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# WHITE PAPER ON

# DENMARK AND THE

# MAASTRICHT TREATY

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**SUMMARY**



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# CHAPTER I

## THE EUROPEAN COMMUNITIES

- An historical introduction -

European co-operation as we know it today began at the end of the 1940s. It has been developing for a good 45 years. It had two overriding aims.

The one was political. It was to establish close co-operation as a means of preventing another war between West European nations. That aim has since then been a cornerstone of French-German co-operation: co-operation which is remarkable for uniting two former rivals in a form of European integration based on "an ever closer union among the peoples of Europe".

The second aim was to ensure economic progress, prosperity and welfare. The background to this was the destruction caused by the Second World War, which in combination with the economic depression of the thirties had lowered the standard of living considerably. The fear of an economic paralysis of Western Europe as a consequence of an inward-looking protectionist policy in the individual countries formed the background to the aim of "ensuring economic and social progress by eliminating the barriers which divide Europe". The same goes for the aim of "improving the living and working conditions of their peoples".

The first step towards co-operation on defence was taken as early as 1948, with the creation of the Western European Union (WEU) comprising the United Kingdom, France, the Netherlands, Belgium and Luxembourg. With the formation of NATO in 1949 the WEU led something of a shadow existence apart from a brief period in the mid-1950s. The admission of Germany and Italy to the WEU was one of the preconditions for Germany's membership of NATO.

In the economic sphere the Coal and Steel Community (Paris Treaty of 1951) comprising Germany, France, Italy, the Netherlands, Belgium and Luxembourg laid the foundation stone for the form of European integration that has developed around the European Communities with the Maastricht Treaty (Treaty on European Union) as the latest link. As its name indicates, the Coal and Steel Community was designed to establish co-operation among the aforesaid six nations in the coal and steel sector. It was no coincidence that those two commodities were chosen: politically, coal and steel were the strategic, key commodities which determined whether a country was able to start rearming. By making these two

commodities the subject of compulsory co-operation between six countries it became impossible in practice for one of those countries to start rearming by itself. For it was the fear of German rearmament that lay behind this objective. In the economic sense the production of coal and steel was vital to future economic growth. The hope was that co-operation on these two economically crucial commodities would create higher economic growth in the Western European area.

The peace settlement after the First World War had precisely shown that to impose a kind of diktat on the defeated countries entailed considerable risks of an unstable economic and political development. The lesson drawn from this was that relations between the European countries after the Second World War must be based on agreements and mutual understanding.

There was thus a clear recognition by the political leaders in Europe at that time that stable European co-operation must be built on the premise that by virtue of its size and economic strength, Germany would be Europe's economic heavyweight. Any form of European co-operation which did not take that fact into account would inevitably suffer from a lack of stability and balance. It would carry the germ of economic conflict between Germany and its neighbours, which it was to be feared would grow in time into a political and possibly also a military conflict.

The key to turning these experiences to account for European co-operation lay in introducing the concept of supranationality into that co-operation. This meant placing part of the participating countries' powers of self-determination in the coal and steel sector in the hands of an international organization. That organization was independent of the national authorities. It had the power to take decisions which directly affected citizens and businesses in the member countries. No distinction was made between small and large member countries. All gave up their powers of self-determination in the same way, according to the same rules and to the same degree. This was in fact nothing new for the small member countries, which were used to arranging their policies according to decisions taken in the large European countries, but for the large countries it was a new thing to have to align oneself on and take account of other countries.

The next step in the European integration process was the proposal on the so-called European army (The European Defence Community). The Treaty on this subject was entered into and signed in 1952 by the same six countries which had joined the European Coal and Steel Community. The Treaty was not approved by France.

On 25 March 1957 the six original members of the Coal and Steel Community signed the Treaties on the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) in Rome. The most important is the EEC Treaty, known as the Treaty of Rome. It was a development and extension of the Coal and Steel

Community. The fundamental principles of that Treaty were extended to the bulk of the economic and commercial activities of the member countries. The Treaty of Rome, like the Treaty of Paris, is based on the principle of supranationality. The member countries place part of their powers of self-determination in the hands of an international organization. The institutions of that organization take decisions in the sectors concerned. Those decisions can directly affect citizens and businesses.

The member countries pool their rights to take decisions in a number of specified areas in order to exercise their right of decision, not in isolation and alone, but jointly. It is clear from this that the supranational principle in the economic sphere serves to guard against a policy on the part of one or more countries which would have harmful effects on the other participating members. For such a policy can be carried out only if the State concerned has the right to take decisions alone and independently of international obligations. Where decisions are taken jointly it is in the nature of things that measures which shift economic and commercial burdens on to other countries cannot be taken by a single country.

The precondition for effective implementation of the principle of supranationality in practice was a set of fixed and familiar rules on the decision-making procedure. The Treaty of Rome therefore lays down who has the right to submit proposals, who must be consulted before decisions are taken, how decisions are taken, to whom they apply, and who is to rule on cases of doubt as to the interpretation of decisions that have been adopted. The Treaty of Rome is therefore based on the same principles as a national community founded on the rule of law. There is internationally binding co-operation, where the decisions taken are legally binding on the member countries and in certain cases on citizens and businesses in the member countries. The decisions are subject to supervision by a court (the EC Court of Justice).

The Treaty of Rome contains the fundamental principle that there must be no discrimination in economic and commercial terms on the basis of nationality. This constitutes a practical application of the higher principle of avoiding economic and commercial decisions damaging to other participating countries.

On 1 January 1973 the United Kingdom, Denmark and Ireland jointed the EC.

On 1 January 1981 Greece jointed the co-operation process.

On 1 January 1986 Spain and Portugal joined the co-operation process.

The Spanish and Portuguese accession took place after the EC had completed negotiations on the European Single Act in late 1985/early 1986. That Treaty constituted an extension of the Treaty of Rome, focusing on three points:

First, the enshrining in the Treaty of the objective of the internal market combined with the change from unanimous to qualified majority voting on the central Treaty provision on harmonization of legislation concerning the establishment and functioning of the internal market.

Secondly, the inclusion in the Treaty of general provisions concerning a number of areas of co-operation in which legal acts had previously been based on other articles, in particular Article 235. Provisions were thus inserted on economic and social cohesion (reducing inequalities, notably economic, between the regions of the Community), research and technology, environmental protection and protection of the working environment.

Thirdly, the translation into Treaty form of co-operation on foreign policy, which up until then had been based on a series of reports. The introduction to the Treaty provisions on foreign policy states that the members of the European Communities shall endeavour jointly to formulate and implement a European foreign policy. It also states that such a European foreign policy may also encompass political and economic aspects of security policy. This section of the Single European Act also refers to both the WEU and NATO.

No crucial changes to the structure and respective powers of the institutions were introduced. To give the European Parliament a better opportunity to present its views and influence the way proposals were dealt with in the EC, a co-operation procedure was introduced. The main feature of this was the European Parliament's right to express its views twice, before the Council adopted a final decision.

EC co-operation has a dynamic structure. On the one hand the Treaties are designed as framework treaties, in which the concrete elaboration of future responses to future problems takes place in the institutions on the basis of the objectives and principles laid down in the Treaties. On the other hand, the Treaty basis is changed where there is good reason for this. Apart from the changes already mentioned it might be worth noting that the Treaty rules on the EC's budget have been amended on a number of occasions, most recently in 1977, direct elections to the European Parliament were introduced in 1979, and Greenland's status was changed in 1985 from that of full member to that of overseas country or territory (OCT).

## CHAPTER II

## THE EUROPEAN UNION

- An examination of the Maastricht Treaty

The Maastricht Treaty continues the process of European integration which began in the late 1940s. It nevertheless in many respects embodies new ideas compared with the earlier Treaties. For the first time, the EC Member States have prepared a Treaty which covers all their areas of co-operation.

The amendments to the Treaty of Rome and the section on Economic and Monetary Union are based on the same principle as the Treaty of Rome (the principle of supranationality).

In contrast, the Titles of the Maastricht Treaty on a common foreign and security policy and on justice and home affairs are intergovernmental in nature. This means that the principle of supranationality does not apply to them. What is more, decisions in these areas will not be taken under the Treaty of Rome's decision-making procedures. However, as far as the Title on justice and home affairs is concerned, provision is made for transferring areas of co-operation from intergovernmental co-operation to co-operation governed by the principles of the Treaty of Rome. Unanimity in the Council is necessary for such a transfer, which must then be endorsed where appropriate, by Member States in accordance with their respective constitutional requirements, which in Denmark's case means in accordance with the Constitutional Act.

Another innovation is that the Maastricht Treaty contains only a limited number of provisions which take effect for the Member States immediately it has entered into force. The Treaty can be regarded as being based on three elements.

Firstly, there are a number of principles contained in the new Treaty which were either absent from or only partially present in the Treaty of Rome.

Secondly, there are decisions which come into force immediately.

Thirdly, there are general decisions which come into force at a later point in time, as a rule after they have been adopted unanimously.

1. PRINCIPLES

In what follows, a principle means a legal precept which is part of Community law and is applied by the Court of Justice. Such legal precepts must be respected by the institutions which promulgate legislation. Otherwise the Court of Justice will be able to declare the legislation null and void.

Community law is governed by the general principle that the institutions can act only within the limits laid down by the Treaty. If institutions exceed those limits, it is the duty of the Court of Justice to declare the adopted acts null and void. This can only happen if the question of the validity of the acts is actually put to the Court in a specific legal case.

Set out below is a short examination of the main principles in the Maastricht Treaty which are either new or have been strengthened.

**Principle of subsidiarity (principle of "closeness")**

The principle of subsidiarity or "closeness" is expressed most clearly in the section of the Maastricht Treaty which amends the Treaty of Rome. The wording is as follows:

> "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of scale or effects of the proposed action, be better achieved by the Community."
>
> "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

This principle applies to the whole Treaty, since at the end of Article B, which applies to the Maastricht Treaty in its entirety, it is stated that:

> "The objectives of the Union shall be achieved as provided in this Treaty ..... while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community."

The term "principle of closeness" is derived from the first Article of the Treaty, which offers the following as a pointer for long-term trends in the development of co-operation:

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

Like the other principles, the principle of "closeness" will need to be developed in practice. It is, however, possible to picture what the new principle will mean, including what it is likely to mean for the individual institutions and for undertakings and citizens in the Community.

The principle of "closeness" restricts the field of action of the Community institutions. It is clear from the text that Community action must be subsidiary to action at national (or regional) level. Community rules can be made only where national (or regional) solutions are inadequate.

The principle of "closeness" imposes a new duty on all the institutions, especially those involved in the legislative process. This means that those institutions and every member of them (Ministers, Members of the Commission, Members of the Parliament, Members of the Committee of the Regions and Members of the Economic and Social Committee) will in all cases be duty bound to consider whether there is a need for a Community act to achieve the desired goal.

It will need to be assessed whether a Community provision is "better" than a national regulation for a given purpose. It is in fact a matter of extending the principle which was introduced with the Single Act of 1986 for environmental matters (Article 130r(4) of the EEC Treaty) so that it will apply generally to all the areas of the Treaty. At the same time as the principle of "closeness" is extended to cover the whole field of application of the Treaty, it is also deepened and hence its importance is increased. There are two points where the principle has been expressed more clearly than in the previous formulation.

The Community is to promulgate acts only where the aim of the action in question "cannot be sufficiently" achieved at national level, and can therefore be "better" achieved at Community level. The text does not employ wider ranging expressions such as the aim "cannot be achieved" or "cannot be fully achieved" at national level. This clarifies the principle of "closeness": regulation at national (or regional) level is "good enough", even if the aim is not fully or completely achieved in this way.

The other point is contained in the formula whereby the Community can act "only if and insofar as" the aim cannot be sufficiently achieved by national measures. This means that it is not enough to assess whether a "better" solution can be found at Community level for the area or subject in question. It must also be

assessed whether, pursuant to the principle of "closeness", the Community act in question is justified in its scope and degree of detail. Thus, the addition of "insofar as" has made the principle of "closeness" more precise by showing that detail too needs to be weighed up (a sort of check on proportionality).

In the first instance it is the institutions involved in the production of legislation which must observe the principle of "closeness". It is the Commission which makes proposals for Community legislation. Hence, in the first instance it is for the Commission to assess whether a Community act is "better" and whether it is better to the required extent ("insofar as"). It is then up to the Council, as the institution which actually takes the decision, to assess whether a Community act is "better" and whether it is better to the required extent. If the validity of the assessment made is challenged, the institutions must be prepared to defend their chosen course of action before the Court of Justice, should a case be brought by a Member State, an undertaking or a citizen.

The Court of Justice can come into play only as the last authority. In accordance with the Court's general role in matters of co-operation, it will chiefly be that institution which will rule on whether the other institutions in preparing legislation have made over-wide assessments of what can "better" be regulated at Community level.

The principle of "closeness" is valid in all areas except those within the exclusive competence of the Community (where only the Community is empowered to act). For example, the principle is not valid in areas where only the Community can conclude agreements with non-Community countries (typically commercial policy matters). Neither can the principle be applied to questions which concern the Community itself, for example the EC budget.

On the other hand, the principle does apply in all areas where it makes sense to decide whether national regulation is better and where implementation is to be achieved through national rules. The principle will thus be applied in the vast majority of areas: agriculture, fisheries, economic policy, industrial policy, industrial relations, environmental policy, education and training, health and culture, research and development, etc. The principle will also hold good for co-operation in the fields of foreign and security policy and justice and home affairs.

The principle of "closeness" also has a role to play in co-operation in industrial relations since a Member State may choose to entrust management and labour with the implementation of EC Directives at national level.

Precisely because the institutions may act only within the limits set by the Treaty, they are duty bound to give reasons for their actions, and this also applies to their application of the principle of "closeness".

The responsibility for the assessment lies with the Community institutions producing the legislation. The question of the correct application of the principle can be raised in any forum appropriate to the matter in hand: the Commission, the Council, the Parliament, the Economic and Social Committee or the Committee of the Regions. If a particular matter leads to a case before the Court of Justice, the Member States, among others, are entitled to make submissions.

**Principle of the rule of law**

The principle of the rule of law is expressed in the EEC Treaty in the clause "Each institution shall act within the limits of the powers conferred upon it by this Treaty". This clause is retained in the Maastricht Treaty.

The principle of the rule of law is repeated in the first paragraph of the provision on the principle of "closeness". There are two innovations. Firstly, it is the Community as a whole and not just its institutions which must respect this principle. Secondly, the Community must keep to the powers conferred upon it by the Treaty and to the objectives assigned to it therein. The innovations are useful in defining the principle more closely.

The principle of the rule of law has two aspects. The first is that the institutions may only take decisions where there is a definite legal basis for them in the Treaty. The second is that they may not take decisions which are at variance with the Treaty.

The first aspect of the principle of the rule of law means that the Community's powers are limited. It is able to take legally binding decisions only where there is a Treaty provision allowing it to do so.

The second aspect of the principle means that legislation may not be at variance with the Treaty - including the material and formal limits which are laid down in particular chapters - or with the general principles of law laid down in the Treaty or developed in the case law of the Court of Justice.

**Principle of proportionality**

The principle of proportionality is a legal principle which the Court of Justice has interpreted in terms of Community law. In the Maastricht Treaty this principle is enshrined in the last paragraph of the provision dealing with the principle of "closeness": "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

The principle has two aspects. The first is that the least intrusive of the available solutions must be chosen, for example a Directive is to be preferred to a Regulation. The second is that there must be a reasonable proportion between aims and means, which is to be taken as meaning that the obligations arising for citizens out of a legislative act must not exceed what is strictly necessary for achieving the act's objectives.

**Principle of consideration for the environment**

The Single European Act introduced a separate Title on the environment into the EEC Treaty. Pursuant to the introductory provision of that Title, action by the Community relating to the environment has the following objectives "to preserve, protect and improve the quality of the environment; to contribute towards protecting human health; and to ensure a prudent and rational utilization of natural resources."

Under the Single Act, the three basic provisions for Community action in environmental matters cover the principle of preventive action, the principle that environmental damage should as a priority be rectified at source, and the principle that the polluter should pay.

The Maastricht Treaty reinforces the earlier Title on the environment (see below), and also introduces the general principle of consideration for the environment with the same legal weight as the other principles.

The principle of consideration for the environment finds its first concrete expression in the Articles laying down objectives in the amendments to the Treaty of Rome, where it is one of the considerations which are to apply generally to all co-operation in the Community. Furthermore, the passage on the environment includes an unconditional rule that environmental protection requirements must play an integral part in the formulation and implementation of Community policies in areas other than environmental protection. This means that when Community institutions discuss proposed legislation they must decide whether it will have environmental consequences and, if so, they must take these consequences into account when adopting the legislation. Thus, the rules in the Single Act are reinforced by the fact that environmental protection requirements are now an important part of Community policy in other areas.

**Principle of cohesion**

The Single Act introduced a title on economic and social cohesion into the EEC Treaty. The aim was to reduce "disparities between the various regions and the backwardness of the least-favoured regions". This was to be achieved by rationalizing the existing structural funds and increasing their efficiency.

The Maastricht Treaty strengthens the previous title on cohesion. It also introduces a general principle of cohesion or solidarity on a par with the other principles. This is achieved by stating in the provisions laying down objectives in the amendments to the Treaty of Rome that a harmonious and balanced development of economic activities throughout the Community and economic and social cohesion and solidarity among Member States are among the considerations which apply to all co-operation in the Community.

**Principle of respect for fundamental rights**

"Fundamental rights" is a generic term for the basic rights of citizens in the Member States which arise from Member States' Constitutions, the European Convention on Human Rights and similar conventions.

In its case law, the Court of Justice has established that fundamental rights are a part of Community law. When, therefore, the Court of Justice has to assess whether a specific Community act contravenes Community law, it must consider whether the act is prejudicial to rights laid down, for example, in the European Convention on Human Rights or in the constitutions of the Member States. Should that be the case, the Court of Justice will declare the act in question null and void.

This principle established by the Court of Justice is now incorporated in the Maastricht Treaty by means of the clause which reads: "The union shall respect fundamental rights, as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law."

There is also the general affirmation that "The Union shall respect the national identities of its Member States (and their) systems of government".

## 2. RULES WHICH TAKE EFFECT IMMEDIATELY THE TREATY HAS ENTERED INTO FORCE

The new provisions taking effect immediately the Treaty has entered into force fall into three main groups:

### 2.1. EXISTING AREAS OF CO-OPERATION (1st PILLAR)

In a number of areas of co-operation already expressly mentioned in the Treaty the text has been reinforced and/or elaborated on. One example of this is the increased opportunity for taking decisions by a qualified majority instead of unanimously.

(1) During the Maastricht Treaty negotiations Denmark took a particular interest in the Title on environmental policy (see the Danish Parliament's resolutions of 29 May 1991 and 5 December 1991).

Environmental concerns are now covered by Article 2 of the Treaty where there is reference to sustainable and non-inflationary growth respecting the environment. The Community's environmental policy will aim at a high level of environmental protection taking into account the diversity of situations in the various regions of the Community. It will 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. Environmental protection requirements must be integrated into the definition and implementation of Community activities in other areas. It is also stated that any measure taken in response to these requirements must include, where appropriate, a safeguard clause. This will allow Member States to take provisional measures, for non-economic environmental reasons, subject to an inspection procedure at Community level.

As regards the adoption of the legislation in question, qualified majority voting is introduced as the general rule. There are three exceptions to this, where unanimity is required. Firstly, provisions primarily of a fiscal nature; secondly, measures significantly concerning town and country planning, land use (except for waste management and measures of a general nature), and management of water resources; thirdly, measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply. In the case of these exceptions, the Council may unanimously define those matters on which decisions are to be taken by a qualified majority.

The improved opportunities for a more effective environmental policy at Community level are seen in:

- the international dimension ("promoting measures at international level to deal with regional or worldwide environmental problems"), which appears as an objective of Community environmental policy along with the three objectives mentioned above;

- the establishment of guidelines for Community environmental policy: the principle of a high level of environmental protection, the taking into account of regional differences, and the precautionary principle. The last of these can be paraphrased as meaning that the environment should be given the benefit of any reasonable doubt;

- the fact that harmonization measures taken in response to environmental protection requirements must include, where appropriate, a safeguard clause allowing Member States provisionally to take more far-reaching national measures concerning the environment; and

- the fact that the general rule of unanimity and consultation of the European Parliament is replaced by qualified majority voting and the co-operation procedure with the European Parliament. In the case of the specific exceptions to this rule, the Council is able to decide at a later date that decisions shall be taken by a qualified majority.

(2) The Community has always had provisions, based on the Treaty of Rome, which guarantee social security for workers from one Member State working in another. Corresponding rules were introduced in 1981 for the self-employed. These

rules ensure that the rules in the Treaty regarding the free movement of workers and the right of establishment are not set at naught, for example by one Member State making it impossible for a worker from another Member State to draw such sickness benefits as are otherwise available to its own citizens.

