



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.3.2000  
COM(2000) 114 final

**COMMUNICATION FROM THE COMMISSION**

**Supplementary contribution of the Commission to the Intergovernmental Conference on  
institutional reforms**

**Qualified majority voting for Single Market aspects in the taxation and social security  
fields**

## **1. Introduction**

The perspective of enlargement up to 28 Member States constitutes an important increase in terms of numbers and diversity of national economies and legal systems. The number of players in the Single Market whether national or private will almost double. In addition, the performance gap between Member States' economies will also enhance diversity in the Single Market. The fact that an important number of new Member States will be undergoing long term structural changes means that the Union will be faced with an evolving environment. The three effects combined will tend to bring out and accentuate the remaining imperfections of the Single Market, notably in the areas of social policy and taxation. Uneven levels of application of Community law, incompatible national rules and distortions of competition may affect the Single Market in a way that requires co-ordinated responses on behalf of the Community.

With the Economic and Monetary Union, the need for a greater co-ordination of fiscal and structural policies has increased. In addition, globalisation has reinforced the potential for spill over effects across Member States, which could distort the functioning of the Single Market. It should be recognised, however, that different levels and structures of taxation and of social protection could also reflect different levels of per capita income and productivity and do therefore not necessarily harm competition in the single market.

The Union can only cope with this challenge by enhancing the efficiency of its decision making process. Hence, the need for greater recourse to qualified majority voting, to the extent that it is necessary for the establishment and functioning of the Single Market. The change in the decisional mode will leave unaffected the current distribution of competences as contained in the Treaty. The switchover from unanimity to qualified majority will merely enhance the decision-making capacity of the institutions.

In its Opinion of 26 January 2000 « Adapting the Institutions to make a success of enlargement » the Commission announced that it would provide a further contribution concerning the application of qualified majority voting in the social security and taxation fields. The approach proposed by the Commission implies a detailed examination of the relevant Articles of the Treaty in order to identify the decisions that should be taken by qualified majority versus those which should remain subject to unanimity.

## **2. The orientations for decision making in the area of taxation and social security**

National provisions concerning taxation and social security reflect the fundamental preferences of national legislators in economic and social policies. The level of social protection and welfare benefits as well as the ways in which the revenue to finance such benefits is raised through taxation constitute the essence of sovereignty exercised by national parliaments. In general terms, these provisions express national choices concerning the degree of solidarity and support between public bodies and citizens. Such choices are usually « neutral » with regard to the European dimension.

However, there are few clearly defined types of national fiscal and social security provisions which cannot be considered « neutral » with regard to the functioning of the Single Market. These rules can affect the Single Market either due to their contents or to their nature. Their effects can broadly be classified into two categories: rules that are incompatible with Single Market objectives and rules that give rise to distortions of competition in the Single Market.

#### **a. Incompatibility of national rules with Single Market objectives**

Traditionally, national rules on taxation and social security apply within a strictly national framework. By definition, they do not take account of cross-border considerations. Unless they do so, however, these national rules may impede the exercise of the four fundamental freedoms of the treaty (free movement of goods, persons, services and capital). Despite the completion of the Single Market and the advent of economic and monetary union, progress has generally been slow in removing cross-border obstacles. Many such obstacles remain. The resulting vacuum has increasingly been filled by the European Court of Justice, which has, in numerous decisions, held aspects of national rules in both areas to be incompatible with the Treaty provisions on the four Single Market freedoms. In these cases Member States must amend their legislations in order to eliminate the possibility of discriminations on grounds of nationality contrary to the Treaty. However, such unilateral or bilateral modifications are not sufficient, and they often do not address situations where more than two countries are involved. It is unsatisfactory for the public to have to take legal action in order to obtain recognition of rights secured by the Treaties. At the same time, it is far from ideal for the Member States if Community law in this area is developed on an ad hoc basis by judgements of the Court of justice rather than via the political process. Moreover they give rise to uncertainty and may lead to an inconsistent application of Community rules across the board. As a result, administrative costs and legal insecurity mean that citizens and companies cannot make full use of their rights to move or invest in another Member State.

