclear Power Plant before 2005 and Unit 2 by 2009;

Recognising that the decommissioning of the Ignalina Nuclear Power Plant with two 1500 MW RBMK-type reactor units inherited from the former Soviet Union is of an unprecedented nature and represents for Lithuania an exceptional financial burden not commensurate with the size and economic strength of the country and that this decommissioning will continue beyond the current Financial Perspective as defined by the Interinstitutional Agreement of 6 May 1999;

Noting the need to adopt implementing provisions for the additional Union assistance to address the consequences of the closure and the decommissioning of the Ignalina Nuclear Power Plant;

Noting that Lithuania will pay due attention to the needs of the regions most affected by the closure of the Ignalina Nuclear Power Plant in its use of Union assistance;

Declaring that certain measures that will be supported through public aid shall be considered as compatible with the internal market, such as the decommissioning of the Ignalina Nuclear Power Plant, and the environmental upgrading in line with the *acquis* and modernisation of conventional electricity production capacity needed to replace the two Ignalina Nuclear Power Plant reactors after their closure,

Points out that specific provisions to that end have been included in Title IV of Part Two of the Protocol on the Treaty and Act 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.

36. Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation

THE CONFERENCE,

Considering the particular situation of the Kaliningrad region of the Russian Federation in the context of the Union's enlargement;

Recognising the obligations and commitments of Lithuania with regard to the *acquis* establishing an area of freedom, security and justice;

Noting, in particular, that Lithuania shall fully apply and implement the Union *acquis* regarding the list of countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as well the Union *acquis* regarding the uniform format for a visa as from accession at the latest;

Recognising that the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation through Union territory is a matter concerning the Union as a whole and should be treated as such and must not entail any unfavourable consequence for Lithuania;

Considering the decision to be taken by the Council to remove controls at internal borders after it has verified that the necessary conditions to that effect have been met;

Determined to assist Lithuania in fulfilling the conditions for full participation in the Schengen area without internal frontiers as soon as possible,

Points out that specific provisions to that end have been included in Title V of Part Two of the Protocol on the Treaty and Act 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.

37. Declaration on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia

THE CONFERENCE,

Noting Slovakia's commitment to close Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant at the end of 2006 and 2008 respectively and declaring the Union's willingness to continue to provide financial aid until 2006 in continuation of the pre-accession aid planned under the Phare programme in support of Slovakia's decommissioning effort;

Noting the need to adopt implementing provisions regarding continued Union assistance;

Points out that specific provisions to that end have been included in Title IX of Part Two of the Protocol on the Treaty and Act 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.

38. Declaration on Cyprus

THE CONFERENCE,

Reaffirming its commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant United Nations Security Council Resolutions, and its strong support for the efforts of the United Nations Secretary General to that end;

Considering that such a comprehensive settlement to the Cyprus problem has not yet been reached;

Considering that it is, therefore, necessary to provide for the suspension of the application of the *acquis* in those areas of the Republic of Cyprus in which the Government of the

Republic of Cyprus does not exercise effective control;

Considering that, in the event of a solution to the Cyprus problem, this suspension will be lifted;

Considering that the Union is ready to accommodate the terms of such a settlement in line with the principles on which the Union is founded;

Considering that it is necessary to provide for the terms under which the relevant provisions of Union law will apply to the line between the abovementioned areas and both those areas in which the Government of the Republic of Cyprus exercises effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland;

Desiring that the accession of Cyprus to the Union shall benefit all Cypriot citizens and promote civil peace and reconciliation;

Considering, therefore, that nothing in Title X of Part Two of the Protocol on the Treaty and Act 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 shall preclude measures with this end in view;

Considering that such measures shall not affect the application of the *acquis* under the conditions set out in the that Protocol in any other part of the Republic of Cyprus;

Points out that specific provisions to that end have been included in Title X of Part Two of the Protocol on the Treaty and Act 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.

39. Declaration concerning the Protocol on the position of Denmark

The Conference notes that with respect to legal acts to be adopted by the Council acting

alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on the position of Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference notes that on the basis of the Declaration by the Conference on Articles I-43 and III-329 of the Constitution, Denmark declares that Danish participation in actions or legal acts pursuant to Articles I-43 and III-329 will take place in accordance with Part I and Part II of the Protocol on the position of Denmark.