Beyond these co-ordinating rules, which are aimed at preventing migrant workers and self-employed persons from falling between the various national social security schemes, the Treaty of Rome also enables legislation to be enacted on protection of the working environment and equal pay.

However, the existing Treaty does not make provision for the Community to legislate in the area which is normally understood as that of social policy, viz. old-age pensions and other types of pension, exceptional cash payments and other forms of grant, day-care, home-helps, etc.

Under the present Treaty it is not possible to take decisions on uniform social benefits in the Member States, nor is it possible to lower a particular Member State's standards in the field of social policy. The Maastricht Treaty does nothing to change this.

Under the Treaty of Rome rules have been implemented which give nationals of one Member State the right to take up residence in another Member State, even if they do not intend to be gainfully employed there. This right of residence is subject to certain conditions. One of these is that the persons concerned must have means of subsistence, so that their residence in another Member State is not a burden on that State's social services. The Maastricht Treaty does not contain any provisions which infringe or alter these existing rules. Where a national of one Member State who is entitled to social benefits takes up residence in another Member State, the benefits are financed by the country of origin and not by the country of residence.

The Community's social dimension is not concerned with social policy - as the choice of words might lead one to think. Rather it is concerned with the extension and reinforcement of a series of measures which are aimed at improving conditions on the labour market and at related matters.

The Maastricht Treaty does not change the situation described above, but does contain the new principle of laying down minimum rules which are adopted by the Council by a qualified majority. The areas involved are:

- improvement in particular of the working environment to protect workers' health and safety;

- working conditions;

- the information and consultation of workers;

- equality between men and women with regard to labour market opportunities and treatment at work;

- the integration of persons excluded from the labour market.

In several other areas the unanimity rule is maintained. These are:

- 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;

- 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.

It is expressly stated in the Treaty provision in question on the social dimension that it does not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

It is also stated - in application of the principle of "closeness" - that a Member State may entrust management and labour with the implementation of Directives adopted by the Community in the areas in question. However, the Member State is responsible for ensuring that the legal position is fully in accordance with the Directive.

The dialogue between management and labour is also a new element introduced by the Maastricht Treaty. The principle involved here is that the Community should not enact legislation in areas where management and labour themselves are better able to negotiate agreements at Community level.

The United Kingdom did not wish to be involved in the strengthening of co-operation in the social sphere. This problem was resolved in the Maastricht Treaty by means of a special Protocol between all twelve Member States authorizing the Eleven (all except the United Kingdom) to use the Community's institutions for implementing the new co-operation ideas. The United Kingdom has therefore accepted that the other Member States may use the Community's

decision-making rules and institutions without United Kingdom participation in the relevant areas. In return, the other eleven Member States have accepted that acts adopted under these new rules will not be applicable to the United Kingdom.

(3) The Treaty of Rome already included the aim of evening out the differences in living standards between the Community's most and least prosperous regions; in the original Community of Six this in practice only applied to Southern Italy.

After the enlargement of the Community to include Ireland (1973), Greece (1981), Spain (1986) and Portugal (1986) this principle became more important for Community cohesion. The fact that the original Community was based on the common agricultural policy and the customs union for industrial goods meant that no account was taken of the significant structural and partly poverty-related problems which exist in quite large areas of Southern Europe and Ireland, and indeed also in parts of the United Kingdom.

Such considerations led in the 1970s to the creation of a Regional Fund to supplement the existing Social Fund. As part of the Community's financial reform of 1988 it was decided that by 1994 there should be a doubling of Community financial assistance to even out the economic differences between the various areas of the Community. The bulk of this assistance would be provided in the framework of the Social and Regional Funds. Together with the Single European Act of 1986, the financial reform of 1988 meant that a new element was added to the Community's objectives and this became known as economic and social cohesion.

In this area the Maastricht Treaty represents a development of the activities described above, with only a few actual innovations. The development involves a survey of the tasks, objectives and organization of the existing Funds. A decision has been taken to set up a cohesion fund by the end of 1993. This will aim to support environmental protection projects and projects in the area of transport infrastructure (trans-European networks). The idea of trans-European networks is to link the Member States together as regards transport, telecommunications and energy.

(4) In addition, there are minor amendments to those parts of the Treaty of Rome dealing with competition and state aid, the common commercial policy and research and technology.

## 2.2. "NEW" AREAS OF CO-OPERATION (1st PILLAR)

In a number of areas of co-operation which previously were not expressly mentioned in the Treaty, provisions have been introduced which are new in comparison with the original Treaty of Rome. The Community had already

enacted legislation in most of these areas of co-operation even though they were not covered by their own separate Titles in the Treaty. This is also true of the new provisions on citizenship of the Union, which are discussed below.

Behind the incorporation of these new Titles is the desire to define what the Community is entitled to do and to specifically delimit the frameworks for Community action. It is largely the principle of "closeness" and its implementation in practice which have made it both desirable and necessary to include specific new Titles in the Treaty. The principle of "closeness" has found particular expression in the various "new" areas of co-operation.

(1) Education and training are included in the Maastricht Treaty. The aim is not to achieve uniformity (harmonization). On the contrary, there is a reference to respect for the cultural and linguistic diversity of the Member States. The principle of "closeness" is clearly exemplified in the text in question. The Community is not going to take over responsibility for this area, but instead is to support and supplement the efforts of the Member States, inter alia by promoting co-operation between educational establishments and encouraging mobility of students and teachers. It is emphasized that Community action must fully respect the responsibility of the Member States for the content of teaching and the organization of education systems.

(2) The Title on culture follows much the same line as that on education. The Community is to support Member States' activities. Community action must respect regional and national diversity.

(3) The aim of the Title on health is that the Community should contribute towards ensuring a high level of human health protection by encouraging co-operation between the Member States and, if necessary, lending support to their action.

(4) Consumer protection likewise gains its own Title in the new Treaty where the aim is to place the Community in a better position to contribute towards a high level of quality in consumer affairs.

(5) Ever since the Treaty of Rome was signed, the Community has endeavoured to construct an approach towards the developing countries. This has resulted, among other things, in what are known as the Lomé Conventions with various African, Caribbean and Pacific countries. Those Conventions included various kinds of development aid and gave the countries concerned advantages when selling their products in Community countries. The Maastricht Treaty has introduced a specific Title on development co-operation. That Title will form the legal basis for a Community development policy to supplement Member States' development policies. It is expressly stated in the provision setting out the objectives that the aims include the sustainable economic and social development of the developing countries and a campaign against poverty. It is also stipulated that the

Community is to contribute towards developing and consolidating democracy and towards respect for human rights.

(6) There are also new Titles on industrial policy and trans-European networks.

(7) The only one of the new areas which can be considered a real innovation, in the sense that the Community was not previously involved in the area, is that of visa policy. Under the Maastricht Treaty the Council is given the task of selecting those non-member countries whose nationals will require visas when entering the Community. Unanimity is required for such decisions until 1 January 1996. After that date, decisions will be taken by a qualified majority.

## 2.3. INSTITUTIONS

The Maastricht Treaty maintains the institutional structure which was established in the Treaty of Rome and upheld by the Single European Act. The decision-making procedure for matters covered by the existing Treaty has not undergone any fundamental changes. However, in a number of areas there are adjustments and innovations within the given framework.

(1) With the 1986 Single European Act, a co-operation procedure was introduced which mainly came to be applied to the subject area of the internal market, where at the same time the possibility of qualified majority decision-making in the Council was introduced. The essence of this procedure is a two-stage consultation of the Parliament as opposed to the original one-stage procedure. If the Parliament expressly rejects the proposal which has been put to it, the Council's decision must be unanimous. The Maastricht Treaty extends this co-operation procedure to cover transport policy, state aid, implementing provisions for the Social and Regional Funds, development aid policy and most legislation in the field of environmental protection.

(2) The Maastricht Treaty introduces a procedure for joint decision-making between the Council and the Parliament (co-decision). With this new procedure the Parliament, by adopting a position in plenary session, can block the adoption of a proposal even if the Council has agreed to it. During the Parliamentary proceedings in question there must be at least 260 votes cast against the proposal out of a possible maximum of 518. The real aim of the procedure laid down for joint decision-making, which is a complicated one, is to give the Parliament a greater influence over the final form of legislation. The possibility of blocking the legislation is the last component in a longer procedure. Judging by experience with the co-operation procedure, it is unlikely that this possibility of blocking legislation will be used very often.

The joint decision-making procedure is to be applied to a number of areas in the Treaty, including the internal market, the right of establishment, and freedom of movement for workers. Most of the new areas of co-operation mentioned earlier are also subject to joint decision-making.

(3) Under the Treaty of Rome, only the Commission is empowered to submit proposals to the Council. This division of tasks was maintained in the Single European Act and is again confirmed in the Maastricht Treaty. However, the Maastricht Treaty gives the European Parliament a certain limited role in the submission of proposals to the Council by endowing it with the right to call upon the Commission to submit proposals.

(4) The European Parliament's supervisory powers over the Commission have been strengthened. The Parliament must be consulted before a new Commission President is appointed and the whole Commission must be approved by the Parliament. In addition, there are further opportunities for the European Parliament to set up special committees of inquiry.

(5) During the negotiation of the Maastricht Treaty the question of greater openness was raised by the Danes and others. As a result, it was agreed, among other things, that in 1993 at the latest the Commission would submit a report to the Council containing recommendations for improved public access to the information available to the institutions.

(6) A genuine innovation was the creation of a Ombudsman on the Danish model. The Ombudsman will only be able to deal with instances of alleged maladministration by the Community institutions.

(7) A Committee of the Regions is set up with a total of 189 members representing regional and local bodies. There will be nine Danish members. The Committee of the Regions is to be consulted by the Council or the Commission in a number of specified policy areas before decisions are taken. The Committee can also issue opinions on its own initiative.

(8) The Maastricht Treaty introduces the concept of citizenship of the Union. This gives nationals of Member States certain rights. The most important are the right to vote and the right to stand as a candidate at municipal elections and elections to the European Parliament.

The Council is to take a decision unanimously on the detailed arrangements for the right to vote and to stand as a candidate at municipal elections and the right to vote and to stand as a candidate in elections to the European Parliament. Denmark already has rules governing the right of aliens to vote and to stand as candidates at municipal elections.

The section of the Treaty dealing with citizenship of the Union contains no privileges with regard to right of residence or access to social security schemes over and above those contained in existing Community law.

With regard to the right to reside freely within the territory of the Member States, it is stated that this is subject to the limitations and conditions laid down in the Treaty and in the measures adopted to give it effect.

The new rules on citizenship of the Union do not confer any new social rights. Reference should be made to the earlier discussion of the social dimension.

## 3. RULES WHICH TAKE EFFECT AT A LATER DATE

The general decisions which take effect at a later date and which, as an overriding principle, require adoption by a unanimous vote of the Member States relate to the third stage of Economic and Monetary Union, the defence-policy aspect of the common foreign and security policy, and the concrete formulation of decisions in the area of justice and home affairs.

### 3.1. ECONOMIC AND MONETARY UNION

Economic and Monetary Union is to be achieved in three stages. The first stage is currently in progress. It will result in the establishment of the internal market, free movement of capital and participation by all the Member States in exchange rate co-operation. This stage will run until the end of 1993.

Once the Maastricht Treaty has entered into force the composition of the unit of account for European monetary co-operation (the ECU) will be frozen. The ECU is composed of fixed amounts of all the Member States' currencies. Hitherto, these amounts have been adjusted from time to time. After the Maastricht Treaty has entered into force this will no longer be possible.

The second stage begins on 1 January 1994. During that stage there are no specific obligations imposed on the Member States, but there are generally stated aims. For example, the Member States must try to avoid excessive government deficits.

At the beginning of the second stage of Economic and Monetary Union a European Monetary Institute (EMI) will be set up. The EMI will be the monetary co-operation organization for the second stage. The current Committee of Governors of the Central Banks will be dissolved when the second stage begins, as will the European Monetary Co-operation Fund (EMCF). The EMI will take over the tasks of the Committee of Governors of the Central Banks with regard to the European Monetary System (EMS) and at the same time will be assigned

certain new tasks in preparation for the third stage. The EMI will not enjoy any concrete powers over the Member States.

The provisions in the Maastricht Treaty regarding economic and monetary policy which are to be applied up to the beginning of the third stage do not involve any new areas of transfer of sovereignty within the meaning of § 20 of the Constitutional Act.

The third stage of Economic and Monetary Union is to be prepared by the end of 1996. At that time the Council is to assess the Member States' economic situation. The aim will be to determine which Member States are ready to enter the third stage of Economic and Monetary Union. In the assessment account will be taken of price stability, whether there are excessive government budget deficits and government debt, exchange-rate stability, and the evolution of interest rates in the Member States. At the time when the Maastricht Treaty was signed, Denmark, France and Luxembourg met the set targets.

The starting date for the third stage of Economic and Monetary Union will be set before the end of 1996 if a majority of the Member States have met the targets laid down and the Council takes the relevant decision. If this decision on the starting date has not been taken by the end of 1997, the third stage of Economic and Monetary Union will start on 1 January 1999 for those countries which have met the conditions.

Two Member States have reserved a special procedure for themselves, namely the United Kingdom and Denmark. In a separate Protocol the Danish Government, referring to the Constitutional Act, has stated clearly, with the agreement of the other Member States, that Denmark will have a free choice regarding its participation in the third stage. Hence, a decision to move into the third stage of Economic and Monetary Union will include Denmark only if the Danish Government has first informed the Council that Denmark agrees to take part in that stage.

Set out below is a brief description of the content of the third stage.

A European System of Central Banks will be set up. It will have independent status and will define monetary policy and daily exchange-rate policy.

The primary objective of the European System of Central Banks will be to maintain price stability. The overall framework for economic policy, including employment matters, will be determined in the Economic and Financial Affairs Council.

Rules have been laid down to prevent excessive government budget deficits from affecting the other Member States. The Council can take certain steps with regard to Member States which persistently have such excessive government deficits. These steps can involve requiring the Member States in question to publish additional information before issuing bonds and securities, inviting the European Investment Bank to reconsider its lending policy towards the Member States concerned, requiring a non-interest-bearing deposit to be made with the Community, and/or imposing fines of an appropriate size.

With effect from the third stage of Economic and Monetary Union those Member States participating in the third stage are to freeze their exchange rates with regard to the ECU and hence with regard to each other. The effect of this will be that the daily margin of fluctuation, which could amount to a maximum of plus or minus 2,25%, will disappear and devaluation/revaluation will no longer be used as part of the economic policy of the participating countries. At the same time a separate currency will be introduced for the participating countries. It will be called the ECU. It has not yet been decided when this step will be accompanied by a uniform currency in the participating countries, or whether those countries may continue to issue their own banknotes. Under the Treaty's rules, such a decision may be taken by the Council acting unanimously.

### 3.2. COMMON FOREIGN AND SECURITY POLICY

The twelve Community Member States provided a treaty basis for co-operation in the area of foreign and security policy in the Single European Act. Those earlier provisions (Article 30 of the Single Act) are repealed and replaced by the provisions on a common foreign and security policy in the Maastricht Treaty. The institutional and decision-making demarcation line vis-à-vis European Community co-operation is maintained. There is no application of the principle of supranationality. Co-operation on foreign and security policy is intergovernmental co-operation. The Council is used as a forum for decision-making. The principle of unanimity is maintained with the addition that the Council may decide unanimously which matters may be decided upon by majority voting.

The objectives of the common foreign and security policy are:

- to safeguard the common values, fundamental interests and independence of the Union;

- to strengthen the security of the Union and its Member States in all ways;

- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;

- to promote international co-operation;

- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

The common foreign and security policy, which will be formulated unanimously in the Council, can be expressed as "common positions" or "joint action". Common positions are familiar from the earlier European Politicial Co-operation context which was enshrined in the 1986 Single Act. If a common position on a foreign policy matter is adopted unanimously, Member States must ensure that their national policies are in line with it.

With "joint action" a new concept is introduced to indicate that the Community's foreign policy can also involve specific courses of action. Joint action is decided upon unanimously in the Council and is essentially more binding on the Member States than a common position. Joint action commits the Member States in the positions they adopt and in the conduct of their activity. When adopting joint action, or at a later stage, the Council may decide unanimously that there are matters within the framework of the joint action which in future may be decided upon by a qualified majority.

In the autumn of 1991 the Community Foreign Ministers suggested the following four areas as being appropriate for joint action: the CSCE process, the process of arms reduction in Europe, the non-proliferation of nuclear weapons, and the economic aspects of security, especially control of the transfer of military technology to third countries and arms exports.

The common foreign and security policy covers all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence. This means that defence-policy aspects may be involved in discussions on security policy.

The provision dealing with security which refers to the eventual framing of a common defence policy, which might in time lead to a common defence, represents a compromise reflecting the different positions adopted by the Member States during the Intergovernmental Conference. Whilst it was previously the case that the common foreign policy could strengthen the co-ordination of positions on the political and economic aspects of security policy, there is now agreement in the negotiated text that Ministers may also discuss defence-policy aspects. Thus, if unanimity is established, it will be possible to adopt common positions on foreign and security policy matters which not only concern the political and economic aspects of security but also the defence-policy aspects.

However, there was no endorsement for making defence-policy matters the subject of joint action. It was therefore decided that issues with defence implications could not be the subject of a joint action - certainly not in relation to the outside world.

The new arrangement therefore means that the European Union cannot determine the organization of Member States' defence, their command structure or specific military operations, etc. These matters are dealt with by the WEU or NATO.

Under the Treaty, the Western European Union (WEU) forms an integral part of the development of the European Union. The latter may request the WEU to elaborate and implement decisions and actions with defence implications. This reflects the fact that the European Union itself is unable to take such decisions and action; however, this task can be transferred to the WEU and hence to the countries which are members of that organization. This procedure was established after the question of the WEU's link with both the European Union and NATO had been discussed on many occasions, including the NATO summit on 7 and 8 November 1991. The conclusion reached in those discussions was that the WEU would be given a double role: one vis-à-vis the European Union, and the other as the European pillar of NATO.

In a special Declaration attached to the Treaty, the members of the Western European Union invite the other members of the European Union to accede to the WEU or to become observers. Simultaneously, other European Member States of NATO are invited to become Associate Members of the WEU. It appears from the Declaration that the European non-members of the WEU, to whom this text is addressed, are expected to respond before the end of 1992.

### 3.3. JUSTICE AND HOME AFFAIRS

The Title in the Maastricht Treaty on justice and home affairs, like the Title on foreign and security policy, is of an intergovernmental nature. Decisions are taken in the Council unanimously. There is no application of the principle of supranationality.

The aim of this Title is to increase co-operation between the Member States on the following matters:

- asylum policy;

- rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;

- immigration policy;

- combating drug addiction;

- combating fraud on an international scale;

- judicial co-operation in civil matters;

- judicial co-operation in criminal matters;

- customs co-operation;

- police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).

These subjects have for many years already been the subject of considerable co-operation between the Member States. This has occurred without a proper basis in a treaty. This basis is now provided in the Maastricht Treaty, although co-operation will continue to be in its traditional intergovernmental form.

It is certainly possible under the Treaty for certain subjects included in this form of co-operation to be transferred to that part of the Treaty which is based on the principle of supranationality. However, this does not apply to judicial co-operation in criminal matters, customs co-operation or police co-operation. Unanimity in the Council is necessary for a transfer in these cases, which must then be approved by the Member States in accordance with the provisions of their constitutions, which in Denmark's case means the Constitutional Act.

## 4. COMMON PROVISIONS

The Maastricht Treaty is based on three pillars.

The first pillar is concerned with updating and extending the Treaty of Rome, including the amendments introduced into it by the Single European Act of 1986. It is in this part of the Treaty that the Title on Economic and Monetary Union is to be found. Here, the principle of supranationality is applied and the institutions and decision-making procedures of the Community operate in full.

The second pillar is concerned with foreign and security policy. This involves intergovernmental co-operation. The forum is the Council. The principle of supranationality is not applied, nor is use made of the decision-making procedures of the Community.

The third pillar is concerned with justice and home affairs. This involves intergovernmental co-operation. The forum is the Council. The principle of supranationality is not applied, nor is use made of the decision-making procedures of the Community.

The Treaty is built on these three pillars and also contains some common provisions. The most important of these are concerned, firstly, with the accession of other countries to the European Union and, secondly, with a subsequent intergovernmental conference in 1996 to examine certain provisions in the Treaty.

As far as admission to membership of the European Union is concerned, it is stated that any European State may apply to become a Member. Accession conditions would be negotiated at an intergovernmental conference between the applicant countries and the existing Members of the European Union.

Provision is made for the convening of an intergovernmental conference in 1996 to examine certain provisions of the Maastricht Treaty. The Treaty mentions several areas which may be the subject of discussions at such an intergovernmental conference. Attention should be drawn to two such areas. The first is the rules whereby the European Parliament may influence the adoption of EC legislation. The second is the relationship between the European Union and the Western European Union (WEU), which should be viewed against the background of the fact that the WEU Treaty of 1988 can be denounced with one year's notice. Annex 1 contains a timetable which surveys the progressive implementation of the Maastricht Treaty.