A Community solution would often mean that coherent application of Single Market law would not depend on the individual initiative of one economic operator who, possibly on the basis of a judgement from the European Court of Justice, would convince the authorities of one Member State to amend one specific aspect of the national legislation. Community solutions have the benefit of orderly policy making as opposed to a case by case approach.

#### **b. Distortions of competition in the Single Market**

Already in the Single Market of today national rules on taxation and social security tend to be influenced by policy choices in other Member States.

The fact is, that as the number of Member States increases so will the differences of development between Member States in the Union. Such divergences are likely to broaden the gap between different national economies. Recent data<sup>1</sup> indicate that the average GNP per capita for the ten Central and Eastern European candidate countries,

---

<sup>1</sup> See Change and Choice in social protection. The experience of Central and Eastern Europe, Consensus 1999.

adjusted for purchasing power, is a third of the EU average; among the Central and Eastern European countries the lowest individual level is a third of that of the highest. As the state of development of national economies differ so will the policy considerations underlying national legislator's choices concerning the level of social protection and the corresponding level of revenue generation through fiscal policies. Policy choices against such different backgrounds may interfere with the overall objective of promoting a harmonious and balanced development of economic activities as well as sustainable growth and a high degree of convergence of economic performance (Article 2 EC). Thus, it will be important to ensure that co-ordinated responses at Community level remain possible, in order to address any distortions of competition in the Single Market

### **c. Conclusion**

In conclusion the Commission considers that almost doubling the number of Member States of the Union in the foreseeable future will tend to bring out and accentuate the remaining imperfections of the Single Market, notably in the areas of social policy and taxation. Uneven levels and distortions of competition require a Community response. If the Community does not avail of efficient instruments to address these issues at Community level, those negative side effects will hamper the harmonious development of the Union.

## **3. Available instruments**

When defining such instruments the Commission proposes to draw on the experience of the integration achieved in the areas of social protection and taxation to the present day.

### **a. The type of intervention**

Community intervention for the establishment of the Single Market can involve different degrees of regulatory intensity. The EC Treaty can broadly be said to distinguish between co-ordination of legislation, adoption of minimum rules and harmonisation of rules.

**Co-ordination** of national rules through Community legislation leaves national regimes as such untouched, but defines the interface between national regimes in relation to cross-border elements. Examples of such co-ordination are, in the social security field, regulation 1408/71<sup>2</sup> and, in the direct tax field, the Council Parents/Subsidiaries and Mergers Directives<sup>3</sup>. The directives leave national rules on groups of companies and business reorganisations intact. They merely lay down rules limited to transactions involving companies from more than one Member State.

Another form of intervention is the adoption of **minimum requirements**. Such requirements are limited to the creation of a common minimum base of rules in the different national laws. In principle, minimum requirements, like coordination, solve

---

<sup>2</sup> Regulation (EEC) n° 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community .

<sup>3</sup> OJ 1990, L225/6 and OJ 1990, L225/1.

the problem of interface between different national laws. An example of minimum requirements can be found in Directive 92/77 EEC<sup>4</sup> concerning the rates for value added tax. The Directive fixes the minimum rates but does not impose a specific rate. In the area of social security, Article 137 (3) EC provides for the adoption of minimum requirements. The first objective of such minimum standards is, of course, to secure an appropriate level of social protection but secondarily such rules also prevent distortions of competition

**Complete harmonisation**, finally, may be necessary in cases where co-ordination of national provisions or minimum requirements do not permit the attainment of the objective of establishing the Single Market. The Sixth VAT Directive is an example of such harmonisation, despite the fact that the Directive also contains numerous derogations and exceptions.