40. Declaration concerning the Protocol on the transitional provisions relating to the institutions and bodies of the Union

The common position which will be taken by the Member States at the conferences on the accession to the Union of Romania and/or Bulgaria regarding the allocation of seats in the European Parliament and the weighting of votes in the European Council and the Council will be as follows.

1. If the accession to the Union of Romania and/or Bulgaria takes place before the entry into force of the European Council Decision referred to in Article I-20(2), the allocation of seats in the European Parliament throughout the 2004-2009 parliamentary term will be in accordance with the following table for a Union of 27 Member States.

MEMBER STATES	SEATS IN THE EP
Germany	99
United Kingdom	78
France	78
Italy	78
Spain	54
Poland	54
Romania	35
Netherlands	27
Greece	24
Czech Republic	24
Belgium	24
Hungary	24
Portugal	24
Sweden	19
Bulgaria	18
Austria	18
Slovakia	14
Denmark	14
Finland	14
Ireland	13
Lithuania	13
Latvia	9
Slovenia	7
Estonia	6
Cyprus	6
Luxembourg	6
Malta	5
TOTAL	785

The Treaty of Accession to the Union will therefore, by way of derogation from Article I-20 (2) of the Constitution, stipulate that the number of members of the European Parliament may temporarily exceed 750 for the remainder of the 2004 to 2009 Parliamentary term.

2. In Article 2(2) of the Protocol on the transitional provisions relating to the institutions and bodies of the Union, the weighting of the votes of Romania and Bulgaria in the European Council and the Council will be set at 14 and 10 respectively.

3. At the time of each accession, the threshold referred to in the Protocol on the transitional provisions relating to the institutions and bodies of the Union will be calculated according to Article 2(3) of that Protocol.

41. Declaration concerning Italy

The Conference notes that the Protocol on Italy annexed in 1957 to the Treaty establishing the European Economic Community, as amended upon adoption of the Treaty on European Union, stated that:

"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 ten-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 109h and 109i 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."

DECLARATIONS BY MEMBER STATES

42. Declaration by the Kingdom of the Netherlands
on Article I-55

The Kingdom of the Netherlands will agree to a European decision as referred to in Article I-55(4) once a revision of the European law referred to in Article I-54(3) has provided the Netherlands with a satisfactory solution for its excessive negative net payment position vis-à-vis the Union budget.

43. Declaration by the Kingdom of the Netherlands
on Article IV-440

The Kingdom of the Netherlands declares that an initiative for a European decision, as referred to in Article IV-440(7) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

44. Declaration by the Federal Republic of Germany, Ireland,
the Republic of Hungary, the Republic of Austria
and the Kingdom of Sweden

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

45. Declaration by the Kingdom of Spain and
the United Kingdom of Great Britain and Northern Ireland

The Treaty establishing the Constitution applies to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

46. Declaration by the United Kingdom of Great Britain
and Northern Ireland on the definition of the term "nationals"

In respect of the Treaty establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term "nationals" with the exception that the reference to "British Dependent Territories Citizens" shall be read as meaning "British overseas territories citizens".

47. Declaration by the Kingdom of Spain on the definition of the term "nationals"

Spain notes that, under Article I-10 of the Constitution, every national of a Member State shall be a citizen of the Union. Spain also notes that, under the current state of European integration reflected in the Constitution, only nationals of Member States are entitled to the specific rights of European citizenship unless Union law expressly provides otherwise. In that respect, Spain notes, finally, that under Articles I-20 and I-46 of the Treaty, the European Parliament currently represents the citizens of the Union.

48. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

The United Kingdom notes that Article I-20 and other provisions of the Treaty establishing a Constitution for Europe are not intended to change the basis for the franchise for elections to the European Parliament.

49. Declaration by the Kingdom of Belgium on national parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

50. Declaration by the Republic of Latvia and the Republic of Hungary on the spelling of the name of the single currency in the Treaty establishing a Constitution for Europe

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaty establishing a Constitution for Europe as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaty establishing a Constitution for Europe, has no effect on the existing rules of the Latvian and the Hungarian languages.