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## CHAPTER III

## ENLARGEMENT AND FUTURE FINANCING OF THE EC

- Connection with the Maastricht Treaty

Throughout the EC's history there has been discussion of the extent to which EC co-operation could be deepened at the same time as the number of members increased.

As far as the EFTA countries are concerned it has become increasingly clear since the end of the 1980s that the decision to establish the internal market by the end of 1992 gave greater relevance to the question of full membership. The EFTA countries' interest in membership has thus increased as the internal market process has been successful. The convening of the two Intergovernmental Conferences on Political Union and Economic and Monetary Union has reinforced that interest.

The Commission's proposal to establish a broader economic area in Europe by extending the EC internal market to include the EFTA countries came to appear to a number of those countries as a transitional arrangement - the Agreement on the European Economic Area (EEA) - which could serve as preparation for full membership.

The EC's negotiations with the EFTA countries on the EEA Agreement, which happened to coincide with the opening up of Central and Eastern Europe, showed that the association which the EC could offer the EFTA countries would not in the longer term be enough to safeguard the greater part of their interests - economically and politically - in the new Europe.

To date the following EFTA countries have applied for membership: Austria, Sweden, Finland and Switzerland. There have also been applications from Turkey, Cyprus and Malta. In addition, the Norwegian Prime Minister has declared himself in favour of Norway submitting an application for membership of the European Union before the end of the year.

The countries of Central Europe, in particular Hungary, have expressed the wish to submit early applications for membership. The Central and Eastern European countries thus lay special stress on the fact that their agreements with the EC have membership as their ultimate goal.

The EC has never been thought of as an exclusive club. Its history, with the three enlargements that have so far taken place, first to include Denmark, the United Kingdom and Ireland in 1973, then Greece in 1981 and lastly Spain and Portugal in 1986, demonstrate that. Enlargements are a challenge that the Community has never refused, and as the conclusions of the European Council

meeting in Lisbon in June 1992 show, that the Community does not wish to turn its back on in future.

The other countries in Europe seek membership for the sake of security, stability, peace and economic progress and in order to play a role alongside the Community countries in securing continuing co-operation and integration in Europe. For the new democracies of Central and Eastern Europe, membership of the Union is the expression of a desire to consolidate their new-found freedom and stabilize their economic and political development.

The debate on the extent to which a deepening of EC co-operation can take place in parallel with an increase in the number of members has in reality now been concluded. The contradictions between the advocates of deepening and the advocates of widening have been cleared away. There is agreement that deepening and widening are complementary, and that they must therefore be regarded as inter-connected.

## 1. THE CURRENT POSITION CONCERNING EC ENLARGEMENT

Under the Treaty - both Article 237 of the Treaty of Rome and Article 0 of the Maastricht Treaty - any European State may apply for membership. Experience shows that, in addition to meeting that geographical requirement, new member countries must also fulfil certain minimum requirements, some relating to the market economy and economic development and some relating to democracy and human rights.

An applicant State addresses its application to the Council, which takes a unanimous decision after consulting the Commission and after receiving the assent of the European Parliament, which must act by an absolute majority of its members. The Commission's opinion concerning Austria and Sweden is already available. Its opinions concerning the Finnish and Swiss applications are expected during the autumn. If an application is submitted by Norway the Commission is expected to be able to have its opinion ready within a short period, partly because the negotiations on the EEA Agreement have given the Commission a close insight into Norway's circumstances and partly because the two Nordic precedents - Sweden and Finland - will be available as a basis for the opinion on Norway.

At the European Council meeting in Maastricht in December 1991 it clearly emerged that there was a connection between EC enlargement and its future financing. In accordance with the conclusions of the European Council meeting in Lisbon on 26 and 27 June 1992, formal negotiations on enlargement can commence only when there is agreement on the future financing of the EC (the Delors II package).

At that meeting it also became clear that formal enlargement negotiations can be initiated only when the Maastricht Treaty has been ratified. This is made

clear in the Lisbon conclusions, which state that applicant countries will be admitted to the European Union.

However, the Lisbon conclusions leave the door open in the meantime for informal/sounding negotiations on admission with those EFTA countries which want membership.

The European Council states in the Lisbon conclusions that any European State whose system of government is founded on the principle of democracy may apply to become a member of the Union. The principle of a Union open to European States that aspire to full participation and who fulfil the conditions for membership is a fundamental element of the European construction.

It also emerges from the conclusions that in the European Council's view the EEA Agreement has paved the way for the start of swift enlargement negotiations with EFTA countries seeking membership of the European Union. The European Council therefore invites the Community institutions to speed up preparatory work needed to ensure rapid progress in the forthcoming negotiations, including the preparation before the European Council in Edinburgh of the Union's general negotiation framework .

In the conclusions it is stated that negotiations with the candidate countries must, to the extent possible, be conducted in parallel, while dealing with each candidature on its own merit.

**1.1. THE EFTA COUNTRIES**

When it enters into force on 1 January 1993 the EEA Agreement will lead to the establishment of one of the largest economic co-operation and free trade areas in the world. Within its borders, goods, services, labour and capital (the 4 freedoms) will to a large extent be able to move freely between the 19 countries linked together by the Agreement.

The EEA Agreement means that the EFTA countries will participate in the EC internal market in industrial goods, but not in EC agricultural and fisheries policy. The EEA Agreement does not provide for free trade in a number of agricultural and fishery products.

Under the EEA Agreement the EFTA countries must be consulted in connection with the adoption of future EC rules, but there is no provision for actual co-decision in the EC's adoption of future legal instruments concerning the internal market, etc.

The EFTA countries are bound under the Agreement to align their national legislation on a very substantial proportion of the Community law in the areas concerned as it existed when the Agreement was signed (at present approximately 1 400 legal instruments). There will also be an obvious

incentive for these countries to adapt their legislation in line with developments in the relevant Community law after 31 July 1991, which is the cut-off date for legal instruments that are automatically covered by the Agreement.

In addition to common rules in the area of competition and State support and certain disciplines in relation to intellectual property law, the Agreement also covers horizontal policy areas of particular relevance to the abovementioned four freedoms. The EEA Agreement will mean more intensive co-operation in a number of adjacent areas such as environment policy, research and technological development, data processing, education and training, social policy, consumer policy, small and medium-sized businesses, tourism, the audiovisual sector and civil protection.

The EEA Agreement establishes a free-trade area, but not a customs union. There will thus still be a need - also after 1 January 1993 - for border formalities between the EFTA countries and the EC. This is also because of the rules of origin, which have been liberalized, and the exclusion of trade in agricultural and fishery products, the continued existence of fiscal frontiers and veterinary and plant health considerations, all of which make border controls necessary.

Furthermore, the EFTA countries undertake during the period 1993-1997 to contribute ECU 2 000 million (approximately Dkr 16 000 million) to the so-called Cohesion Fund for 5 years (Dkr 4 000 million in the form of grants and Dkr 12 000 million in soft loans), which may be used for structural projects in the EC area in the same way as the activities financed by the EC's own Structural Funds.

Annex 2 contains a description of the EFTA countries' ratification procedures in connection with possible accession to the European Union.

### 1.2. OTHER APPLICANT COUNTRIES

The European Council states in its Lisbon conclusions that if it proves possible to meet the challenges involved in a European Union comprising an increased number of member countries, progress will have to be made at the same time with the internal development of the Union and with the preparation of other countries' membership.

The position regarding the applications submitted by Turkey, Cyprus and Malta is that each one is to be treated on its own merits. The European Council does not express an opinion on enlargement negotiations with these countries, but stresses that co-operation with Turkey, Cyprus and Malta and with the Central and Eastern European countries must be extended.

As far as co-operation with the Central and Eastern European countries is concerned, this must systematically concentrate on assisting the countries in their endeavours to prepare for accession to the European Union, as they wish.

The Commission has the task of evaluating the progress made in this area and reporting to the European Council meeting in Edinburgh, where the European Council will consider the situation and, if need be, propose further measures.

## 2. FUTURE FINANCING

Ratification of the Maastricht Treaty, agreement on the EC's future financing and the start of negotiations on EC enlargement have been linked together for negotiating purposes. The European Council established that link most recently at its meeting in Lisbon on 26 and 27 June 1992 (see above).

In a communication to the Council of 11 February 1992 the Commission put forward its position regarding the framework for EC financing over the period 1993-1997 and for the specific changes to the EC's financial provisions which it considers necessary (the "Delors II package").

There are several reasons why the Commission is putting forward its future financing proposal at this time. In the first place, parts of the existing reform of financing cover only the years 1988-1992.

In the second place the Commission wished to put forward its views on the goals and priorities which the Comunity should lay down for the next five years. A concrete example is the establishment by 31 December 1993 of the "Cohesion Fund", mentioned in Article 130d of the Maastricht Treaty, which was one of the most important negotiating objectives for the less prosperous member countries.

### 2.1. THE EXISTING FINANCING SYSTEM

The 1988 financing reform was a direct consequence of the entry into force of the Single European Act in 1987. The Single Act had included a considerable strengthening of the provisions on economic and social cohesion. For that reason inter alia it was decided at the European Council meeting in February 1988 that each year from 1989 to 1992 the appropriations for the Structural Funds should be increased by ECU 1 300 million at fixed 1988 prices. This means that by the end of 1992 appropriations for the Structural Funds will have doubled compared with the 1987 level. The 1988 reform also gave a higher priority to expenditure on the so-alled integrated Mediterranean programmes and on research.

In connection with the financing reform a Council Decision was adopted on 24 June 1988 on the rules governing the EC's own resources. That Decision introduced a new fourth source of revenue based on Member States' share in the Community's gross national product (GNP). At the same time the Council

Decision imposed a ceiling on total own resources, rising from 1,15% of GNP in 1988 to 1,2% of GNP in 1992.

With regard to discipline in the matter of Community expenditure (budgetary discipline), the Council Decision of 24 June 1988 set an upper limit on EC agricultural expenditure. Thus the annual rate of increase in agricultural expenditure must not exceed 74% of the rate of increase in member countries' aggregate GNP. On the basis of that rule a ceiling for agricultural expenditure - the agricultural guideline - is worked out each year and must be complied with when the budget is drawn up.

Finally, as a link in the financing reform process the Interinstitutional Agreement on budgetary discipline was adopted on 29 June 1988. In that Agreement between the Council, the Commission and the European Parliament, the three institutions undertake to observe expenditure ceilings for various categories of EC budget expenditure in each of the years 1988 to 1992. The Agreement contains rules on how these ceilings can be altered should the need arise.

## 2.2. THE COMMISSION PROPOSAL FOR FINANCING REFORM

As future priority areas the Commission points in its proposal to:

- the Community's external relations, particularly in the light of developments in Europe in recent years;

- economic and social cohesion, which was an important demand for a number of member countries in the Intergovernmental Conferences, and

- new activities with a view to strengthening Europe's competitiveness.

As regards the **EC's external relations**, the Commission exphasizes in its communication the increased international importance the Community has acquired following the fall of the Berlin Wall, the Gulf War and developments in Central and Eastern Europe, and following the dissolution of the Soviet Union.

As priority areas for the Community's external relations the Commission points to the countries in Central and Eastern Europe and the CIS, where the establishment of new democratic, independent States will require further technical and economic assistance from the EC.

With regard to the Mediterranean countries the Commission considers it important that, in order to ensure stability and security in the region, the Community should continue to support economic and democratic reforms in those countries with financial assistance.

It is the Commission's view that there should be a strengthening of Community co-operation with the developing countries, just as the EC should increase its humanitarian assistance in cases of famine, etc.

Regarding **economic and social cohesion**, the Commission underlines the importance of increased assistance to the least-favoured regions in the Community and to particularly exposed population groups (e.g. the long-term unemployed and young people undergoing training).

At the same time the Commission takes the view that there should be a substantial increase in the effectiveness of the Structural Funds. The object of the Cohesion Fund is to lend support to environmental protection and transport infrastructure projects. By this means inter alia the idea is to create better conditions for a more uniform economic development (convergence) in the recipient countries with a view to easing their entry into the third phase of Economic and Monetary Union.

In the section of the proposal dealing with the **strengthening of Europe's competitiveness** the Commission notes that European industry is not developing satisfactorily in relation to the USA and Japan. The Commission points out that the Community's total research and development effort is at the level that Japan reached ten years ago. As a second example the Commission notes that hi-tech products account for 31% of US exports and 27% of Japanese exports but only 17% of Europe's exports.

With a view to better utilization of human resources, future technology and the internal market, the Commission proposes that the Community should supplement the efforts being made in the Member States and individual businesses. This concerns areas such as research and development, improvement of vocational training and retraining and investment in the trans-European networks in transport, telecommunications and energy.

As far as **revenue** is concerned the Commission proposes an increase in the limit on the Community's own resources from 1,20% of gross national product (GNP) in 1992 to 1,37% in 1997.

If that ceiling is fully used in 1997, given the Commission's prediction of 2,5% annual economic growth in the Community, in 1997 revenue will be some ECU 20 000 million higher than revenue on the 1992 budget. It should be observed in this connection that, if the current level of 1,2% of GNP is maintained, the revenue ceiling will be ECU 11 000 million higher in 1997 than in 1992. Hence the real effect of increasing the limit from 1,2% of GNP to 1,37% of GNP will be a mere ECU 9 000 million.

The Commission proposes a number of changes to the existing revenue system which will mean that a larger share of the Community's revenue will be collected through the fourth resource (GNP contribution), while a smaller proportion will be raised through VAT. This will result in the more affluent Member States contributing more. This is in line with the aim of taking greater account of individual Member States' capacity to contribute.

Finally, the Commission has submitted a report which it is obliged to produce, pursuant to Article 10 of the Council Decision on own resources, on the question of the correction of budget imbalances in the United Kingdom's favour.

The Commission is considering the idea that the existing arrangement should be continued with the modification that expenditure concerning the Cohesion Fund should not be included in the calculation basis.

At the present time the situation concerning the negotiations on the EC's future financing is unresolved. Some Member States can endorse the main thrust of the Commission proposal, while others have taken a critical stance.

## CHAPTER IV

## THE INTERGOVERNMENTAL CONFERENCES

- A summary of the course of events and positions -

The impetus for the intergovernmental conferences which culminated in the Maastricht Treaty goes back to the meeting of the European Council in Hannover in June 1988 under the German presidency. Here the first step was taken towards the subsequent negotiations on Economic and Monetary Union. This took place in a special committee which submitted a report in the spring of 1989. In the spring of 1990, France and Germany took the initiative of starting negotiations on a political union. This was in recognition of the fact that Economic and Monetary Union could not be implemented unless progress was made on foreign and security policy matters and with reference to the Community institutions (decision-making procedure and democratic legitimacy).

In December 1990 the first meeting was held of the intergovernmental conferences on Economic and Monetary Union and Political Union. The negotiations continued throughout 1991, and they were concluded at the meeting of the European Council in Maastricht in December 1991.

It was France that favoured the establishment of an economic and monetary union. This was in consideration of the increasing inter-dependence of the EC countries' economic and monetary policies. In view of this de facto situation the French argument ran that it would be in all countries' best interests for economic and monetary decisions to be taken jointly. The French initiative was a continuation of the traditional and familiar French policy on Europe, ever since France had led the way in the 1950's with plans for the European Coal and Steel Community. For France, Economic and Monetary Union was the main consideration and the strengthening of the Community institutions desired by other member countries was less important.

Germany accepted the French desire for an economic and monetary union, but placed the main emphasis on a political union. As the negotiations proceeded, Germany placed more and more emphasis on the European Parliament's role, which became a major German demand during the negotiations. The background to this was the wish for greater democratic control over the EC's institutions, in particular the Commission. On the political front, the German Government recognized that a pre-requisite for the realization of the German unification process was a continuing strong German commitment to Western European co-operation. This could be achieved in the form of a European Union based on France's initiative on Economic and Monetary Union and the Franco-German ideas on a political union. Undoubtedly a further argument from the German point of view was that the profound changes in Central and Eastern Europe and the dissolution of the

Soviet Union demanded a greater Western European commitment, which would naturally have to take the form of a more active and vigourous EC.

The United Kingdom felt a considerable degree of scepticism about the ideas on both Economic and Monetary Union and Political Union. This scepticism was attributable inter alia to the then Prime Minister, Mrs Thatcher, and was a contributory factor in the change of Prime Minister in the United Kingdom in the autumn of 1990. During the negotiations in 1991 the United Kingdom's interests concerning Economic and Monetary Union and the social dimension were accommodated. The new British Prime Minister, John Major, declared as his political objective that the United Kingdom should be at the heart of Europe and praised the Maastricht Treaty as a triumph for British interests.

Italy played an important role in the autumn of 1990 in arranging things so that the negotiations could start officially in December 1990. The Italian negotiating line was a continuation of Italy's traditional policy on Europe. It wanted strong integration, preferably in the direction of a kind of federation, and the establishment of a common defence policy. Spain, Greece and to some extent Portugal supported this line.

Spain, Greece, Portugal and Ireland, in addition, saw it as their most important negotiating objective to secure a political declaration followed by concrete provisions with the aim of strengthening economic development in the Community's less prosperous regions. This took the form of the so-called Cohesion Fund together, to some degree, with the ideas on trans-European networks.

Two of the Benelux countries, Luxembourg and the Netherlands, held the Presidency during the negotiations in 1991, and this influenced their national negotiating positions. The Benelux countries broadly pursued the declared political goal of a strengthening of the Community institutions, including the powers of the European Parliament.

The decisive phase of the negotiations occurred in June 1991 and September 1991, where the issue was the final goal of co-operation between the twelve member countries and, as a consequence thereof, the structure of the Treaty.

One group of member countries wished the final objective of co-operation to be described as being of a federal nature. Another group of countries, including Denmark, was unable to support such a formulation. The result was that at its meeting in December 1991 the European Council reached agreement on the formulation "This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen."

The other main problem concerning the structure of the Treaty was in reality resolved in the early autumn of 1991. The Luxembourg Presidency had been working with a treaty structure based on three pillars corresponding to the model which was adopted at the European Council meeting in Maastricht. In September 1991 the Netherlands Presidency submitted a proposal for a "unified" treaty, in which the differences with regard to institutions and decision-making procedures as between the three pillars were eliminated. This proposal was rejected by 10 member countries, including Denmark. Thereafter the preparatory discussions for the concluding negotiations at the European Council meeting in Maastricht in December 1991 were conducted on the basis of the text submitted by the Luxembourg Presidency.

Denmark's negotiating objectives were set out in a memorandum submitted to the other member countries in October 1990. That memorandum was followed up in March 1991 by specific Danish proposals for treaty texts. There was a clear political majority in favour of both documents.

Denmark's participation in the negotiations on European Union was debated in Parliament on 29 May 1991, at which the following resolution was adopted:

> "Parliament confirms its support for the proposals contained in the Danish EC memorandum and calls on the Government, at the intergovermental conferences, to stand by the demand for majority decisions concerning minimum requirements in environmental matters in order to ensure that long-term environmental interests are not neglected as a result of other considerations."

On 5 December 1991 a further exploratory debate was held in Parliament on the negotiations on Economic and Monetary Union and Political Union.

The following resolution was adopted:

> "Parliament calls on the Government in the concluding negotiations on changes in EC co-operation to work for:
>
> - a strengthening of the EC's economic and political co-operation without accepting a federal aim for co-operation,
>
> - receptivity to the admission of new members to the EC and increased co-operation with non-member countries,
>
> - a strengthening of environment policy with the possibility of laying down minimum requirements by majority decision,

- the introduction of a social dimension,

- no Danish commitment to participate in military co-operation,

- no Danish commitment to participate in a common EC currency,

- openness in the decision-making process.

After the signing of the Maastricht Treaty on 7 February 1992 the Government introduced a bill in Parliament concerning Denmark's accession to the Maastricht Treaty. In the vote, 130 voted for the proposal in its final version, 25 voted against, 1 member abstained and 23 were absent. The bill did not secure the 5/6 majority (150 votes) required for Parliament to decide the matter alone. In accordance with § 20 of the Constitutional Act, the final adoption of the bill was put to a referendum. This took place on 2 June 1992. 50,7% of the votes cast were in favour of rejection of the bill adopted by Parliament, and the bill thus lapsed.

## CHAPTER V

## THE MAASTRICHT TREATY AND § 20 OF THE CONSTITUTIONAL ACT

- The surrender of sovereignty within the meaning of the Constitutional Act

### 1. SECTION 20: HISTORY AND HOW IT FITS INTO THE CONSTITUTIONAL ACT

§ 19 of the Constitutional Act contains the rule that the King, i.e. the Government, shall act on behalf of the Realm in international affairs. The Government can thus commit Denmark by entering into agreements with other countries, in some cases, however, only with the prior consent of Parliament. In particular, consent must be obtained where fulfilment of the obligation requires the concurrence of Parliament, but also where the obligation is otherwise "of major importance".