### **b. Decision-making**

Due to the unanimity requirement it has been difficult in recent years to make progress in a number of areas in which action is urgently required to ensure the proper functioning of the internal market and the unfettered exercise of the Treaty freedoms. Since the completion of the internal market and the advent of economic and monetary union no further steps to remove fiscal obstacles to cross-border activity have been possible. In the area of social security Member States have not yet agreed on any measure based on Article 137 (3) first indent, which provides for measures in the area of social security and social protection of workers.

The Commission considers that the scope for unanimity voting currently contained in the Treaty must now be narrowed for the sake of efficiency.

### **c. Conclusion**

The Commission proposes to introduce qualified majority voting for instruments allowing the co-ordination of national rules or the introduction of minimum requirements in the areas of taxation and social security set out in more detail below. As far as indirect taxation is concerned, where a significant degree of harmonisation has already been achieved, separate specific considerations apply.

## **4. Practical implications of this approach for taxation:**

### **a. Co-ordination of national rules with a view to the removal of direct obstacles to the exercise of the four freedoms (ensuring compatibility of national rules with Single Market objectives)**

The Commission considers that all Community measures necessary to remove a direct obstacle to the exercise of the four freedoms must in future be adopted by qualified majority. These measures will have as their objective to define the interface between national systems and thereby remove additional burdens to which the taxpayer is subject by reason of his cross-border situation, in particular discrimination and double

---

<sup>4</sup> Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT ), OJ L 316, 31.10.1992, p. 1-4.

taxation. Community legislation will therefore take the character of coordinating measures. These measures will not address obstacles that arise simply from the need to comply with more than one tax system or the lack of uniformity of tax systems. Unanimity would therefore, for example, continue to be required for the harmonisation of corporate taxation rates. Furthermore, the scope of measures adopted by qualified majority voting would be limited to situations involving more than one Member State. Community measures necessary for the functioning of the Single Market that also have an impact on purely internal situations would continue to require unanimity

A measure providing for deductibility in the host country of pension contributions paid by migrant workers to a supplementary pension scheme in their home country would be one example of an issue that should be subject to qualified majority voting. Bilateral solutions may not address all aspects of the problems of individuals who work in more than two countries during their career. Another example would be the proposed Directive on a common system of taxation applicable to interest and royalty payments made between associated companies in different Member States. The proposal is designed to eliminate taxes levied at source on payments of interest and royalties between associated companies in different Member States with a view to avoiding double taxation. There, a Community solution would have the two advantages of eliminating those withholding taxes which are not currently eliminated under some bilateral tax treaties and of dealing with the incomplete double taxation relief in triangular situations which bilateral treaties cannot, by their very nature, address. By contrast provisions harmonising taxation of interest and royalty payments would still require unanimity.

## **b. The specific situation of free movement of goods and services**

### **Value Added Tax**

The free movement of goods and services is a specific case because questions linked to the free movement of goods have been dealt with in a detailed manner by, in particular, the Sixth Directive on VAT<sup>5</sup> that created a common base for levying value added tax. However, ever since its adoption in 1977, except for the 1992 amendments to remove physical controls at the frontiers, the common VAT system has not known any significant evolution. The system was conceived in the early seventies prior to the advent of the Single Market and prior to the upsurge of the services industry. This system is hardly adapted to the economic situation of today. The establishment of the Single Market has entailed a large scale liberalisation of economic activities. For example, services in the public interest were either exempted from a VAT regime or excluded because of their being provided by public authorities. This situation now gives rise to distortions of competition in a liberalised environment (the transport of a letter by a private mail service is subject to VAT, whereas the “postage stamp” issued by a public authority which pays for a similar service, is not). In addition new forms of economic activity such as electronic commerce are difficult to address with the existing rules, which in turn gives rise to tax avoidance schemes which lead to erosion of the tax base. The Directive no longer responds to the needs of operators who need

---

<sup>5</sup> Directive 77/388 of 17 May 1977, OJ No. L 145/1.

simple, modern and more uniform rules within the Single Market. Inadequate rules may affect the Single Market in the same way as a lack of rules altogether.