§ 19(1) of the Constitutional Act reads as follows:

> "The King shall act on behalf of the Realm in international affairs, but, except with the consent of the Folketing, the King shall not undertake any act whereby the territory of the Realm shall be increased or reduced, nor shall he enter into any obligation which for fulfilment requires the concurrence of the Folketing, or which is otherwise of major importance; nor shall the King, except with the consent of the Folketing, terminate any international treaty entered into with the consent of the Folketing."

This provision, in slightly different formulations, has been the central provision in all Danish constitutional acts concerning Denmark's entry into internationally binding agreements with the outside world. It is on this constitutional basis that the substantial international network in which Denmark participates has been established, including Denmark's membership of the UN, NATO, the Council of Europe, etc.

§ 20 of the Constitutional Act was added when the Act was revised in 1953, precisely in order to make it possible for Denmark, without an amendment to the constitution, to join in international co-operation in which joint bodies exercise direct authority over citizens and businesses in Denmark.

§ 20 of the Constitutional Act reads as follows:

> "Powers vested in the authorities of the Realm under this Constitutional Act may, to such extent as shall be provided by statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation.

(2) For the enactment of a bill dealing with the above, a majority of five-sixths of the members of the Folketing shall be required. If this majority is not obtained, whereas the majority required for the passing of ordinary bills is obtained, and if the Government maintains it, the bill shall be submitted to the electorate for approval or rejection in accordance with the rules for referenda laid down in § 42."

Professor Max Sørensen, who drafted the first version of the provision for the Constitutional Commission, explained the background to the provision thus in his 1971 opinion to the common market committee:

"As far as Denmark is concerned, it may be taken as read under the constitutional system that authority over citizens can be exercised only by Danish institutions, unless the constitution itself makes provision otherwise. Denmark's accession to a system such as that established by the European Communities would therefore in principle presuppose an amendment to the constitution unless the constitution itself provided for an alternative possibility.

It was precisely to make it possible for Denmark to join in international co-operation in this more advanced form without an amendment to the constitution that § 20 was inserted in the constitution when it was revised in 1953." (Reprinted in special edition of Supplementary Report on L 240, page 152)

§ 20 of the Constitutional Act is thus a special provision on the transfer of authority to international bodies. It makes it possible to fulfil obligations of that kind without an amendment to the constitution.

It is worth pointing out that the procedure under § 20 can clearly only be applied where it is necessary in order to give international bodies (new) powers over citizens and businesses in Denmark, or to enter into treaties with third countries which have a binding effect on Denmark. All other international obligations, i.e. duties for the State as such, which can be fulfilled in another way, namely by legislation, do not require the § 20 procedure. Denmark can assume such obligations under the procedure in § 19 of the constitution.

Powers transferred to an international authority in accordance with the procedure in § 20 can be revoked at any time by the enactment of an ordinary law, i.e. adopted by a simple majority in Parliament. Such revocation will be completely valid under the constitution, irrespective of whether the revocation is in accordance with international law.

## 2. SECTION 20 AND EC CO-OPERATION TO DATE

The Act of Accession of 1972 was the first example of application of the procedure in § 20 of the Constitutional Act prior to Denmark's accession to a treaty which involved the transfer of legislative, administrative and judicial

powers to international bodies. Consent to entry into the obligations of the Treaty (§ 19) was given in legal form in § 1 of the Act. In addition, the Act contained various implementing provisions, notably § 2, which transferred powers to the EC institutions (§ 20). The Act stipulated that the institutions could exercise the transferred powers to the extent laid down in the Treaties. The Act was ratified on 11 October 1972 after it had been confirmed on 2 October 1972 by a binding referendum pursuant to § 20 of the Constitutional Act. In the referendum 63,3% voted yes.

Since accession in 1973, no new powers have been transferred to the EC institutions within the meaning of the constitution. The basic Treaty has, it is true, been amended on a number of occasions, most recently by the Single Act in 1986, but on each occasion it was concluded by the Government and Parliament that the amendments or additions to the basic Treaty did not hand over new powers to legislate, administer or deliver judgments with direct application to citizens and businesses in Denmark, or to accede to treaties with third countries with binding effect for Denmark.

It was thus concluded in connection with the ratification of the Single Act that the EC institutions were not granted powers to issue rules binding on the citizen in new areas, and that the fact that the voting rules in the Treaty were changed, e.g. from unanimity to qualified majority, did not involve the transfer of new powers from Denmark, and therefore did not require application of the procedure in § 20 of the Constitutional Act. The same applied to the change in the legislative process, which meant that the European Parliament became involved more closely in a number of areas, the so-called co-operation procedure.

Thus, since 1973 the EC institutions have, on the basis of the Treaties, exercised powers transferred when Denmark acceded. The enactment of laws and (to a limited extent) administration and the handing down of judgments have had direct application to citizens and businesses in Denmark.

In some areas the institutions made very extensive use at an early stage of the powers transferred by the member countries. This was particularly the case with agricultural policy, the rules concerning internal trade in goods and services, rules on the free movement of labour and the common commercial policy vis-à-vis the outside world. In other areas a more comprehensive development of law only occurred later. This was the case inter alia with fisheries policy, which was seriously developed in the second half of the 1970s and - particularly after the adjustments introduced with the Single Act in 1986 - the environment, protection of the working environment with common minimum standards and legislation on "the internal market".

It may, incidentally, be pointed out that a large part of EC legislation over the years has not been based on powers transferred under § 20, as a large proportion

of the total legislation is binding on the member countries but not directly on citizens and businesses in the member countries.

The fact that the institutions are able to legislate in an area takes on practical significance only as Community regulation is introduced in that area. Thus the degree of freedom of the national authorities in all member countries is reduced only to the extent that common rules are established. Even in areas with very extensive common rules it is therefore very often the case that the State's capacity for regulating the area has not completely disappeared. Within, for example, the agricultural policy area, which is one of the most thoroughly regulated Community sectors, there remains the possibility of enacting laws nationally in various matters, albeit of course in such a way that such legislation, like all other legislation, does not conflict with Community law. Supplementing or implementing national legislation is moreover often provided for in EC legislation. Similarly, most administrative and in practice almost all judicial powers in the agricultural sector (and other sectors) continue to lie with the national authorities.

It can thus be concluded that EC co-operation has for almost 20 years developed partly through changes to the basic Treaty and partly through the effect of the institutions, but without it being necessary to transfer new powers within the meaning of the constitution.

## 3. SECTION 20 AND EUROPEAN CO-OPERATION IN THE PATENT FIELD

A proposal for the transfer of powers to international bodies was put before Parliament under the procedure in § 20 of the Constitutional Act in the patent field. The instruments concerned are the European Patent Convention of 1973 and the Agreement on Community Patents, including the Community Patent Convention of 1975. These two sets of international agreements, the first of which is moreover open to non-member countries and has inter alia been acceded to by Sweden, still have a certain connection with EC co-operation but were drawn up on a general international basis and, furthermore, do not constitute an amendment to the EC's basic Treaties.

The first bill on accession to the two Conventions was tabled in the parliamentary year 1976-1977 but discussions were not completed, so that it was re-introduced in 1977-1978, when it was put to the vote and a five-sixths majority failed to be obtained. A bill on accession to the European Patent Convention was subsequently submitted in 1980-1981, and again in 1981-1982, when it lapsed owing to the calling of elections. The bill was again submitted in the parliamentary year 1982-1983, when it was voted on but did not secure the requisite qualified majority.

Thereafter the matter lay dormant until the parliamentary year 1988-1989, when at its third reading it proved possible to achieve the required five-sixth majority (Act No 368 on the European Patent Convention).

In the parliamentary year 1991-1992 the Government made a further attempt to secure the required majority for the Agreement on Community Patents (Bill L 61). Discussions on the bill were not concluded and it is expected to be re-introduced in the parliamentary year 1992-1993.

There is nothing in the constitution to prevent the resubmission of the same issue concerning the transfer of powers to an international institution with a view to making it possible to fulfil a specific international agreement. A bill under § 20 does not differ in this respect from other bills, despite the strict requirements in the constitution regarding the adoption of such bills.

It is the Government, or a member of Parliament, which determines on the basis of a political assessment whether it is expedient to submit a proposal, but if the required five-sixth majority in Parliament is not obtained it is the Government alone which can maintain a bill which has been adopted by an ordinary majority vote, with the effect that it can be put to a referendum.

## 4. SECTION 20 AND THE MAASTRICHT TREATY

As stated above, EC co-operation since accession in 1973 has developed on the basis of the § 20 powers which were transferred at that time. The need for the transfer of new or supplementary powers first arose in connection with the Maastricht Treaty.

There is no reason to repeat the analysis which was carried out in connection with the discussion of the bill in Parliament; reference is made to the note from the Justice Ministry of 3 March 1992, the common market committee's questions to the Government and the replies received etc., which were published in the Special Edition of the Supplementary Report on L 240.

In its note of 3 March 1992 the Justice Ministry goes through the Maastricht Treaty with a view to examining certain constitutional issues to which Denmark's accession to that Treaty could give rise.

The note points to a number of provisions in the Maastricht Treaty to which, in the Justice Ministry's view, Denmark can subscribe only in accordance with the procedure in § 20 of the Constitutional Act.

The Justice Ministry notes that the Maastricht Treaty introduces a series of new areas of co-operation which have, however, to a certain extent already been regulated under EC legal instruments drawn up under the authorizing provisions of the Treaty, including Article 235.

**4.1. POSITIONS TO BE TAKEN PRIOR TO THE ENTRY INTO FORCE OF THE MAASTRICHT TREATY**

The Justice Ministry note points to the following instances where the entry into force of the Maastricht Treaty would involve a transfer of sovereignty provided the bill was finally adopted in the form adopted by Parliament.

(1) The amendments to Articles 1 to 3: with regard to these amendments the Justice Ministry note states that they might be thought to entail a certain extension of EC powers.

Taking this together with the fact that there is no clear certainty concerning the extent to which the current EEC Treaty gives authority for the drawing up of legal instruments in some of the new areas of co-operation, as mentioned in Articles 3 and 3a and in the special sections of the Treaty, the Justice Ministry's overall opinion was that in this situation the procedure in § 20 of the Constitutional Act should be applied.

As stated in the Justice Ministry note, it may be assumed that it would already be possible to some extent on the existing Treaty basis, to adopt legal instruments within the areas which the Maastricht Treaty refers to explicitly in contrast with the earlier Treaties. The following new areas are divided, each of which is given a special section in the Treaty: training and vocational training, culture, health, consumer protection, trans-European networks, including transport, telecommunications and energy infrastructure, industrial policy and development co-operation. There are also three areas which do not receive a special section in the Treaty - energy, civil protection and tourism.

There would not really be a transfer of new powers to the EC to the extent that the sectors concerned have been or could have been regulated under the authorizing provisions of the Treaty, including Article 235.

However, the Justice Ministry note does not examine in detail the extent to which legal instruments could be drawn up in the areas concerned on the existing Treaty basis. As stated above, the Justice Ministry simply notes that there is no clear certainty concerning the extent to which the current EEC Treaty gives authority for drawing up legal instruments in several of the specific areas concerned, including, for example culture.

Finally, the Justice Ministry note stresses, as mentioned above, that the amendments to the introductory provisions of the Treaty could entail some extension of EC powers on the basis of the future developments clause in Article 235, in that the introductory provisions are relevant for demarcating the scope of that provision.

(2) Article 8b: The obligation to give nationals of other EC countries who are resident here the right to vote and to stand as a candidate at municipal elections and elections to the European Parliament is contained in the Treaty itself and, insofar as these provisions are directly applicable, does not involve a transfer of authority within the meaning of § 20. The provision that this right is to be exercised subject to detailed arrangements to be adopted by the Council acting unanimously, however, gives rise to doubts. These implementing provisions may impose various requirements which will have to be fulfilled before foreigners can acquire the right to vote and to stand as a candidate, e.g. residence in the host country for a certain period, and they may also provide for actual derogations. The Justice Ministry concludes that Danish acceptance of these provisions will probably require application of the procedure in § 20 of the Constitutional Act.

(3) Article 100c: Pursuant to this provision it is for the Council to determine, with effect for all member countries, the third countries whose nationals must be in possession of a visa when entering a member country for the first time. The Council is also given authority to introduce a temporary visa requirement for nationals of a third country should an emergency occur which makes such a measure necessary, and it can also draw up a uniform visa format.

It is stressed for form's sake that the new rules do not concern Danish citizens entering Denmark or other EC countries, and that the new rules in this area do not involve third country nationals being given social rights in Denmark.

(4) Article K.9, cf. Article K.1: In the area of asylum policy it was written into the bill adopted by Parliament on 12 May 1992 that adoption of the bill and the entry into force of the Maastricht Treaty meant that the area of asylum policy could be transferred from intergovernmental co-operation, pillar 3, to supranational co-operation, pillar 1, by means of a decision by the Council acting unanimously. If this did in fact occur, the adoption of the bill would mean that powers would be transferred to the Council in the asylum policy area corresponding to the powers conferred in the visa policy area by Article 100c.

The Council would in the event be able to lay down a common asylum policy in relation to third country nationals.

## 4.2 POSITIONS TAKEN AFTER THE ENTRY INTO FORCE OF THE MAASTRICHT TREATY

In the following areas, in which implementation of the Maastricht Treaty would require a transfer of sovereignty, the bill adopted by Parliament on 12 May 1992 provided for a decision to be taken at a later date:

(1) Article 109(3): EMU, agreements with third countries on monetary or foreign-exchange rates. The Justice Ministry's note considered that it was doubtful whether the EC would already be able to enter into such agreements with third countries. It was therefore assumed that the § 20 procedure would be necessary on this point.

As the Justice Ministry note states, a possible transfer of sovereignty on this point is different in nature. Whereas the other areas identified are examples of the EC institutions being handed powers to legislate, administer or pass judgments with direct application to citizens or businesses in Denmark, here a power is transferred which, under the constitution, is explicitly conferred on the Government, namely the capacity to enter into international agreements. If such an agreement entered into by the EC were also to be binding on the member countries, a transfer of powers within the meaning of § 20 would be needed.

A position would need to be taken on the question before Denmark could, if the case arises, participate in the third stage of EMU, probably in 1996 but in 1998 at the latest. If a decision is not taken to transfer the relevant power to the EC institutions in accordance with § 20, Denmark will be unable to participate in the third stage of the EMU.

(2) The Statute for the European System of Central Banks and the European Central Bank (ESCB/ECB) Article 34, cf. Article 19: EMU, certain requirements for credit institutions. Pursuant to these provisions the ECB is empowered to require banks and savings banks directly to hold minimum reserves on accounts with the ECB and national central banks in order to fulfil monetary policy objectives.

A position would also have to be taken on this transfer of sovereignty before Denmark could, if the case arises, participate in the third stage of the EMU.

(3) Article K.9: transfer of certain areas from international co-operation to supra-national co-operation, cf. Article K.1. In the same way as mentioned above concerning asylum policy, application of the procedure in § 20 will be necessary in order to transfer one or more of the areas mentioned in Article K.1, points 2 to 6, to supra-national co-operation, pillar 1. The matters concerned are further border controls, immigration policy (concerning third country nationals) two forms of cross-border crime, viz. drugs and international fraud, and civil matters.

A position would have to be taken at the time when consideration was being given to transferring co-operation to the supra-national arena (Article 100c) in the case of one of these areas or merely part of an area.

A position could therefore be taken for the five abovementioned areas together, for one area at a time, or for one partial area at a time.

## 4.3. AREAS IN WHICH A TRANSFER OF SOVEREIGNTY IS NOT NECESSARY

The abovementioned areas are thus those in which a transfer of sovereignty is identified as being necessary. In those areas new powers would, in the event, have to be transferred to the EC institutions within the meaning of § 20 of the Constitutional Act.

It was thus assumed when the law was being discussed that in particular the following rules in the Maastricht Treaty could have been acceded to with binding effect on Denmark without the application of the procedure in § 20 of the Constitutional Act, i.e. with the ordinary consent of Parliament:

- The new intergovernmental co-operation in pillar 2 on the common foreign and security policy, including the more binding common actions.

- The new intergovernmental co-operation in pillar 3 in legal and internal affairs, irrespective of the question of a transfer of certain areas to pillar 1.

- The new institutional rules, including

  - The common institutional framework, i.e. the fact that the existing institutions would conduct co-operation under all three pillars, which means in particular that decisions would also be taken by the Council in connection with pillars 2 and 3.

  - Extension of the European Parliament's legislative powers, i.e. introduction of the new co-decision procedure and extension of the scope of the co-operation and assent procedure.

  - Strengthening of the European Parliament's supervisory powers (budget, right of petition, examining committees).

  - The new procedure for appointing the Commission.

  - New voting rules in the Council (qualified majority) in certain areas.

  - Establishment of the Committee of the Regions and a European Ombudsman.

- Introduction of new principles for the working of the EC institutions, in particular the "closeness" principle.

- Introduction of a common currency and a European Central Bank (see Section 5 below for details).

In these areas there are thus new Treaty rules which only bind Denmark as such. In these areas, pursuant to the Maastricht Treaty, there can be no enactment of laws, administration or passing of judgments with direct application to citizens or businesses in Denmark to a greater extent than on the present Treaty basis.

## 5. SECTION 20 AND ECONOMIC AND MONETARY UNION

The rules in the Maastricht Treaty on Economic and Monetary Union illustrate very succinctly that the concept of sovereignty in § 20 of the Constitutional Act is of a judicial nature. Treatment according to this special provision does not necessarily reflect greater political importance or mean that the specific obligations concerned are weightier than other obligations which do not require the § 20 treatment.

As appears from the account given above, Denmark can assume most obligations (with the related rights) which are enshrined in the new rules on EMU on the basis of the general provision in § 19 of the Constitutional Act. This applies to the setting of exchange rates and the introduction of a common currency, establishment of the European Central Bank and the European System of Central Banks, the obligation to avoid disproportionately large public deficits and the Council's right to impose penalties in that connection.

On these and other similar points, which may be regarded as the crucial provisions in the EMU, Denmark can accede and fulfil the new rules under the procedure in § 19.

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## Chapter VI

## THE RATIFICATION PROCESS IN THE OTHER MEMBER STATES

- Procedure and debate

This Chapter describes national procedures for ratification of the Maastricht Treaty. Of the twelve EC Member States, five have completed their national procedures; three (Denmark, Ireland and France) have done so by means of a referendum and two (Luxembourg and Greece) by means of a parliamentary vote. The other Member States are expected to complete their procedures using the parliamentary process. One Member State (Luxembourg) has already deposited its instrument of ratification.

The various countries' national constitutional ratification procedures differ, particularly with regard to the need to amend the national constitution, secondary legislation and the need to consult interested parties (such as constituent States). Thus, for example, constitutional amendments are necessary in France, Spain, Belgium, Luxembourg, Italy and Germany. In the case of the United Kingdom, the ratification law will contain only those parts of the Maastricht Treaty which relate to the Community (first pillar), since co-operation between States (second and third pillars) does not require any special legislation before ratification. In connection with the national ratification procedure in some Member States resolutions have been passed in national parliaments. These resolutions are by way of being interpretations of the Maastricht Treaty, or concern national legislation which has been affected, or national decision-making procedures on EC matters.

The general picture in the other EC countries shows that there is broad political support from the dominant parties in the various countries' parliaments. It is mainly the far-right and far-left wings that are against ratification of the Maastricht Treaty.

Reaction to the result of the Danish referendum on 2 June was expressed in the Oslo declaration of 4 June 1992, which stated that:

"- Ministers heard a report from the Danish Foreign Minister on the results of the Danish referendum, the outcome of which they all regret.

- Ministers noted that 11 Member States expressed their wish to see the European union established by all Member States. They exclude any reopening of the text signed in Maastricht.

- The ratification process in Member States will continue on the basis of the existing text and in accordance with the agreed timetable before the end of the year.

- They all agreed that the door for Denmark's participation in the union remains open."

This position was confirmed in the Lisbon European Council's conclusions.

Reaction to the result of the French referendum on 20 September 1992 was expressed in the New York declaration of 21 September 1992, which stated:

"The General Affairs Council met in extraordinary session in New York on 21 September.

The Council warmly welcomed the positive result of the French referendum on the Treaty on European Union signed in Maastricht on 7 February.

The Council noted with satisfaction that certain Member States have already ratified the draft Treaty, and that ratification procedures were well advanced in most other Member States. They attached high priority to the speedy and successful conclusion of the process, without reopening the present text, on the timing foreseen in Article R of the Treaty. (2)

The Council also welcomed the statement issued on 20 September by Economic and Finance Ministers meeting in Washington, in which they expressed the view that the French referendum result will ease tension in the foreign exchange markets and reiterated their commitment to the European Monetary System as a key factor for economic stability and prosperity in Europe.

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(2) The relevant part of Article R is paragraph 2, which states: "This Treaty shall enter into force on 1 January 1993, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step."

The Council welcomed at the same time the wide debate which has taken place in all the Member States over recent months with regard to the future development of the European construction. They pledged their determination to ensure that the preoccupations which had been brought to the forefront in this public discussion will find specific responses in the future development of Europe internally and externally.

The Council welcomed the Presidency's decision to convene an early, special European Council to consider these issues.

The Council also welcomed the determination of the Presidency to press ahead quickly with urgent business, including the completion of the Single Market by the end of 1992, and the negotiations on the Community's finances, in accordance with the timetables and priorities set by the European Council in Lisbon."

Annex 3 gives a general picture of the progress of ratification procedures in the Member States.

## 1. BELGIUM

### National ratification procedure

The recommendation for Belgian ratification of the Treaty was, as a first step in the ratification procedure, put before the Belgian Cabinet. After discussion in the Cabinet, the text of the Treaty was sent to the Council of State for comment. In an opinion of 6 May 1992 the Council of State held that Belgian acceptance of the Maastricht Treaty would require amendment of Article 4 of the Constitution concerning the right of foreigners to take part in local elections in Belgium. The Council of State considered that the amendment of the Constitution should take place before ratification. The Council of State's opinions are simply advisory, and the Government decided that the bill for the necessary amendment of the Constitution should not be tabled until after ratification had taken place.

At the same time as it was submitted to the Cabinet, the text of the Treaty was also sent to the Councils of the three Belgian language communities with a view to obtaining their consent to the text of the Treaty. The Foreign Affairs Committee of the Flemish Council completed its discussions on 9 July 1992.

It should be noted that the language communities are not required to approve the Treaty as such, but simply those parts of it which fall within their sphere of competence.

The actual bill for ratification of the Maastricht Treaty was put before Parliament by Government on 26 May 1992. It was discussed in the Foreign Affairs Committee of the Chamber of Representatives, which recommended approval of ratification on 9 July 1992. On the basis of the Foreign Affairs Committee's report, the Chamber of Representatives discussed the bill on 13, 14 and 15 July 1992. The bill was passed by the Chamber of Representatives without amendment on 17 July 1992. One hundred and eighty-two of the Chamber's 212 members took part in the vote. Of those, 146 voted in favour, 33 voted against and 3 abstained. Only the two green parties and the two Flemish nationalist parties dissociated themselves from the bill. The bill was then sent to the Senate, where it will be discussed when Parliament reassembles in October.

It is anticipated that the Belgian ratification process will be completed in October 1992.

Belgium will not be holding a referendum on the Maastricht Treaty.

**Political debate**

There is wide political backing for the Maastricht Treaty in Belgium. The Belgian Parliament made its agreement to ratification of the Maastricht Treaty conditional on a favourable Opinion from the European Parliament on the Union. This Opinion was given at the European Parliament's plenary part-session from 6 to 10 April 1992. An opinion poll carried out by the daily newspaper "Le Soir" immediately after the Danish referendum on 2 June 1992 showed that three out of four Belgians would vote "yes" to ratification if the question were put to a referendum. Thirty-seven per cent of those polled had no opinion on the matter.

**Reaction to the Danish referendum**

Immediately after the result of the Danish referendum on 2 June, the Belgian Foreign Minister commented that it was necessary to pursue the course defined by the Maastricht Treaty. There was very little official Belgian comment on the situation as it stood after the Danish "no". The Belgian press was likewise concerned only to a limited degree with the result of the Danish referendum.

## 2. FRANCE

**National ratification procedure**

Under Article 54 of the French Constitution the President submitted the Maastricht Treaty to the French Constitutional Council on 11 March 1992 for its opinion on whether the Treaty was compatible with the French Constitution. The Constitutional Council gave its opinion on 9 April 1992.

In that opinion, the Constitutional Council took the view that Article 8b(1) of the Maastricht Treaty, on the right to vote and to stand as a candidate at municipal elections, required amendment of Article 3 of the French Constitution, which gives only French nationals that right. It also held that, as the French Senate was constituted by means of indirect elections via an electoral college composed of members with seats on the French Communal Councils, and as the French Senate, being a parliamentary body, took part in the exercise of national sovereignty, only French nationals could take part in the election of Senate members. On the other hand, the Constitutional Council did not consider that Article 8b(2) of the Maastricht Treaty, concerning elections to the European Parliament, required amendment of the Constitution.

In the monetary area, the Constitutional Council considered that the third phase required amendment of the Constitution with regard to the following points:

- Article B as regards the establishment of Economic and Monetary Union, ultimately including a single currency;

- Article G amending the EEC Treaty by including the following new provisions: Articles 3a(2), 105(2), 105a, 107, 109, 109g, second paragraph, and 109l(4);

- the other provisions in Treaty Title VI, Chapters 2, 3 and 4 and in Protocols Nos 3 and 10 to the extent that they constitute an integral part of the said Articles.

The Constitutional Council considered that implementation of the objectives of an independent European Central Bank (ECB), of an ECB monopoly on the issue of banknotes, and of the irrevocable fixing of exchange rates, followed ultimately by the adoption of a single currency, with a view to introducing a common monetary and exchange-rate policy from the beginning of the third phase deprived a Member State of individual powers in an area where the essential conditions for the exercise of national freedom of action were involved.

Finally, the Constitutional Council considered that Article 100c(3) concerning visa policy, which was incorporated in the EEC Treaty by means of Article G,

required an amendment of the French Constitution from 1 January 1996, the date on which the Council would start adopting decisions by qualified majority, since those decisions could lead to infringement of the essential conditions for the exercise of national freedom of action.

The Constitutional Council's overall conclusion was that France could not ratify the Maastricht Treaty without first amending the Constitution as a result of surrendering sovereignty - as defined in the French Constitution - over the right to vote and to stand as a candidate at municipal elections, the common monetary policy and the common visa policy.

The procedure for making constitutional amendments is set out in Article 89 of the French Constitution and involves a series of discussions in the National Assembly and the Senate, each body passing the amendment in identical terms. To conclude the amendment procedure there is a choice between a Parliamentary Congress consisting of the members of both the National Assembly and the Senate, which together must adopt the proposed amendment by a three-fifths majority of the votes cast, or a national referendum.

On the basis of the Constitutional Council's opinion of 9 April 1992, the French Government decided, on 22 April 1992, to table a bill for amendment of the French Constitution.

Article 1 of the bill amended the chapter layout of the 1958 Constitution. Article 2 introduced a new Chapter XIV in the 1958 Constitution entitled "European Union", consisting of two new Articles 88-1 and 88-2:

- Article 88-1 stated that France, with regard to application of the Maastricht Treaty as signed on 7 February 1992 and subject to reciprocity, consented to transfer of the necessary powers for the establishment of Economic and Monetary Union and for the laying down of rules concerning the crossing of the external frontiers of the Member States of the European Community;

- Article 88-2 stated that, subject to reciprocity and with regard to application of the Maastricht Treaty as signed on 7 February 1992, nationals of the Member States of the European Community resident in France would have the right to vote and to stand as candidates at municipal elections. They could not serve as mayor or deputy mayor or take part in the election of senators.

The proposed constitutional amendment was put to the National Assembly on 22 April 1992 and was submitted to the Legislative Committee for discussion.

The Legislative Committee of the National Assembly produced a partial report on 2 May 1992, concerning EMU, for use in the debate on the constitutional amendments connected with France's ratification of the Maastricht Treaty. The report gave a run-down of the advantages and disadvantages for France of co-operation within the EMS compared with EMU.

According to the report, the French monetary authorities were, under the EMS, subject to the decisions of the Bundesbank. An autonomous French monetary and exchange-rate policy would involve floating the franc on the exchange markets and leaving the EMS, with the same negative effects on prices, interest rates and competitiveness as the United Kingdom suffered before the pound joined the EMS exchange-rate mechanism.

The view was that the French economy's main problem - unemployment - was fuelled by a German monetary policy carried out by a German body independent of the Government, on the basis of interests which were not those of France.

It was concluded that the only solution was full implementation of Economic and Monetary Union, which would not involve a transfer of French powers to a European body but on the contrary a transfer of actual power from the Bundesbank to the European Central Bank, where France would have a part to play in influencing monetary policy. This was also considered to be the only way to avoid a de facto DM-zone.

The report concluded by expressing the wish that the French Parliament should be consulted by the Government on questions to do with EC financing and the EC budget.

On 5 May 1992 the bill was discussed for the first time in plenary. A procedural motion tabled by the Gaullist opposer of the Treaty, the former Social Affairs Minister, Philippe Seguin, to the effect that the bill should not be discussed in Parliament and that there should be a referendum instead, was rejected by 396 votes to 101 with 72 abstentions. The motion was supported by 53 of the RPR's 126 members, all 26 Communists, 5 of the Socialist Party's 271 members, 3 of the UDF's 89 members, 1 of the Centre Union's 40 members and 3 of the 30 independents. Half of the RPR group abstained and only one member voted against. The bill was then sent once more for discussion in Committee.

During the discussions in the National Assembly, 97 amendments were tabled and the Government confirmed orally that the Luxembourg compromise would continue to exist. At the end of the first reading in the National Assembly on 13 May 1992 the Government's bill was passed with the following substantive amendments:

- in Article 2 of the Constitution, on the flag and the national anthem, "le français" was added as the Republic's official language;

- in Article 74 of the Constitution, on the French overseas territories, it was stipulated that their status would be determined in a special framework law;

- the title of the Constitution's new Chapter XIV was changed from "European Union" to "The European Communities and European Union";

- Chapter XIV started with a new Article 88-1 defining the Union in the following terms: "France shall be a member of the European Communities and the European Union consisting of States which, in accordance with the founding Treaties, have freely decided to exercise some of their powers in common";

- the original bill's Articles 88-1 (on EMU) and 88-2 (on the right to vote and to stand as a candidate at municipal elections) became Articles 88-2 and 88-3. In Article 88-3 it was stipulated that the rules for the exercise by EC nationals of the right to vote and the right to stand as a candidate at municipal and European Parliament elections would be laid down in a separate law;

- a new Article 88-4 was introduced into the Constitution stipulating that the Government would submit proposals by the EC Commission involving provisions of a legislative nature to the National Assembly and the Senate at the same time as the proposals were submitted to the EC Council of Ministers. Each body was to give an opinion on these proposals either in a special committee or in plenary session in accordance with detailed procedural rules laid down by law.

The bill was passed by the members of the National Assembly by 398 votes to 77 with 99 abstentions. Those in favour consisted of 263 Socialists, 5 RPR, 77 UDF, 39 Centre Union and 14 independents. Those against consisted of 5 Socialists, 31 RPR, 7 UDF, 1 Centre Union, all 26 members of the Communist Party and 7 independents. Three socialists, 33 RPR, 5 UDF and 3 independents abstained.

The amended bill was then passed on immediately for first reading in the Senate, and after discussion in committee was submitted to the plenary on 2 June. Discussions in plenary were suspended on 3 June when the result of the Danish referendum became known and were resumed on 9 June. After further discussion in committee, the Senate, on 17 June 1992, passed the bill approved by the National Assembly with the following further substantive amendments:

- Articles 88-2 and 88-3 no longer referred to the actual Treaty on European Union of 7 February 1992, but to the content of that Treaty, to cover the case if it became necessary to make consequential adjustments to the Treaty as a result of one or more countries not joining the Union;

- the introduction of the right to vote and the right to stand as a candidate at municipal elections in Article 88-2 was changed from an obligation to an option, and it was specified that only citizens of the Union resident in France could avail themselves of those rights. It was also stipulated that citizens of the Union could not hold the post of mayor or deputy mayor or take part in the appointment of senators. The provision was also amended so that the Senate carried the same weight as the National Assembly in the subsequent establishment of the specific implementing provisions in a special framework law;

- Article 88-4 was amended so that the National Assembly and the Senate no longer had to give opinions on proposals for EC legislative acts, but could adopt resolutions in accordance with detailed rules laid down in their respective rules of procedure;

- Article 54 of the Constitution was amended so that a minority of 60 members of the National Assembly or 60 members of the Senate could in future ask to have international legal obligations put to the French Constitutional Council for its opinion on whether they were compatible with the Constitution.

The text thus amended was adopted by 192 votes to 110. Generally speaking, all Socialist Party members, UDF members and Central Union members voted in favour. The RPR group voted against, along with 2 socialists, 3 UDF and 3 independents.

When the Senate had amended the National Assembly's text, the amended bill was sent the same day for second reading in the National Assembly; on the following day, 18 June 1992, the National Assembly adopted the Senate's text without amendment by 388 votes to 43 with 2 abstentions. All RPR members apart from one walked out before the vote. Those who voted in favour consisted of 258 Socialists, 1 RPR, 73 UDF, 39 Central Union and 12 independents. Those who voted against consisted of all 26 Communists, 5 Socialists, 7 UDF, 1 Centre Union and 4 independents. Two Socialists abstained.

This adoption of the text by both bodies in identical terms fulfilled the condition laid down in Article 89 of the Constitution for the conclusion of discussions in the two chambers. For final adoption of the constitutional amendments, President Mitterrand then decided to lay the bill before the members of the National Assembly and the Senate convened in Congress at Versailles on 23 June 1992. After a short debate the Congress passed the bill without further amendment by 592 votes to 73 with 14 abstentions. Of the 875 members of the Congress, 196 did not attend, all of them members of the RPR. Those who voted in favour consisted of 325 Socialists, 142 UDF, 104 Centre Union, 5 RPR and 16 independents. Those who voted against consisted of 7 Socialists, 2 RPR, 15 UDF, 1 Centre Union, 41 Communists and 7 independents. Three Socialists, 7 UDF and 4 independents abstained. The constitutional amendments were thus

adopted by 193 votes more than the required three-fifths majority of the votes cast. Parliamentary adoption of the constitutional amendments was thus concluded and the President confirmed the law on 25 June 1992.

In order subsequently to effect actual ratification of the Treaty by means of a referendum, in accordance with the President's decision, the Government, on 1 July 1992, tabled a bill authorizing ratification of the Treaty on European Union. On the same day the President issued a decree on submission of the bill to the French people by means of a referendum on Sunday 20 September 1992 in accordance with Article 11 of the Constitution.

The French electorate had to vote "yes" or "no" on the following question: "Can you approve the bill authorizing ratification of the Treaty on European Union as put to the French people by the President of the Republic?"

The referendum was binding.

At the same time it was decided to send a copy of the ratification bill, together with the full text of the Treaty on European Union and a short summary of the main elements, to each of the 38 million French electors. The texts were sent out in the last few weeks preceding the referendum.

On 14 September, with support from 70 Gaullist members of the Senate, the former Minister for the Interior, Charles Pasqua, asked the Constitutional Council to adopt a position on whether the Treaty on European Union was compatible with the revised Constitution in accordance with the new procedure laid down in Article 54 of the Constitution. On 2 September, the Constitutional Council ruled that nothing in the Treaty conflicted with the amended French Constitution, and that authorization of ratification could legally go ahead. In answer to the Senators' assertion that the Treaty on European Union was no longer ratifiable in accordance with its Article R after the Danish "no", the Constitutional Council stated that the situation with regard to ratification procedures in other countries and the conditions for entry into force of the Treaty did not affect the existence of the international obligation which France had entered into by signing the Treaty on 7 February, and therefore in no way prevented France's ratification of it.

In the referendum on 20 September 1992 a majority of 51% of the votes cast approved the law on France's ratification of the Treaty on European Union. The turnout was nearly 70%, which is a relatively high figure for France.
On 23 September the French Constitutional Council proclaimed the following official result, covering France, the overseas countries and territories and French nationals abroad:

| | | |
|---|---|---|
| Number entitled to vote: | 38 305 534 | (100,0%) |
| Total number of votes cast: | 26 695 951 | |
| Number of non-voters: | 11 609 583 | (30,31%) |
| Blank or spoiled papers: | 909 377 | (2,37%) |
| Total number of valid votes: | 25 786 574 | |
| - Yes: | 13 162 992 | (34,36%) |
| - No: | 12 623 582 | (32,95%) |

The turnout was thus 69,69%. Of the valid votes cast, 51,05% said yes and 48,95% no.

On the evening of 20 September, 63 leading Gaullist members of the National Assembly referred the newly adopted ratification law to the Constitutional Council, arguing firstly that the referendum procedure was not applicable and secondly that the Treaty on European Union was not ratifiable. On 23 September the Constitutional Council declined to express an opinion on a law adopted by the people, on the grounds that it was not competent to do so.

On 24 September 1992 the President confirmed the law authorizing France's ratification of the Treaty on European Union signed in Maastricht on 7 February. France's instrument of ratification will subsequently be deposited with the Italian Government in accordance with Article R of the Treaty.

**Political Debate**

The general pattern running throughout the results of the votes in the National Assembly, the Senate and the Congress, was that a large majority of members of the Socialist Party and of the two centre parties, the UDF and the Centre Union, supported the constitutional amendments and therefore also ratification of the Treaty on European Union. On the opposite wing, the Communist Party consistently

voted against. In the middle was the next largest party, the RPR, which suffered a gradually widening split. After the first reading in the National Assembly, where the majority of the party abstained and a large minority voted against, the party decided, after growing opposition amongst the members of the Senate, not to take part in the vote at the Versailles Congress.

The debate on the constitutional amendments also showed that there were varying positions within all parties.

While only a few members of the Centre Union and Communist Party did not follow the party line, in the Socialist Party a small breakaway group formed around former Defence Minister Jean-Pierre Chevènement to oppose the constitutional amendments and the Treaty on European Union. In the UDF a small group also formed around Philippe de Villers to oppose the Treaty, while an increasing majority ranged themselves alongside the party leader, former President Valéry Giscard d'Estaing. The considerably larger opposing minority in the other right-wing opposition party, the RPR, was led at the beginning by former Social Affairs Minister Philippe Séguin and in the last phase of the Parliamentary discussions was also supported by the leader of the RPR group in the Senate, former Interior Minister Charles Pasqua. A smaller group, led by former Prime Minister Jacques Chaban-Delmas, supported the position of the Socialist Party, the UDF and the Centre Union. Although Jacques Chirac undoubtedly allowed considerations of party tactics to influence the party's non-attendance at the Congress, it was not possible to unite the party around a common position on ratification.

After the calling of the referendum on 1 July 1992, nearly all parties made a recommendation to the electors. Of the five parties represented in Parliament, the Socialists, the UDF and the Centre Union unconditionally supported ratification of the Treaty on European Union. The Communist Party was equally unconditionally against. In the case of the RPR, Jacques Chirac said that party members had a free choice but that he himself, with a majority of the party's leadership, supported ratification of the Treaty.

Of the parties outside Parliament, one environmental party, the "Génération Ecologie" of former Environment Minister Brice Lalonde, supported ratification along with the Socialists, the Centre Union and the UDF. The other environmental party, the Greens, after an indecisive vote amongst the party's leadership, decided to leave their members a free choice, while the party Chairman, Antoine Waechter, played an active personal part in the yes campaign. Jean-Marie Le Pen's far-right party, the National Front, was, like the Communist Party, unconditionally opposed to the Treaty on European Union.

In addition, a number of cross party and apolitical groups took stands for and against.

The two co-ordinators for the Government's referendum campaign, Cultural Affairs and Education Minister Jacques Lang and European Affairs Minister Elisabeth Guigou, set up a "National Committee for a Yes Vote" consisting of

some 300 leading personalities in the fields of culture, entertainment and science under the chairmanship of author, Eastern Europe expert and member of the French Academy Hélène Carrère D'Encausse. An "International Committee for a Yes Vote" was also set up, involving a number of European personalities who supported a "yes" vote by means of "an appeal to the French people".

The large majority of French business leaders were unequivocally in favour of a "yes" vote, but a minority, led by the Chairman of Peugeot-Citroën, Jacques Calvet, and the Chairman of the industrial concern CGE, Pierre Suard, campaigned for a "no" vote. For that reason, the employers' organization for heavy industry, the CNPF, did not issue any recommendation, but the Chairman, François Périgot, personally led an active "yes" campaign. Furthermore, the Chairmen of the associations of small and medium-sized businesses and of the liberal professions, along with the French banking union, supported a "yes" vote.

Despite the traditional anti-EC position of the largest agricultural organization, the FNSEA, it did not issue any recommendations to its members. On the other hand, the smaller organizations, the MODEF and "Co-ordination Rurale", campaigned actively for a "no", by means of demonstrations and other forms of action during the campaign.

Most trade unions did not issue any formal recommendations to their members. Amongst those which did set the tone, the communist CGT, came out clearly against the Treaty, while the moderately left-wing trade unions, the CFDT and the CFTC, supported the Treaty on the grounds that it strengthened labour market policy. The traditionally pro-EC trade union, Force Ouvrière, made no direct or indirect recommendations one way or the other.

The French European Movement conducted a very active "yes" campaign, including by means of local committees throughout the country. The biggest association on the opposition side, the Movement for Hunting, Fishing, Nature and Traditions (CPNT), which at the last local elections won 2% of the votes, conducted a more subdued campaign at local level.