Given the existing considerable degree of harmonisation in the area of VAT, new instruments will have to provide for the adaptation of the existing rules in order to maintain that acquis.

The Commission proposes to specify in detail which aspects of the VAT rules should now be subject to qualified majority voting. Qualified majority voting should apply for decisions which

- modernise and simplify existing Community rules in order to eliminate distortions of competition
- ensure a uniform application of existing taxation rules and guarantee the simple and transparent application of such rules.

The changeover to a new common VAT system, implying fundamental changes concerning the localisation of operations and the reattribution of VAT income between Member States, would clearly have to be decided by unanimity. The same applies to rules concerning the determination of the rate (normal rate and reduced rate, non-obligatory character of reduced rate) or for rules which are different between Member States but which do not in themselves constitute an obstacle to the operation of the Single Market (for example, the exemption schemes for real estate operations or in the social and training sector).

### **Excise duties**

The problems explained above concerning the VAT rules are mirrored in the Community excise duty rules. Because of the rapid evolution of products to which Community excise duties apply, such duties require constant adaptation, which the current unanimity requirement does not allow for. In fact, the products that are subject to excise duties were defined a decade ago and the definition does not correspond to the evolution of market requirements (taste, fashion). In the area of alcohol and alcoholic drinks a number of new products do not fall into the categories of products defined by the directive. The question of whether a new product falls into one or the other category is therefore important for the taxation issue. In the absence of clear rules, distortions of competition and possibly even fraud related issues will continue to arise. A similar situation can be observed as far as tobacco products and mineral oils are concerned.

The Commission proposes that qualified majority voting should apply for decisions which

- modernise and simplify existing Community rules in order to eliminate distortions of competition
- ensure a uniform application of existing taxation rules and guarantee the simple and transparent application of such rules.

Obviously, rules concerning the place of taxation or the fixing of rates for products subject to excise duties will remain subject to unanimity.

### **Tax measures of a primarily environmental nature**

The protection of the environment is one of the Union's key priorities (Articles 2 and 6 of the Treaty). In the recent past, Member States have increasingly used taxation measures as means to address environmental preoccupations by seeking to modify the operators' behaviour in a way more favourable to environmental protection. While the implementation of such measures constitutes a means to address the overall objective of improvement environmental protection such legislation can have the secondary effect of creating obstacles to the functioning of the Single Market. Accession of new Member States with economies undergoing important structural changes will require an increased recourse to efficient measures, including fiscal measures, to ensure the pursuit of the environmental objectives of the Treaty, which provide for the sustainable development (Article 6 EC) and the preservation and improvement of the quality of the environment (Article 174 EC). Therefore, the Commission considers that taxation measures that have as their principal objective the protection of the environment and have a direct and significant effect on the environment also requires qualified majority voting.

For example, a levy based on the sulphur contents of certain fossil products clearly has an environmental objective, as sulphur emissions are a principal cause of acidification. Taxation of products containing sulphur would discourage use and proliferation of such products. A differentiation in tax rates to take account of sulphur contents could, therefore, be adopted by qualified majority voting. On the other hand, a uniform increase of excise duties on mineral oils does not in itself pursue an environmental objective even if such measure could have a secondary impact on the environment. Such a decision would therefore continue to be taken by unanimity.

The Commission recalls that such change of the decisional mode does not affect the distribution of competencies currently contained in the Treaty. In particular, such modification could not be seen as permitting the introduction of Community fiscal measures for the benefit of the Community budget. Article 269 (2) EC clearly establishes that decisions on own resources are taken by unanimity.

### **c. Rules for combating fraud, fiscal evasion and avoidance**

Provisions directly governing the levying of direct and indirect taxes and aimed at preventing fraud, evasion<sup>6</sup> or tax avoidance<sup>7</sup> are necessary to eliminate cases of double non-taxation in cross-border situations and to prevent circumvention of existing provisions, particularly in the VAT field. Such operations can have the effect of eroding taxation bases in the Member States concerned. Provision already exists for individual Member States to derogate from Community rules to combat evasion or

---

<sup>6</sup> Tax evasion is understood as an act of illegal withholding of taxes from the tax authorities. By definition tax evasion is illegal under the national law applicable to the tax operation in question.

<sup>7</sup> Tax avoidance is the setting up of an economic operation in a way to minimise the tax impact of such operation by exploiting existing loopholes in the applicable legislation. . By definition tax avoidance is legal.



avoidance and this has, on occasion, been used as a mechanism for allowing several Member States to apply the same derogation. It would be preferable in such cases to amend the provisions of the Sixth Directive<sup>8</sup> itself by qualified majority.

In the area of direct taxation, the objective of a new Treaty provision would be to allow a more effective tackling of situations of double non-taxation, in particular by allowing adoption of coordinating Community measures by qualified majority voting. The Commission's savings taxation proposal addresses the issue of tax evasion in the direct tax field<sup>9</sup>. Such measures are not aimed at limiting the freedom of companies and citizens to take advantage of the different national tax rates in order to reduce their tax burdens.

#### **d. Mutual assistance and co-operation between tax authorities**

**Measures on mutual assistance and co-operation** between tax authorities currently fall under the general legal basis of Article 95 EC and are therefore already subject to qualified majority voting. An example of such a measure would be the *Fiscalis* programme, which was adopted under Article 95 EC. Another would be the proposed Directive amending Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, tax and other measures, which has been proposed under Article 95. However, in an effort to improve legal certainty and understanding of the provisions in question the Commission prefers to bring such measures into a single chapter of the Treaty dealing with both tax measures and measures on assistance and co-operation between tax authorities.

### **5. Practical implications of the Commission approach for social security**

#### **a. The removal of direct obstacles to the Single Market (ensuring compatibility of national rules with Single Market objectives)**

Article 42 EC, already in co-decision procedure provides for the adoption of measures necessary for establishing the free circulation of workers. The most important legal instrument adopted on this basis is Regulation 1408/71. This regulation provides in essence for the co-ordination of national social security provisions in order to take account of cross-border elements. As national provisions evolve, the Community instrument should also evolve in order to maintain the beneficial effects for the free movement of workers. The numerous adaptations of regulation 1408/71 have not always achieved the desired objective because of the unanimity requirement in Article 42. Moreover this instrument needs to be simplified and modernised. The need for a general overhaul of the legislation was recognised as early as 1992 when the Edinburgh Council appealed for simplification of co-ordination rules. In its 1997 Communication: "An Action Plan for Free Movement of Workers"<sup>10</sup>, the Commission also recognised that modernisation and simplification of the rules on the co-ordination of social security schemes were essential to make them "more efficient and user-friendly". To this end the Commission adopted on 21 December 1998 a proposal for a

---

<sup>8</sup> Directive 77/388 of 17 May 1977, OJ No. L 145/1.

<sup>9</sup> COM (98) 295, OJ C 150, 28.5.1999, 184.

<sup>10</sup> COM (97) 586 final.

new simplified co-ordination Regulation<sup>11</sup>. The adoption by unanimity requirement in Article 42 makes negotiations on this proposal in the Council very difficult.

The Commission therefore proposes that Community co-ordination in order to facilitate the free movement of workers should in the future be adopted by qualified majority<sup>12</sup>.

**In addition, the Commission considers it necessary to widen the scope to beneficiaries over and above workers.** The legal instruments adopted on the basis of Article 42 (Regulation 1408/71, Regulation 574/72 and Directive 98/49) have Article 308 as a second legal basis. This basis has been added in particular to allow the extension of Regulation 1408/71 to self-employed persons (by Regulation 1390/81). There is indeed no specific legal basis for the social security co-ordination for persons other than workers. Later Article 308 also allowed the extension to students ( by Regulation 307/1999). In the absence of an extension of the personal scope of Article 42 application of qualified majority voting would remain theoretical. The adoption of social security provisions for persons other than workers in the single Community instrument would still require recourse to Article 308 and therefore unanimity.