The main topics in the political debate were changeable. During the National Assembly's first reading of the constitutional amendments, the general question of the surrender of sovereignty was the central issue. After the Government's assurance that the Luxembourg compromise would continue to exist, the majority came round to the Government's opinion that the Treaty did not involve any irrevocable transfer of national powers to supranational institutions, but simply the voluntary exercise in common of some of the Member States' national competence. That interpretation was expressed in the new Article 88-1 of the Constitution.

In addition to the constitutional amendments concerning the right to vote and to stand as a candidate at municipal elections, the common monetary policy and the

common visa policy, a majority in the National Assembly and the Senate decided to introduce a new Article into the Constitution requiring the Government to submit EC Commission proposals with legislative consequences to both chambers for opinion.

A majority in the National Assembly and the Senate also adopted an amendment to Article 54 of the Constitution so that a minority of 60 members of the National Assembly or 60 members of the Senate could in future request that international legal obligations be referred to the French Constitutional Council for an opinion on whether they were compatible with the Constitution.

In addition, on 29 June, the National Assembly adopted a proposal for amendment of the provisions on the drafting of the Finance Bill, whereby Parliament would set a yearly ceiling in the Finance Act for the State's payments to the EC budget and authorize transfers to the EC. It was proposed that along with the Finance Bill the Government should also submit the EC Commission's provisional budget proposals, the EC Commission's report to the European Parliament on implementation of the previous year's EC budget and a report from the Government on the Community measures which formed the basis for the coming financial year's transfers to the EC.

In a report of 8 July 1992, the National Assembly's EC delegation proposed, along the lines of the subsidiarity principle, that national parliaments should be authorized to determine the form and means of implementation of EC directives. The National Assembly's EC delegation made a series of concrete proposals to that end. As yet, the Government has not expressed an opinion on these proposals.

During the first reading in the Senate, the chief topic was the introduction of the right for citizens of the Union to vote and to stand as candidates at municipal elections. After lengthy negotiation with the Government, the majority in the Senate obtained guarantees that it would not be possible in future, against the Senate's wishes, to extend the right to vote and the right to stand as a candidate to other foreigners living in France, and that citizens of the Union would not be allowed to take part in the indirect election of members of the Senate (see new Article 88-3 of the Constitution). It is anticipated that the French legislative rules on the residence requirement and exercise of the right to vote and the right to stand as a candidate will be laid down in the context of the negotiations on the EC implementing Directive on the same subject.

Both in the National Assembly and in the Senate a persistent theme was the lack of influence of French MPs in the EC decision-making process. Inspired by the Danish and British models, a majority cutting across all shades of opinion on the Treaty on European Union voted to oblige the Government to submit EC Commission proposals with legislative consequences to both chambers for opinion. The detailed procedural rules have not yet been laid down. A majority in both chambers also supported the introduction in Article 54 of the Constitution

of a guarantee allowing a minority to refer future international obligations to the Constitutional Council for a binding opinion on whether they were compatible with the Constitution. Although the provisions are worded in a general fashion, the debate showed that they were mainly aimed at subsequent amendments of the Treaty on European Union.

The constitutional amendments concerning Economic and Monetary Union and the common visa policy did not play a very large role in the parliamentary debates.

The debate which preceded the Congress's adoption of the constitutional amendments was characterized by general points of view in the run-up to the referendum campaign. The need for peace and political stability, economic and social progress and an assured influence for France in Europe was put forward by the Government, the Socialist Party, the Centre Union and the UDF as the main argument in favour of ratification of the Treaty. The spokesmen for the opposition emphasized chiefly that the Treaty on European Union involved an unacceptable loss of France's independence and national identity vis-à-vis Germany.

All in all, the political debate in France showed a steady political majority - also outside the RPR - in favour of ratification of the Treaty on European Union. While the centre-left pro-faction appeared politically united, the opposition side was spread over a wide field from the far right to the far left, the only common ground being opposition to the Treaty on European Union.

**Reaction to the result of the French referendum**

President Mitterrand stated on the evening of the referendum that there were neither winners nor losers. The day's vote was binding on the whole of France, but he respected the feelings of the "free citizens" who by voting "no" wished to protect the values they believed in.

The same evening, Prime Minister Pierre Bérégovoy stated that the Government without exception had heard all electors that had raised questions and were uneasy. Everything would be done to improve the building of a more democratic and social Europe. France needed a modern agricultural sector, a solid currency and a more balanced labour market situation.

Former President Valéry Giscard D'Estaing said that those who had voted "no" had points which had to be listened to and answered. In the subsequent debate he pointed in particular to the need for application of the principle of "closeness".

Former Prime Minister Jacques Chirac said that the referendum had shown that things could not be the same tomorrow as they were yesterday, particularly when

it came to the construction of Europe. It was now necessary to prepare for the future. The Europe we wanted to see had to be more democratic, closer to daily reality, more rational in its defence organization and had to express greater solidarity with the new democracies in the East.

François Périgot, Chairman of the employers' organization CNPF, said that the result was a warning to the Government, which had largely underestimated the French people's concern over the current economic and social crisis. He urged the Government to do everything it could to rescue France from this situation.

Jean Kaspar, Chairman of the moderate trade union CFDT, said that it was now necessary to provide answers to the concern and questions about democracy and employment which had been raised during the campaign. It was time to role up the sleeves and get on with the job.

Former Interior Minister Charles Pasqua said that one out of two French men and women had listened to his views, voted no and therefore rejected the type of organization of Europe which was being proposed, i.e. a Europe which took no account whatsoever of people.

Former Social Affairs Minister Philippe Séguin said that the French had demonstrated the will to take their fate in hand again and force a return to a situation where politics held sway over all conservative and technocratic aberrations.

Former Defence Minister Jean-Pierre Chevènement, welcomed the left-wing's "no" and added that much could be done with the vast citizens' movement which had emerged despite the mobilization of the establishment.

With the people's adoption of the law on ratification of the Union Treaty in the form presented, the President and the Government and the other "yes" parties have at the same time maintained that renegotiation of the Union Treaty is ruled out.

The Minister for European Affairs, Elisabeth Guigou, suggested in an interview in "Libération" on 25 September that there should be an interpretative statement on the Union Treaty which in her opinion should primarily relate to the division of powers between the Member States and the European Community, more democratic co-operation, closer to citizens' concerns, clarification of the Treaty and a consolidation of the European Monetary System with confirmation of the will to move to the third stage of Economic and Monetary Union in 1997 if already possible.

The Foreign Minister, Roland Dumas, suggested, shortly before the referendum, holding a "clarificatory" parliamentary debate in the National Assembly and the Senate on implementation of the Union Treaty. In his opinion such a debate should clarify three questions: the Danish problem, definition of what should be carried out in Brussels and what by national Parliaments, and development of

more precise control by national parliaments over EC co-operation. Mr Dumas repeated his proposal after the referendum, but the Government has not yet adopted a position on it.

**Reaction to the Danish referendum**

On 3 June 1992 the French Government stated that news of the Danish people's decision had been received with disappointment, and repeated what was said in a joint statement at the Franco-German summit meeting in La Rochelle on 22 May 1992, namely that France and Germany for their part would implement the Maastricht accords in full and called on the other countries to do likewise. The Government also stated that France did not intend to accept a renegotiation of the Treaty, apart from certain procedural arrangements which might prove necessary.

On 3 June President Mitterrand and Chancellor Kohl issued a joint statement in which both countries expressed disappointment at the result of the Danish referendum, with a slim majority, and confirmed that at the same time they were firmly resolved to implement the Treaty on European Union before the end of 1992. The possibility of Danish membership of the Union would have to remain open. France and Germany also emphasized in their statement that enlargement negotiations with the EFTA countries would begin as soon as possible and be rapidly completed.

Afterwards the President told the press that what could not be done with the Twelve would be done with the Eleven. Renegotiation of the Treaty was quite unnecessary. At the European Council meeting in Lisbon, France would press for early extension of the Union between the Eleven. At the same time he announced that France would ratify the Maastricht Treaty by means of a referendum.

On 3 June the Prime Minister, Pierre Bérégovoy, stated in the National Assembly that each country's sovereign right to decide its own future would be respected. The disappointing result of the Danish referendum would not affect continuation of the process towards Union. He stated that the French Foreign Minister's informal consultations with a series of EC partners had shown that they all shared France's view of the situation and will to continue. There would be no possibility of renegotiation.

The Foreign Minister, Roland Dumas, took the same line in a speech made to the Senate on 3 June.

The former French President, Valéry Giscard D'Estaing, stated immediately after the Danish referendum, in the European Parliament and elsewhere, that - unless Denmark changed its mind - a clear political signal would have to be given at the

next European Council meeting on how the Maastricht Treaty in its present form could enter into force between ten or eleven Member States. A signal of this kind was inevitable given that renegotiation was ruled out. Mr Giscard D'Estaing also said that an arrangement whereby one Member State remained with the Treaty of Rome while eleven Member States went further with the Treaty of Maastricht would be fragile and unmanageable and would hinder further progress in European co-operation. Confirmation of the Danish "no" would therefore mean leaving the Community and joining the EEA.

Former Social Affairs Minister Philippe Séguin (RPR), former Interior Minister Charles Pasqua (RPR), the Communist Party's General Secretary Georges Marchais, former Defence Minister Jean-Pierre Chevènement (Socialist Party), and Philippe de Villers (UDF) told the press on 3 June that the Treaty on European Union had no legal validity after the Danish "no", and that the ratification process should therefore be stopped. Their party groups followed this line when discussions resumed on the constitutional amendments in the Senate.

The French Foreign Minister stated in the Senate on 9 June on behalf of the Government that the ratification process in France and in the other EC Member States would go ahead unchanged. In the autumn it would be seen whether Denmark still intended to take part in the common process in which it had also been involved since 1972. If that were so, the Maastricht Treaty would enter into force. If, however, the Danish people continued to oppose it, the consequences would have to be borne. The Treaty as a whole would not be renegotiated, but Member States would make the necessary adjustments so that the Treaty could enter into force for the Eleven. The new text would not differ from the old except for various references to Denmark. The legal basis for continuation of the ratification process was therefore sound.

The French Minister for European Affairs also stated that the question of the Danish Presidency of the EC from 1 January 1993 could not be settled until the other eleven EC Member States had completed their ratification procedures and Denmark had definitively announced whether it was going to ratify or not.

As in other EC countries, the Danish "no" gave rise to an ongoing public debate on democratic control of the EC decision-making process and on application of the principle of "closeness".

The Minister for European Affairs, Elisabeth Guigou, stated in an interview in "Libération" on 25 September that the Danish "obstacle" was, from the legal point of view, a more serious problem than the British one. Politically speaking, however, it was the same thing. In her opinion, much of the concern which had been expressed in Denmark was also due to a rejection of a centralized and bureaucratic Europe. She stated that France would do everything possible to find a solution to the Danish (and the British) problem. It was not of decisive

importance if this delayed implementation of the Treaty by a few weeks. However, Madame Guigou considered that Denmark should say "yes" or "no" to the Maastricht Treaty without delay. It was not possible to agree to only part of the Treaty.

## 3. GREECE

### National ratification procedure

The parliamentary proceedings for the ratification of the Maastricht Treaty took place at a specially convened meeting of Parliament. At a plenary meeting on 20 July a 27-man committee was instructed to go through the Treaty and place it before the full Parliament. The committee began its proceedings on 27 July, and they were concluded by a vote on 31 July 1992.

A referendum on ratification could have been held under the Greek Constitution. If the government had so wished and the President had given his approval, a referendum would have been possible.

At the beginning of the year it had been intended to hold a parliamentary debate in which the question of Greece's membership of the Western European Union would also have been discussed. At that time, it was not certain whether the Treaty could be ratified by a simple majority or whether a qualified majority was required under the constitution. As it gradually became clear that there would be an overwhelming majority in favour, the question became increasingly hypothetical and no position was really adopted on this formal problem.

The parliamentary debate was accelerated, without waiting to discuss membership of the Western European Union at the same time.

With the exception of the Communists and the Greens, all parties had let it be known in advance that they would vote in favour of ratification. The Communists demanded a referendum.

On Friday 31 July 1992 the Greek Parliament decided to ratify the Maastricht Treaty by 286 votes out of the 295 members present (the Parliament has a total of 300 members).

### Political debate

Right from the start, press reports on the parliamentary debate on the Maastricht Treaty stated that the atmosphere was one of harmony. During the preliminary committee discussions the Government party's representatives argued that what was involved was a new start which would not destroy the EC but transform it into a Union. Rejection would not be advantageous for Greece's nogotiating position; on the contrary, it would for no reason make Greece stand out as an exception. The content of the Maastricht Treaty was fully in line with the goals Greece had set itself during the negotiations. The Maastricht Treaty would give the EC the necessary framework and mechanisms. It was also stated that Greece would not

wait for the Maastricht Treaty to enter into force before pressing on with further work on the Delors II package, where Greece already had plans for the use of the funds it would receive.

The opposition criticized the Government for having acted too hastily. Membership of the Western European Union should have been dealt with at the same time and there were still many issues of great concern. It was pointed out that the convergence requirements could have negative economic repercussions such as unemployment. The Treaty would be of no help if the government continued to pursue the same economic policy as at present. Similar criticisms were made by the left-wing coalition, which added that the people had not been properly informed. The Communists said that they had asked for a dialogue but that this request had been rejected.

During the plenary debate in Parliament approximately 130 members and all the Ministers concerned spoke. The points raised were the same as mentioned above.

The Economics Minister, Mr Manos, stressed that Greece was the member country which would gain the most. The country's security would be reinforced at a time when the balance of power was changing in the Balkans, and the Treaty's economic provisions would ensure low inflation, low interest rates and a stable currency together with an influx of funds for carrying out infrastructure projects. The Economics Minister's statement also reviewed the current economic situation in Greece and privatization projects, and argued that Greece must seek its future in Europe.

Prime Minister Mitsotakis described Greek accession to the Maastricht Treaty in general terms as an invitation to take up a challenge which must be met at all costs and as an agreement which would shape the country's future, guarantee national survival and increase Greece's prosperity. He predicted that the Delors II package would be ready by December. This would help in implementing the convergence plan and the government's stabilization programme and make it possible to increase productivity and competitiveness whilst at the same time removing obstacles to economic growth.

The common foreign policy would underpin Greece's security. Greece's membership of the Western European Union would become a reality. He supported enlargement of the Community, but at the same time pointed out that new members would have to accept not only the Community's economic but also its political criteria.

In his speech Mitsotakis also said that he thought Greece would join the European Exchange Rate Mechanism at the beginning of the second stage of EMU on 1 January 1994.

He stressed that European Union was based on principles of solidarity, mutual assistance and respect, and this made the Community more democratic as a Union. The European Parliament's role and powers would be increased and new representative fora would be created. Finally, with the Maastricht Treaty the whole Community would achieve the potential for constructing a decentralized democratic federation in accordance with the wishes and values of the citizens of Europe.

The leader of the opposition, Andreas Papandreou, said that there was no alternative if Greece were not to be marginalized, notwithstanding the obstacles in the way. Maastricht was a ticket to a difficult and unequal battle - unequal because the terms had been devised by the northern members of the Community. There should have been a different basis for Greek membership of EMU. A united Europe did not fit in with Maastricht. It was a milestone on the way which would be passed. On the question of enlargement, he said that this would only be possible after adoption of the Delors II package.

The leader of the left-wing alliance, Maria Damanaki, was critical in her support for the Maastricht Treaty, stressing that it contained faults. Nevertheless, it was necessary to be actively involved and play an active part in the process leading towards economic and, in particular, political union.

Together with the result of the parliamentary debate, the Greek news agency, A.N.A. also published on 1 August an opinion poll showing that 57% of the population considered the Maastricht Treaty to be advantageous for Greece, whilst 12% were opposed to it.

Opinion polls are published fairly rarely in Greece, but on EC issues, opinion polls conducted by the EC and EC statistical data are frequently quoted.

**Reaction to the Danish referendum**

Following the considerable interest shown immediately after the referendum there has not been any particular interest in this question.

In the parliamentary debate the following points were made in connection with the result of the Danish referendum on 2 June:

- Greece would not be able to improve its negotiating position by a rejection and would simply unwarrantedly stand out as an exception,

- the EC countries had taken up the challenge and declared their intention of pressing on with ratification of the Maastricht Treaty by the end of the year despite its rejection by the Danish voters. The Danish voters had thrown the 12 countries into a constitutional crisis without precedent and placed a question mark over the drive for European integration.

## 4. THE NETHERLANDS

### National ratification procedure

For the ratification of the Maastricht Treaty a bill was drawn up with comments on the individual provisions of the Treaty. This bill was sent to the Council of State, which is a consultative body to which every bill of law is submitted before being dealt with in the Lower Chamber of Parliament and then the Upper Chamber. All three bodies may put questions to the Government and these must be answered to the satisfaction of the party asking the question before the matter can proceed to the next stage of the ratification procedure.

Pursuant to the decision of the Council of State, it will not be necessary to amend the Netherlands' Constitution in the context of the Maastricht Treaty. The Netherlands Parliament received the government's ratification bill on Wednesday, 3 June 1992. The content of the bill was broadly in line with the proposal which the Government had referred to the Council of State since the latter had found no reason to make any substantial amendments.

The ratification law can be adopted by the two Chambers by a simple majority. However, the Netherlands' constitution (Articles 91 and 92) provides for the possibility of requiring that treaties involving a greater transfer of sovereignty than laid down in the constitution may only be approved if a 2/3 majority is achieved in both Chambers.

The Constitution does not contain any provisions on referenda in connection with the transfer of powers to international authorities.

The Lower Chamber's proceedings on the bill started in early summer 1992 with more than 500 questions being put by a large number of Members of Parliament representing all of the parliamentary parties.

The answers to the questions, which were sent to the Lower Chamber on 21 September 1992, the day after the French referendum, filled some 250 pages. It is expected that these answers will be followed by further, albeit fewer, questions.

The Lower Chamber's debate is expected to take place on 20 October 1992. Once its text - including a recommendation that the Maastricht Treaty be ratified - is available, it will be sent to the Upper Chamber. This is expected to be done at the end of October.

The Upper Chamber's proceedings on the bill as adopted by the Lower Chamber should be concluded at the beginning of December so that ratification can take place before the end of the year.

**Political debate**

There is broad political agreement that the Netherlands should ratify the Maastricht Treaty.

The parliamentary debate, first in the Lower Chamber and then in the Upper Chamber, is expected to confirm this. There is nothing to suggest that anybody other than representatives from the very small opposition parties on both the extreme right and the extreme left, which altogether account for less than one-tenth of the members of the two Chambers, intends to oppose ratification by a simple majority or will demand amendments to the constitution in this connection. There may however be a majority in Parliament in favour of strengthening its role in relation to the Netherlands Government as regards the national procedure for taking certain types of decision, for example, particularly decisions in the context of judicial co-operation or the common foreign and security policy.

**Reaction to the Danish referendum**

The Netherlands Lower Chamber held a debate on 10 June 1992 on the possible consequences for the Netherlands of the results of the Danish referendum on the Maastricht Treaty.

The debate showed that none of the four large political parties supported the small green left wing party's proposal for a consultative referendum in the Netherlands in 1992. The four parties together have 137 out of a total of 150 seats in the Lower Chamber.

The Liberal opposition party and the Christian Democrat Government coalition party rejected the idea of a referendum as the Government had already done. The arguments for rejection were, inter alia, that there was no tradition in the Netherlands of holding referenda, that the Netherlands' constitution did not contain any provisions on referenda and that the Maastricht Treaty was not suited to a referendum.

The representatives of the two other large parties, the second Government coalition party, the Social Democrats, and the opposition Social Liberals party (D66) were also against a referendum in the present case but were willing to consider an amendment to the constitution which could allow referenda in a few years' time, for example on the results of the planned next intergovernmental conference.

There was broad agreement that the Government should take the lead in increasing understanding in the Netherlands of the contents of the Maastricht Treaty and its advantages. The D66 party thus proposed debates in the Netherlands in which opponents, including opponents from Denmark, would also have an opportunity to take part.

The Government participants in the debate, the Christian Democrat Foreign Minister Hans Van den Broek and the Social Democrat State Secretary Piet Dankert, stuck in their contributions to the line agreed at the special EC Foreign Ministers meeting in Oslo, i.e. that the eleven other countries must continue with their ratification procedures. This line was supported in Parliament. Requests from some Members of Parliament for any Danish wishes to be treated with sympathy were rejected by the Christian Democrat spokesman in particular on the grounds that the reasons for the Danish "no" had not yet been properly established. In addition, there was general opposition to formally re-opening the negotiations on the Maastricht Treaty.

The Netherlands Judge at the EC Court of Justice, P.J.G. Kapteyn, pointed out in the "Nederlands Juristenblad" in June 1992 that it would be difficult for Denmark simultaneously to reject the Maastricht Treaty and remain an EC member. The Judge's legal article does not seem to have started a political debate on the issue in the Netherlands. The article has been discussed in the Danish press.

5. IRELAND

**National ratification procedure**

The issue of the ratification of the Single European Act in 1986 was submitted to the Irish Supreme Court, which ruled that the degree of transfer of sovereignty involved was such that an amendment to the constitution was necessary. A referendum was therefore required, which took place at the beginning of 1987, before the Single Act could be ratified. Against this background the government decided right at the beginning of the negotiations on the ratification of the Maastricht Treaty that the result should be put to a referendum before the Treaty could be ratified.

Immediately after the European Council meeting in Maastricht in December 1991, the government arranged for a White Paper on the Maastricht Treaty to be drawn up. The White Paper was submitted at a government meeting on 9 April 1992 and published on 23 April 1992.

The White Paper reports on and explains the content of the Treaty and puts forward the Irish Government's position together with the expected effects for Ireland.

During the negotiations on the Treaty, Ireland had a protocol added which was intended to ensure that the Irish Constitution's provisions on "the right to life of the unborn child" (prohibition on abortion) would remain an Irish affair. Following a concrete case in the spring of 1992 this protocol proved inadequate. The Irish Government tried to get the protocol amended but this was rejected by the other member countries on the grounds that it would entail re-opening negotiations on the whole Treaty. The twelve member countries subsequently adopted a solemn declaration on 1 May 1992 and the White Paper argues that this declaration will in practice be just as effective in the courts, including the EC Court of Justice, in protecting the right inter alia to travel out of Ireland freely.

The White Paper claims, inter alia, that membership of the Community entails considerable political, economic and social advantages for Ireland. As a member, Ireland is in a better position to influence decisions affecting Irish interests in international commercial, economic and political negotiations. Ireland will therefore commit itself to European Union.

After publication of the White Paper the Irish Government submitted a bill on 5 May 1992 for amending the Irish Constitution with a view to ratification of the Maastricht Treaty. The operative part of the bill contained an addition to Article 29 of the Constitution, concerning international relations, empowering Ireland to ratify the Treaty and thus become a member of the European Union. The bill contained a provision ensuring that European Community legislation takes

precedence over Irish legislation. The bill also made it possible to ratify the European Patent Convention. It was adopted by the Irish Parliament without a vote on 7 May 1992.

The planned referendum was then scheduled for 18 June 1992 with Irish voters being asked whether they approved - yes or no - the abovementioned amendment to the constitution. As part of the information campaign, every household received a 15 page pamphlet which in easily understandable language described the consequences of Irish membership of the Union. It also pointed out what the Union did not cover (e.g. legislation on abortion and general compulsory military service).

The result of the Irish referendum was 69% of votes cast in favour of ratification of the Maastricht Treaty and 31% against. The turnout was 57%.

Formal ratification will take place in the autumn. When Parliament assembles in the middle of October it will have a bill placed before it. After this has been adopted, the ratification procedure for the Maastricht Treaty will pass through the two Chambers of Parliament and the bill will be submitted to the President for signature. It will then be possible for the instrument of ratification to be deposited. The whole of this procedure should be concluded before the end of November.

In the referendum Prime Minister Reynolds succeeded in separating the issue of ratification of the Maastricht Treaty from the politically controversial and legally complex issue in Ireland of an amendment to the Irish Constitution further to the Irish Supreme Court's ruling in the abortion case in February 1992. The Government has announced that a referendum will be held on this question and this is expected to take place in November 1992.

**Political debate**

Apart from the small new Socialist party, the Democratic Left, together with a few independents in Parliament, the other parties recommended their voters to vote in favour of the Maastricht Treaty.

Some Members of Parliament defied their own party and publically declared themselves opposed to the Treaty on the grounds of the abortion issue. This was the issue that induced most of the undecided voters to vote against the Treaty.

Throughout the negotiations the Government was concerned that the Treaty might result in obligations which would directly entail the surrender of Ireland's traditional neutrality. Labour especially put forward very strong political

arguments against the Government. It was however able to accept the result of the Treaty negotiations submitted in this area.

The issue of neutrality and non-aligned status is particularly important for Ireland. Various opponents of the Treaty justified their position on the grounds that they did not wish to commit Ireland to compulsory military service in a European army. This argument was rejected by the Government, which pointed out in the White Paper that the question of a common defence policy would only be dealt with at the next intergovernmental conference in 1996. It was therefore not an issue as regards the position on the Maastricht Treaty but would be put to voters in a referendum when the time came. Reference was also made to Article J.4 of the Maastricht Treaty, which provides that the policy of the Union will not prejudice the specific character of the security and defence policy of certain Member States. The Maastricht Treaty does not therefore interfere with Ireland's non-aligned status.

The middle-class "Fine Gael" party, the largest opposition party, argued right from the start of the Union negotiations for a flexible Irish attitude on proposals for strengthening the security and defence policy dimension.

Labour and the Democratic Left both warned that care should be taken not to over-estimate the economic advantages of being part of an ever more integrated Europe. The essence of this argument was that it would be mainly the existing centres of growth in Europe which would further increase their economic development in the Union. The peripheral regions would remain comparatively poor unless they received considerably higher financial transfers from the growth centres.

The same two parties also criticized the Treaty for not taking employment problems sufficiently into account. If Labour subsequently opted in favour of the Treaty, this was, inter alia, on the grounds that the Treaty's social dimension would result in improvements compared with current Irish legislation.

**Reaction to the Danish referendum**

The Irish Government issued a statement on 2 June 1992 in which it deeply regretted the result of the Danish referendum. The statement pointed out that it must be ensured that the content of the Maastricht Treaty was nevertheless realized.

## 6. ITALY

**National ratification procedure**

At its meeting on 17 April 1992 the Italian Government approved a bill for the ratification of the Maastricht Treaty.

After referral to Parliament, the bill has to be discussed in the two parliamentary chambers, the Senate and the Chamber of Deputies. It is dealt with first in the relevant committees - the foreign affairs committee, the finance committee and the constitutional committee. After the committee stage, the bill has to be discussed in plenary in the two chambers and it will be adopted once the two chambers have, by a simple majority, approved the same text authorizing the Head of State to ratify the Treaty.

The bill for ratification of the Maastricht Treaty was referred to Parliament on 29 April 1992, but discussion in the foreign affairs committee only began in the middle of July as the bill lay in abeyance pending a resolution of the government crisis (at the end of June 1992) and the appointment of the committee in the newly elected Parliament.

The Senate approved the bill on 16 September 1992 by 176 votes in favour, 16 against and 1 abstention.

The plenary discussions in the Senate took place with a view to the Senate dealing with the ratification bill before the French referundum on 20 September 1992. By expediting the Senate proceedings in this way the Italian Government wanted to send a positive signal both to France and the other Member States.

The Chamber of Deputies began its discussion of the bill at the beginning of October and its proceedings are expected to take a couple of months.

The ratification bill is extremely simple, containing only three articles, as follows:

Article 1

1. The President of the Republic is hereby authorized to ratify the Maastricht Treaty together with the 17 attached Protocols and the Final Act containing 33 Declarations, done at Maastricht on 7 February 1992.

Article 2

1. The international act referred to in Article 1 shall be wholly and fully implemented as from the date upon which it enters into force pursuant to Article R(2).

Article 3

1. This law shall enter into force on the day following that of its publication in the Official Gazette.

Ratification of the Maastricht Treaty in Italy will require certain constitutional amendments which it is, however, intended to carry out after ratification. Involved here are, inter alia, the Treaty's provisions on citizenship of the Union. At the moment it is being considered whether other aspects of the Maastricht Treaty may justify further adjustments to the Italian Constitution.

In Italy, constitutional amendments are implemented by means of a procedure whereby the two chambers of parliament debate a bill to this effect twice at an interval of three months. After the second reading the bill can be adopted by a simple majority in both chambers. If 1/5th of the Members of Parliament in one of the two chambers then so wish, the bill will be put to a referendum. This will also be the case if 500 000 voters or 5 out of 20 regional elected administrations so wish. If, on the other hand, the bill for constitutional amendment is adopted by at least a 2/3 majority in the two chambers of Parliament, it may not be put to a referendum.

**Political debate**

There is strong support for the Maastricht Treaty both amongst politicians and in the population. The Italian Parliament made its approval of the Treaty conditional on the European Parliament's Opinion on it. As the European Parliament expressed a positive view on ratification of the Treaty by the member countries at its plenary meeting on 6 to 10 April 1992, this condition has been fulfilled.

**Reaction to the Danish referendum**

The Italian Government issued a statement on 3 June in which it expressed its regret at the result of the Danish referendum. The statement also made it clear that the Italian Government was firmly resolved to move forward towards the construction of Europe as decided in Maastricht.

The Italian Foreign Minister has since stressed that he agrees with the Franco-German position (see France above) even if this might result in a Treaty without Danish participation. On 15 June 1992 - on the initiative of the Italian side - the Danish ambassador in Rome was summoned to a meeting with the Italian State Secretary, Senator Vitalone; the Italian Foreign Ministry issued a press communiqué afterwards stating that Senator Vitalone had expressed a very firm wish on the Italian side that Denmark should be able to continue to take part fully in the development of the European integration process - in which the Maastricht Treaty was of particular importance - inter alia because the cohesion

of a Union consisting of 11 countries and a European Community consisting of 12 could create complicated legal and institutional problems. Senator Vitalone wished to stress that the Italian position allowed for subsequent ratification of the Maastricht Treaty.

The Italian Foreign Minister subsequently referred to Denmark's situation in a statement to the Italian foreign affairs committee on 15 July on the European Council meeting in Lisbon. The statement expressed understanding for the Danish Government's difficulties and voiced the hope that, in spite of everything, all the ships would arrive in port together. It was stressed that the process of Union should not be brought to a halt by one participant who could not or would not go along with the rest and that the best signal for Denmark would be for the other countries resolutely to continue with the process of ratification.

## 7. LUXEMBOURG

### National ratification procedure

The Maastricht Treaty was ratified on 2 July 1992 without any constitutional amendment and without a referendum but with a resolution being adopted at the same time to the effect that the Constitution would be amended later, i.e. before the end of 1994, as a consequence of Union citizenship and the right of foreigners to vote.

Luxembourg deposited its instrument of ratification with the Italian Foreign Ministry on 28 August 1992.

The Luxembourg Foreign Minister stated that Luxembourg would ask for the directive to be adopted under Article 8b of the Maastricht Treaty to provide for the possibility of laying down the following conditions at national level:

- fixed local residence for a period of 10 to 12 years,

- posts such as mayor and councillors to be reserved for Luxembourg nationals,

- at least 50% of candidates on any voting list to be Luxembourg nationals,

- the number of nationals from the other Member countries to be limited to 25%, and

- discussions in local councils to be conducted in Letzeburgesch.

The Luxembourg Constitution contains a single provision in Article 51 on the holding of referenda. A referendum must be based on a specific law adopted either by a simple or a qualified majority (cf. Article 114 of the Constitution). Referenda are not binding. Under the Constitution there is no legal obligation to hold a referendum in the case of a transfer of sovereignty but such a transfer may of course give rise to a political or legal requirement for amendment of the Constitution pursuant to the procedure laid down for this purpose (cf. below).

The Government placed the ratification bill before the Chamber of Deputies on 9 March. The bill was discussed by a special committee composed of representatives from the two standing committees, the foreign affairs committee and the economic affairs committee. Once the committee had concluded its proceedings, a written report was submitted and the second reading took place. The matter was then briefly dealt with in the Council of State before the third reading.

The first vote took place on 22 April 1992 with 36 of the 64 members of the Chamber of Deputies voting in favour of the bill, 13 against and with 6 abstentions.

The third reading commenced on 30 June 1992. The basis for the discussions was an opinion from the Council of State concerning the Maastricht Treaty's compatibility with the Luxembourg Constitution and the positive views expressed by the special committee of the Chamber of Deputies.

The debate in the Chamber of Deputies and in the media concentrated on the question of citizenship of the Union, in particular on the right of foreigners to vote and to stand for election, and on the question of the location of the EC institutions, especially the future European Central Bank. The two small parties asked for both a referendum and renegotiation of the Maastricht Treaty. In connection with Union citizenship and foreigners' voting rights the main opposition party, the Liberals, argued that the Constitution had to be amended before the Treaty was ratified. During the third reading the Liberals changed their position and the Constitution is now to be declared revisable during the present legislative period so that the necessary constitutional amendments can be made before the end of 1994. As regards the seat of the EC institutions, the Foreign Minister, Jacques Poos, stated that the Luxembourg Government would continue to claim the rights granted it under the 1965 agreement.

At the final vote the ratification bill was adopted with 51 votes in favour, 6 against and 3 abstentions. The Christian Socialist, Socialist and Liberal Parties voted in favour and the Greens, the Communist Party and the 5/6 Party, also called the Pensioners' party, voted against.

At the same time as the vote on the bill the Chamber of Deputies adopted three resolutions calling on the Government to do the following:

Resolution 1 concerning Political Union:

- to ensure that the Union respects the national identities of member countries and the principle of "closeness" and does not develop in a centralizing and bureaucratic direction,

- to ensure that any enlargement of the European Community does not prejudice its internal cohesion or the objectives of the Union,

- to ensure that the small member countries continue to be guaranteed representation in the Community institutions as equal partners,

- to work for transparency, efficiency and democracy in the institutions,

- to promote the closest possible co-operation between national parliaments on Community decisions,

- to continue its information campaign,

- at the intergovernmental conference in 1996, to work for the development of the Union's social, ecological and democratic dimensions.

Resolution 2 concerning Economic and Monetary Union:

- on the basis of a number of pre-conditions and in co-operation with the European Parliament and management and labour, to take the necessary budgetary, economic, fiscal and institutional measures.

Resolution 3 requires the Government to ensure that the date of entry into force of the directive on the right to vote and to stand as a candidate in municipal elections - which is to contain the special derogations for Luxembourg in accordance with Article 8b of the Maastricht Treaty - does not precede the revision of the Constitution.

The amendments to the Luxembourg Constitution as a result of Union citizenship and the EC right to vote and stand for election will relate in particular to Article 52 and Article 107. As yet, there are no definitive proposals for new formulations of the relevant Articles or any other amending Articles which may be required as a result of Union citizenship or voting rights.

The procedure for constitutional amendments is laid down in Article 114 of the Constitution. This provides for the legislative assembly to be dissolved after declaring that it intends to amend the constitution and to reconvene after new elections to be held at the latest 3 months after dissolution. The intention is that the present assembly will make the relevant declaration before the end of the present parliamentary period, i.e. the middle of 1994; it will draft the constitutional amendments and continue until the end of its term and then the newly elected assembly will confirm the amendments by a qualified majority or quorum (cf. Article 114(4)(i) of the Luxembourg Constitution).

**Political debate**

There was broad political agreement between the Government parties and the major opposition parties in Luxembourg concerning the advantages of ratification of the Maastricht Treaty. The Government coalition of Christian Socialists and Social Democrats also agreed, together with the Liberals, that the Luxembourg Constitution should be amended and that Luxembourg should have a derogation

from some of the provisions of Article 8b concerning the right to vote and to stand as a candidate in municipal elections, a possibility provided for in that Article. The disagreement between the Government and the Opposition concerned the question of the extent to which the amendments to the Constitution should be made before or - if this were the outcome - after ratification of the Treaty.

The justification for the future derogations concerning municipal elections will be based on Luxembourg's particular demographic situation, given that 28/29% of the resident population, or approximately 115 000 out of a total of 400 000 inhabitants, are foreigners.

The Luxembourg Social Democrat Party issued a statement in connection with the debate, stressing the Party's main priorities as regards the Maastricht Treaty:

- clarification of the conditions for the right of EC nationals to vote and stand as candidates in municipal elections,

- defence and extension of Luxembourg's rights as a full partner in the context of enlargement of the EC,

- reduction of the democratic deficit,

- avoiding the social dimension of Europe being sacrificed to economic growth,

- a strengthening of environmental policy,

- Luxembourg as the capital of Europe.

**Reaction to the Danish referendum**

Both the Luxembourg Prime Minister and the Foreign Minister expressed their regret at the result of the Danish referendum. The Prime Minister stated that he did not think there would be any renegotiation or that the other EC countries would suspend their ratification procedures.

## 8. PORTUGAL

### National ratification procedure

Parliamentary approval is required for ratification of the Treaty on European Union and in this connection amendments will be made to the Portuguese Constitution. Under Article 286 of the Constitution, proposed amendments are to be adopted by a 2/3 majority. The proposed amendments concern the powers of the Portuguese National Bank and the issue of the right of EC nationals to take part in municipal and local elections.

Theoretically, the possibility of a referendum on the Maastricht Treaty in Portugal cannot be excluded, but it must be considered highly unlikely.

The proceedings for the ratification of the Maastricht Treaty will take place in 2 stages. When the Portuguese Parliament begins its autumn session on 15 October 1992, the proposed amendments to the Constitution will be debated, whilst the other aspects of the Maastricht Treaty will be dealt with in November on the basis of four committee reports, thus enabling ratification to take place before the end of the year.

### Political debate

The Communist Party (PCP), parts of the Socialist Party (PS) and the Socialist Centre Party support the idea of a referendum, but the Government Party (PSD), which has an absolute majority in Parliament, is against the idea.

An opinion poll published on 18 September 1992 showed 52,9% of the population in favour of ratification of the Maastricht Treaty, with 21,6% against and 23,3% abstaining. 16,7% of those questioned had never heard of the Maastricht Treaty.

### Reaction to the Danish referendum

The Portuguese Prime Minister and then President of the European Council, Cavaco Silva, issued a statement on 3 June 1992 in which the Portuguese Presidency regretted the Danish decision not to take part in the development of the process of European integration. The statement also pointed out that the EC member countries must now look for the best way of continuing the process towards European Union decided in Maastricht.

## 9. SPAIN

### National ratification procedure

On 1 July 1992 the Spanish Constitutional Court determined in a unanimous and binding decision that the provision in the Maastricht Treaty on the right of Union citizens to stand as candidates at municipal elections would require amendment of Article 13(2) of the Spanish Constitution, which merely speaks of the possibility of non-Spanish nationals being entitled to vote at municipal elections.

Amendment of Article 13 can be undertaken by a 3/5 majority in Parliament's two chambers, but with the possibility of a referendum subsequently if 1/10 of the members of one of the two chambers so request no later than 15 days after adoption of the proposed amendment (Article 167(3) of the Constitution).

Immediately after the decision by the Constitutional Court, Government placed before Parliament a proposal for amendment of Article 13 of the Constitution so that non-Spanish nationals would also gain the right to stand as candidates at municipal elections. The proposal received support from all parties and was passed by Congress and the Senate on 22 and 30 July 1992 respectively, entering into force on 28 August 1992.

With the constitutional amendment adopted, the path is clear for Parliament's discussion of a proposal for ratification of the Maastricht Treaty. The proposal for ratification of the Maastricht Treaty was submitted in Congress on 10 September 1992. Discussion will take place in both chambers of Parliament and is expected to be completed in Congress in October and in the Senate in November.

### Political debate

Broadly speaking, as far as can be judged all the political parties will vote for ratification of the Union Treaty. The coalition of the left (Izquierda Unida), of communist bent with 17 members in Congress, has been split over the question, as to date 8 of its members, including the Chairman (Julio Anguita), have declared that they will abstain while the remaining 9 intend to vote in favour.

In the course of the parliamentary discussion of the Maastricht Treaty, interest will largely focus on the extent to which the Spanish requests concerning economic and social cohesion will be taken into account. All parties in Parliament concur with the Government line on the question of economic and social cohesion. In this connection the financial reform (the Delors II package) will be brought into the debate.

Another subject in the debate is the Government's convergence plan, i.e. its economic programme for being able in due course to meet the criteria for participation in the third stage of Economic and Monetary Union. Spain's current economic problems and the difficulties faced by Spanish industry in competition in the internal market will be brought into the debate in this context.

On 3 September 1992 Rodrigo Rato, the spokesman for the Conservative Party (Partido Popular), stated to the press that the Treaty would be bound to be re-read in all Member States after what had happened in Denmark and after the debate which had taken place in France. He mentioned in this connection that if the cohesion resources wanted by Spain were not created a request would have to be made for extension of the deadlines laid down for meeting the conditions for entering into the third stage of Economic and Monetary Union. The Chairman of the same party, José Maria Aznar, stated that the Maastricht Treaty would have to be reinterpreted in any event.

These statements drew no comments from Government, but on 8 September 1992 the Foreign Minister, Javier Solana, informed the press that Spain would implement the ratification procedure even if, contrary to expectations, France were to vote against the Maastricht Treaty on 20 September 1992.

The question of consultative referendum on the Maastricht Treaty will possibly be raised during parliamentary discussion. Article 92 of the Spanish Constitution allows for the possibility of consultative referenda on questions of far-reaching importance if a majority of Congress members approve a Government proposal to that effect. Prime Minister Felipe González, whose party holds half the seats in Congress, has rejected the idea of a consultative referendum. And it is regarded as out of the question that any call on Government to bring forward a proposal on the matter could acquire the requisite support among the majority of Congress's members.

Instead, Government intends to initiate an information campaign concerning the Treaty on European Union. The campaign will include distribution of certain publications on the Treaty in addition to the printing of 25 000 copies of the Union Treaty together with the Treaty of Rome and the Single Act.