Therefore this Article should be redrafted to cover not only migrant workers but all persons who exercise the right to move and reside freely within the union<sup>13</sup>.

Finally the possibility should be given to the Council to extend wholly or partly the instruments adopted under the redrafted Article, to non-EC-nationals legally residing within the territory of a Member State. This is in line with the conclusions of the European Council of Tampere which called for the adoption of a general statute for third country nationals legally residing in the Member States. The Tampere Council also stressed that such rules should be aligned to the greatest possible extent to the rules applying to citizens of the Union.

The attainment of these objective is hampered by the absence of a clearly specified legal base. Article 63 EC cannot be applied in this context as the provision only concerns the admission and residence of third country nationals. The Commission considers therefore that the best way forward would be the extension of article 42 as the appropriate legal bases for adopting rules that mirror, to the extent necessary, the rules adopted for citizens of the Union<sup>14</sup>.

## **b. Prevention of distortion of competition**

Article 137 (3) first indent constitutes the legal basis for adopting measures in the area of social security. Measures based on Article 137 must be confined to minimum requirements for gradual implementation and can not permit fully-fledged

---

<sup>11</sup> COM (1998) 779 final.

<sup>12</sup> See also the explicit reference to Regulation 1408/71 in Communication of 26.1.2000 COM (2000) 34 under point 10. (iii).

<sup>13</sup> See footnote \*\* of Annex 2 of the Communication of 26.1.2000.

<sup>14</sup> The current Treaty already provides for such extension mechanism by qualified majority concerning service providers who are third country nationals and who are established in the Community. (“The Council may, acting by a qualified proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and are established within the Community”).

harmonisation. The Commission considers it necessary that such minimum standards should be adopted by qualified majority voting to allow for the effective exercise of the right to free movement or to prevent distortions of competition. .

Extending qualified majority voting to social security and the social protection of workers in this way is wholly in line with meeting the objectives set out in Article 136. The Commission recalls that in its Opinion of 26 January 2000, it proposed to apply qualified majority voting as a general rule for decision-making under the EC Treaty. As a consequence of that approach, decisions under Article 137 (3), 2<sup>nd</sup> to 5<sup>th</sup> indent, should be subject to qualified majority voting because such decisions do not comply with the criteria that according to the Commission in its opinion of 26 January 2000 would justify maintenance of unanimity. The remaining issue was Article 137, (3), 1<sup>st</sup> indent. Social security and social protection are intimately and inextricably linked to most of the objectives in the area of social policy (eg. improved living conditions, proper social protection, the development of human resources, and combating exclusion) and there is thus a strong case for extending to this field the decision making mechanism already used to guarantee improving standards in other fields with a bearing on competitiveness and the Single Market such as health and safety, working conditions, integration of persons excluded from the labour market, and aspects of equality between men and women. Community intervention in the field of social security and social protection would, of course, be limited by the imperatives to respect national practice and maintain competitiveness contained in Article 136, and the clear limits that Article 137(2) places on the nature and effects of any measure to be adopted.

## **6. Conclusion**

In conclusion, the Commission proposes to the Conference that qualified majority voting should be introduced for

- adoption of coordinating provisions intended to remove a direct obstacle to the exercise of the four freedoms, and in particular to prevent discrimination and double taxation.
- measures which modernise and simplify existing Community rules in the indirect tax area in order to eliminate distortions of competition
- measures which ensure a uniform application of existing indirect taxation rules and guarantee the simple and transparent application of such rules
- taxation measures which have as their principal objective the protection of the environment and have a direct and significant effect on the environment
- adoption of provisions directly governing the levying of tax and aimed at preventing fraud, evasion or tax avoidance in order to eliminate cases of double non-taxation in cross-border situations and to prevent circumvention of existing provisions, particularly in the VAT field
- measures of co-ordination of social security schemes in order to facilitate the free movement of persons

- measures providing for minimum requirements which are necessary to allow for the effective exercise of the free movement of persons or to prevent distortions of competition through artificial lowering of social protections standards.

In addition the Commission proposes with a view to consolidating the Treaty and providing for more readily understandable provisions

- To widen the scope of beneficiaries of Article 42 EC over and above workers to include all persons exercising a right of free circulation and to allow the Council to extend wholly or partly the existing instruments to non-EC-nationals.
- To include in the tax chapter measures on mutual assistance and co-operation between tax authorities which would currently be concluded on the basis of a provision in another chapter of the Treaty.

## Annex

### Current text of EC Treaty

#### ARTICLE 93

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 14.

### Draft amendment

#### ARTICLE 93

1. The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions [...] **concerning the laws and regulations of Member States on [...] direct and [...] indirect taxation** to the extent that such **provisions are** necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 14.

2. **By way of derogation from Paragraph 1 the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt:**

- **measures for the coordination of provisions laid down by law, regulation or administrative action in Member States in order to remove direct obstacles to the free movement of goods, persons, services or capital arising from tax provisions and in particular to prevent discrimination and double taxation;**
- **measures for the coordination of provisions laid down by law, regulation or administrative action in Member States concerning direct taxation in order to prevent fraud, evasion or tax avoidance ;**
- **measures concerning value added tax, excise duties and capital duty which modernise or simplify existing Community rules or ensure a uniform application or ensure the simple and transparent application of such rules, other than those which fix the rates of tax or bring about a general change in the system of taxation ;**
- **measures concerning indirect taxation in order to prevent fraud, evasion or tax avoidance and to prevent circumvention of existing provisions**
- **taxation measures which have as their principal objective the pursuit of the**

**environmental objectives of the Treaty such as laid down in particular in Article 174, and have a direct and significant effect on the environment.**<sup>15</sup>

**3. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt provisions necessary for mutual assistance, co-operation and exchange of information between tax authorities within the Community with a view in particular to combating fraud, evasion or avoidance.**

ARTICLE 42

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

ARTICLE 42

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for **persons** ; to this end it shall notably make arrangements to

---

<sup>15</sup> Article 175 (2) should be deleted, because the remaining issues would fall under the general rule of qualified majority as the commission explained in its Communication of 26 January 2000.

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

The Council shall act unanimously throughout the procedure referred to in Article 251.

#### ARTICLE 137

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
  - improvement in particular of the working environment to protect workers' health and safety;
  - working conditions;
  - the information and consultation of workers;
  - the integration of persons excluded from the labour market, without prejudice to Article 150;
  - equality between men and women with regard to labour market opportunities and treatment at work.

secure for migrant persons and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

[deletion]

**The Council may, acting in accordance with the same procedure, extend wholly or partly the benefit of this system to nationals of a third country, who are legally resident within the territory of a Member State.**

#### ARTICLE 137<sup>16</sup>

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
    - improvement in particular of the working environment to protect workers' health and safety;
    - working conditions;
    - the information and consultation of workers;
    - the integration of persons excluded from the labour market, without prejudice to Article 150;
    - equality between men and women with regard to labour market opportunities and treatment at work.
- 
- **social security and social protection of workers;**
  - **protection of workers where their employment contract is terminated;**
  - **representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;**
  - **conditions of employment for third country nationals legally residing in Community territory;**
  - **financial contributions for promotion of employment and job creation,**

---

<sup>16</sup> The proposed draft also includes the elements contained in the Commission's opinion of 26 January 2000.

2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:

- social security and social protection of workers;
- protection of workers where their employment contract is terminated;
- representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- conditions of employment for third country nationals legally residing in Community territory;
  
- financial contributions for promotion of employment and job creation, without prejudice to the provisions relating to the Social Fund.

4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced

**without prejudice to the provisions relating to the Social Fund.**

2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

[ deletion ]

3..A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2.

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



the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

6. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lockouts.

transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

4 . The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lockouts.