The Treaty text will be sent to subscribers to the Spanish Official Gazette and to local authorities, etc., as well as being sold in bookshops. A more general review of the current EC situation and the Union Treaty will be issued with a print run of 4 to 5 million, for distribution with the major daily papers, etc.

Finally, the State radio and television station has announced that, independently of Government and political parties, etc., a series of information programmes on the Union Treaty will be broadcast.

**Reaction to the Danish referendum**

The Spanish Government's reaction to the referendum on 2 June was to note that the European process must continue with or without Denmark.

## 10. UNITED KINGDOM

### National ratification procedure

On 3 June the British Prime Minister informed the House of Commons of the consequences of the Danish referendum and at the same time decided to postpone the ratification procedure in Parliament. This was done to provide an opportunity to clarify the legal and economic implications of the Danish no. In his statement he maintained Government's desire to implement the Maastricht Treaty. He considered that there was no possibility of any renegotiation. Denmark's future relationship to the Union must now be determined within the months to come.

The British ratification process entails passing a bill amending the "European Communities' Act" (the UK accession law). The bill concerns only those aspects of the Maastricht Treaty which amend the Treaty of Rome. The bill in question has to be adopted by a simple majority. The intergovernmental aspects do not require a law to be adopted in order to be ratified. That can be done directly by Government under United Kingdom legislation.

Government put forward the bill immediately after the opening of the House of Commons on 6 May 1992. Thereafter it was passed on for committee discussion. The second reading of the bill for ratification of the Maastricht Treaty was held on Thursday 21 May 1992. The debate was closed by a vote in favour of moving the bill to a third reading with 336 votes for and 92 against. The majority of Labour members abstained.

Some 150 proposed amendments to the Government's bill have been put forward. These amendments will be voted on individually or, wherever possible, by groups of individual proposals. The committee stage will take place before the full House of Commons, and thus not in the Select Committee for European Affairs (Parliament's "Market Committee"). In the final (third) reading a vote will be taken on the entire, and possibly modified, bill.

Simply given the number of proposed amendments, the debate is expected to be very protracted, possibly drawing out over many days.

The bill has to pass before the House of Lords before receiving Royal Assent.

The United Kingdom has no written constitution, with the result that constitutional amendments are irrelevant.

The referendum has a very marginal position in UK political tradition, although it was used in 1975 following the renegotiations on the United Kingdom's EC

membership. In the current debate the demand is being heard for a referendum, both from members of the governing party and from Labour. The Prime Minister, Mr Major, has rejected this possibility as being at variance with British parliamentary traditions and Parliament's responsibility.

**Political debate**

Following the result of the Danish vote, some 100 Conservative MPs called on Government to attempt to have the Maastricht Treaty renegotiated. The criticism was led by former Conservative MPs now sitting in the Lords - primarily Baroness Thatcher and Lord Tebbitt - and by Conservative backbenchers such as Sir Teddy Taylor in the Commons.

In the public mind the generally critical attitude towards the Community has increased concurrently with constantly rising dissatisfaction with the Government's economic policy in relation to the long-awaited economic recovery, which has so far failed to materialize. The reproach is increasingly being made to the Government that the United Kingdom's economic scope is continually being curtailed as a result of what is described as the Community's increasing powers.

Following the European Council meeting in Lisbon the United Kingdom Government initiated a major clarification exercise on the principle of subsidiarity in the various Ministries. This exercise is expected to be completed in the autumn.

As regards Labour's position on ratification of the Treaty, the party is only in the process of elaborating its strategy following the election of a new leader. The party abstained from voting during the second reading of the bill for ratification of the Treaty. However, for the time being it continues to be an open question to what extent the new party leader will in the event be able to maintain that position.

The party's commitment to continuing integration of the United Kingdom into the Community is being maintained, even though the British opt-out clause from the Social Charter continues to cause the party difficulties.

**Reaction to the Danish referendum**

As stated above, on 3 June 1992 the British Prime Minister briefed the Commons on the consequences of the Danish referendum.

It is anticipated that the parliamentary ratification process will be resumed when Parliament convenes in October following the summer recess. In that context a general EC debate will be held in the British Parliament.

During the special debate in the Commons on 24 September 1992 on the British economic situation, the Prime Minister adverted to the ratification of the Maastricht Treaty. He refused to hold a referendum. At the same time he stated that the ratification process would be resumed once Denmark's intentions were clear. (4)

Following the Cabinet meeting on 1 October 1992 the Prime Minister stated during a radio interview on the same day that he planned to submit the Maastricht ratification bill for a third reading by the Commons by Christmas or shortly thereafter.

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(4) On Denmark's position Mr Major said: "Although the Danish people narrowly voted against the Maastricht Treaty, that is not necessarily their last word. The Danish Government plan a further referendum. But if the Danes were unable to go back to their people, or were they to lose again that further referendum, then the Maastricht Treaty could not proceed. It would not be acceptable for the eleven to go ahead without Denmark and against the will of the Danish Government and people. That cannot happen. And it will not happen.

The Danish Government will publish a White Paper next month at the start of a process of consultation. It would not make sense to bring the Maastricht Bill back to the House of Commons before we know clearly what Danish intentions are and when and how they propose to consult their people again. But when it is known we must consider further examination of the Bill."

Later in the statement Mr Major said: "... when we are clear that the Danes have a basis on which they can put the Treaty back to their electorate, we shall bring the Maastricht Bill back to the House of Commons."

## 11. GERMANY

### National ratification procedure

On 21 July 1992 the Federal Government approved the bill modifying the German Basic Law together with the bill on actual ratification of the Maastricht Treaty. The two bills, on modification of the Basic Law and on ratification, were brought before the Bundesrat on 23 September 1992. Both bills were submitted to the Bundestag on 8 October 1992. The bill amending the Basic Law requires a 2/3 majority in the Bundesrat and the Bundestag. The bill on actual ratification requires a simple majority in the Bundestag and the Bundesrat. At present, the ratification procedure is expected to be concluded in December 1992 (after the European Council meeting in Edinburgh on 11 and 12.12.1992 but before the end of the year).

At a later date in the year the Federal Government will put forward a bill on the detailed implementation of the new Article 23 on the transfer of powers to the EC and the question of the involvement of the Länder in the German decision-making process on EC matters. For adoption, the law requires a simple majority in the Bundesrat and the Bundestag.

The German Basic Law contains no rules on a referendum in connection with the transfer of powers to international bodies. Neither the governing coalition parties (CDU/CSU and the FDP) nor the Social Democrats (SPD) have put forward a proposal for a consultative referendum.

The Federal Government's bill amending the Basic Law entails:

- inserting a new Article 23 on the transfer of powers to the EC;

- modifying Article 28 (local voting rights);

- modifying Article 88 (European Central Bank);

- adjusting Article 115 (the internal procedure between the Bundestag and the Bundesrat).

The main content of Article 23 is:

- The Federal State's future transfer of powers to the EC requires passing a law, to be adopted by both the Bundestag and the Bundesrat. If treaty amendments in EC co-operation are involved which affect the content of the German Basic Law, a bill has to be passed with a 2/3 majority in the Bundestag and the Bundesrat, under the rules governing amendment of the German Basic Law.

- Both the Bundestag and the Bundesrat will co-operate in treating future EC issues at national level.

- Where areas are involved which are of exclusively Federal competence but which affect the Länder's interests, the Federal Government will take account of the Bundesrat's position.

- Where areas are involved which are preponderantly the competence of the Länder or where the Länder's administrative practice is affected to a significant degree, the Federal State will take decisive account of the Bundesrat's views in adopting the German position.

- Where areas are involved which are exclusively of Länder competence, the German position within the relevant EC bodies will be put forward by the Länder.

- The involvement of the Länder will be set forth in more specific terms in a law to be adopted by both the Bundestag and the Bundesrat.

**Political debate**

Apart from the issue of Article 23 there have been no crucial differences of opinion between the governing coalition parties regarding ratification of the Maastricht Treaty.

The SPD leadership adopted the party's main line at meetings in March and May 1992 respectively. That involves acceptance of the Maastricht Treaty as it stands. Prior to that, a lengthy discussion was conducted within the party, during which, among other things, a number of leading politicians apparently wanted the SPD to press for "subsequent improvements" to the current negotiation outcome.

Article 23 has in the meantime been the subject of discussions between the political parties in the Constitutional Committee and of negotiations between the Federal Government and the Länder, most of which are SPD-governed.

It may therefore be expected that in December 1992 both the governing parties and the SPD will vote in favour of the constitutional amendment and ratification bills.

However, the possibility cannot be ruled out that, in connection with adoption of the abovementioned bill on German implementation of the Maastricht Treaty, the Länder and/or the SPD might make demands involving major modifications to the internal German EC procedure. Such a situation would merely involve adjusting German internal legislation and not entail any requirement to amend the Maastricht Treaty.

It may be added that there continue to exist circles which do not want an automatic transition to the third stage of EMU on Germany's part. Germany's participation, even in a situation where it fulfils the Treaty conditions, must be preceded by prior approval in the Bundestag and the Bundesrat. On 25 September 1992, the German Foreign Minister, Mr Kinkel, stated before the Bundestag that the Bundestag and the Bundesrat would deal with the matter before the European Council meeting in 1996 or 1998 took a decision.

It should further be added that, despite acceptance of the current Maastricht Treaty by the governing parties and the SPD, there has been considerable dissatisfaction that Germany's high ambitions were not fulfilled in the Intergovernmental Conferences. This applies in particular to the new provisions on the powers of the European Parliament, the common foreign and security policy, legal and internal matters and specifically the lack of balance between the limited progress in these areas and the far-reaching EMU provisions.

There are no regular opinion polls in Germany corresponding to the Danish ones prior to 2 June 1992.

There have been occasional telephone polls, in particular in the German mass media (TV), revealing widespread scepticism on parts of the Maastricht Treaty, first and foremost the projected abolition of the German mark. However, as stated, there is no possibility of making direct comparisons between attitudes towards the Maastricht Treaty in opinion at large as between Germany and Denmark.

Some sections of "opinion" have levelled considerable criticisms at the Treaty. For example, some 60 economics professors have voiced strong criticism of the provisions on EMU on the grounds that they do not secure adequate European stability after transition to the third stage.

Following the criticism from the 60 economics professors in the German media a statement was published by some 50 professors speaking positively on the EMU Treaty.

The same has been done by leading representatives of the German financial sector. In that circle too there has been criticism primarily of the "inadequate" guarantees that transition to the third stage and abandonment of the German mark will lead to a European system with at least as high a level of economic and monetary stability as Germany has today.

A number of law professors have publicly criticized other provisions of the Treaty. It has been stated inter alia that the European Parliament and the Court of Justice do not exercise adequate control over the Commission and the Council with regard to powers concerning industrial policy, the labour market and social conditions, culture and education and consumer protection.

**Reaction to the Danish referendum**

On 3 June 1992 Germany issued a joint statement together with France (see section on France). The statement indicated that the ratification process would proceed in France and Germany regardless of the result of the Danish vote and that the two countries were striving for ratification of the Maastricht Treaty before the end of the year at any rate in 11 and preferably in all 12 Member States. At the same time, the two countries stressed that the door was being kept open for Denmark and that the prospects for the EC's enlargement must not suffer as a result of the Danish vote.

The result of the Danish referendum received considerable coverage in the German media during the days immediately following it.

On a number of occasions, and most recently in connection with Chancellor Kohl's Government statement to the Bundestag on 25 September 1992, the Federal Government has confirmed its desire to maintain the objective of entry into force of the Maastricht Treaty on 1 January 1993. The Government has also vigorously maintained that the door is "open" for Denmark.

The Federal Government has clearly stated the desire that Denmark should also accede to the Maastricht Treaty and in that connection has reiterated the German desire for accession negotiations with the EFTA candidate countries to be initiated in early 1993.

## CHAPTER VII

## THE RELATIONSHIP BETWEEN THE ROME TREATY AND THE MAASTRICHT TREATY

### 1. INTRODUCTION

This Chapter takes a systematic look at the Maastricht Treaty, in order to see how it departs from the existing Treaties. The purpose is especially to consider whether it would be practically and legally possible for the great majority of Member States to co-operate under the new dispensation while just one or a very few continue to take part in accordance with the old arrangements or something like them.

The Chapter accordingly examines changes and differences in the institutional provisions, including the decision-making procedures which the old and new Treaties lay down, and in the substantive rules in various areas, including some which are not specifically regulated in separate chapters in the existing Treaties.

### 2. THE TREATIES

### 2.1. THE ORIGINAL TREATIES

The three original Treaties are the ECSC Treaty, which dates from 1951, and the Euratom Treaty and the Treaty on European economic co-operation, frequently referred to as the "Rome" Treaty, both dating from 1957. The ECSC Treaty set out to safeguard peace in Europe by establishing close economic co-operation between the Member States in the coal and steel industries. The Euratom Treaty is likewise confined to a single field, namely atomic energy. The EEC Treaty lays the foundations of an ever closer union among the peoples of Europe, and provides for the establishment of a common market or customs union, common policies in agriculture and transport, the co-ordination of the Member States' economic policies, and co-operation on a series of other subjects relating to the economy.

The institutional structure of the ECSC Treaty differs from that of the other two Treaties in being more supranational in design. (5) The cornerstones of the ECSC structure were four institutions. The High Authority was given far-reaching powers to regulate the coal and steel industry in the six countries. The High Authority's activities were subject to control by a

(5) The central player in the ECSC Treaty is the High Authority, whereas in the two later Treaties the Council is more important.

Council composed of Ministers from the Member States' Governments, a Parliamentary Assembly composed of delegates from the Member States's parliaments, and a Court of Justice.

In the EEC Treaty the High Authority was replaced by the Commission. Decision-making power was given to the Council, which was required to consult the European Parliament. As in the ECSC Treaty, there was also a Court of Justice which was to interpret and review the application of the Treaty.

Over the years the original Treaties were amended in a number of revisions, which until the Single Act were mainly concerned with institutional matters. The first revision was the Merger Treaty of 1965, which established common institutions for all three Communities. The Budget Treaties of 1970 and 1975 expanded the European Parliament's role in the drawing up and approval of the European Community budget. There was also the decision that the European Parliament would be elected directly, beginning in 1979.

European political co-operation developed from 1970 onward as a purely intergovernmental form of co-operation alongside the original Treaties. The basis here was not a Treaty but three reports (the Luxembourg Report of 1971, the Copenhagen Report of 1973 and the London Report of 1981) which the Member States accepted as a basis for co-operation.

From the mid-1970s there has also been intergovernmental co-operation between the Member States on justice and home affairs. This takes place through a number of channels set up on an ad hoc basis outside the Treaty framework, and in some cases links up with political co-operation. Cases of this kind include immigration, policy on asylum, and co-operation in the field of civil law.

Since the end of the 1970s there has been economic and monetary co-operation between the Member States. This takes place outside the framework of the Treaty.

**2.2. THE SINGLE EUROPEAN ACT**

The Single Act represented the most far-reaching revision of the EEC Treaty to date. Its structure is similar to that of the Maastricht Treaty. It consists of two pillars, which clearly separate co-operation through the Community machinery proper from intergovernmental co-operation (foreign policy co-operation).

The first pillar builds on the EEC Treaty: it amends both the substantive and the institutional provisions. It expands and clarifies the areas of Community authority (the environment, research and technological development, economic and social cohesion), streamlines the decision-making process by introducing majority voting in the Council, and strengthens the European Parliament's role

by introducing the co-operation procedure and the assent procedure.

The second pillar represents a codification of European political co-operation, which had been going on since 1970. But this foreign-policy co-operation continues to be an intergovernmental matter. Decisions continue to be taken by unanimous vote, in the form of "common positions" which do not directly affect citizens or businesses in the Member States and are not subject to judicial review.

The Single Act left co-operation on justice and home affairs unregulated by the Treaties.

This was the body of treaties which formed the point of departure for the intergovernmental conferences on political union and economic and monetary union; it consisted of a series of acts which had so to speak been superimposed one on top of the other and expanded in step with the development of the Community. The Maastricht Treaty follows the same principles of structure as were applied earlier in the Community's history.

The following chapters concentrate on the EEC Treaty, as the changes to the ECSC and Euratom Treaties are merely consequent on the changes to the EEC Treaty.

**2.3. THE STRUCTURE OF THE MAASTRICHT TREATY**

The Maastricht Treaty is the most comprehensive revision of the Treaties since the foundation of the Community. It is structured in three pillars, bound together by common introductory and final provisions.

The Maastricht Treaty is divided into seven Titles, between them comprising Articles A to S.

The common introductory provisions are set out in Title I, which comprises Articles A to F; they deal with the objectives of the Union, fundamental principles, and rules governing the Union as a whole.

Amendments to the EEC, ECSC and Euratom Treaties are set out in Titles II to IV, comprising Articles G to I (the first pillar). The Maastricht Treaty continues along the lines of the Single Act by further clarifying and building on the powers conferred by the EEC Treaty, further streamlining the decision-making process by means of majority voting in the Council, and developing the decision-making procedures which the Single Act had introduced.

The second pillar is Title V, comprising Articles J to J.11; it extends the treaty provision for intergovernmental foreign-policy co-operation. Title VI, which comprises Articles K to K.9, brings into the system of the Treaty the machinery for co-operation in the fields of justice and home affairs which has been in operation outside the Treaty since the 1970s. This is comparable to what was done with European political co-operation in the Single Act.

The final provisions, which apply to all three pillars, are set out in Title VII, comprising Articles L to S; the clauses in the EEC Treaty covering amendments to the Treaty and the enlargement of the Community are here made applicable to the Union as a whole.

A series of protocols and declarations are also attached to the Maastricht Treaty which supplement or interpret its wording in a range of areas.

The Maastricht Treaty establishes separate decision-making rules for each of the three pillars. The existing institutions, Council, Parliament, Commission and Court of Justice, are employed for all three pillars. The Council becomes the deciding body in foreign policy and in co-operation on justice, in place of the earlier meetings of foreign ministers and of ministers for justice and home affairs. The preparatory stages were previously divided into three separate systems. A single system is now established for preparation and for decision-making, but the rules governing the actual taking of decisions are different in the first, second and third pillars.

It is worth noting that the Treaty itself sets a series of deadlines for its implementation. These are spread over the period from 1993 to 1999 (see Annex 1).

The Treaty also lists a number of subjects to be considered at the next intergovernmental conference, in 1996 (see Annex 1 hereto).

To sum up, the structure of the Maastricht Treaty builds on the same method as has been applied in the past. As in the Single Act, a clear distinction is maintained between co-operation in the Community framework (the first pillar) and intergovernmental co-operation (the second and third pillars). The inclusion of intergovernmental co-operation on justice and home affairs follows the same principle as the inclusion of European political co-operation in the Single Act. This makes co-operation more systematic and more transparent.

## 2.4. THE FUNDAMENTAL OBJECTIVES AND PRINCIPLES OF THE MAASTRICHT TREATY

The common provisions set out the principles which apply to the Maastricht Treaty as a whole, that is to say both to the Community (the first pillar) and to the intergovernmental co-operation mechanisms (the second and third pillars).

It is here stated that the Maastricht Treaty "marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen". This formulation is a development of the wording in the Rome Treaty. The preamble to the Rome Treaty spoke of the Community being "determined to lay the foundations of an ever closer union among the peoples of Europe".

The objectives of the Union are defined as follows (Article B):

"- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;

- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

- to develop close co-operation on justice and home affairs;

- to maintain in full the aquis communautaire and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of co-operation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community."

This general provision on the objectives of the Union also makes express reference to the principle of subsidiarity, which is defined by the first pillar of the Maastricht Treaty.

Article C lays down the principle of the single institutional framework, and the principle of consistency and continuity between the pillars and in the Union's foreign-policy activities as a whole.

Provision is made for the European Council to provide the Union with the necessary impetus for its development and to define its general political guidelines. The European Council is to submit to the European Parliament a yearly written report on the progress achieved by the Union.

The principle of legality, that is to say the principle that any act must have a legal basis in the Treaty, is laid down as a general principle governing the workings of the Union.

A number of fundamental principles are then stated: these include respect for the national identities and systems of government of the Member States, and respect for fundamental human rights and freedoms, which the Union is to uphold.

**3. CO-OPERATION IN THE COMMUNITY FRAMEWORK (ROME TREATY AND FIRST PILLAR)**

**3.1. FUNDAMENTAL PRINCIPLES IN THE ROME TREATY AND THE MAASTRICHT TREATY (FIRST PILLAR)**

The fundamental principles, objectives and tasks set out in the Rome Treaty are taken further and built on in the Maastricht Treaty, in line with the development of the Community up to the Maastricht Treaty and with the new codification of the areas of co-operation in the Union. The term "European Economic Community" is to be replaced by the term "European Community", which better reflects the broader and more modern sphere in which it is now to operate. The new Treaty in fact makes express provision for co-operation in a number of the non-economic areas with which the Community has in the past concerned itself despite the absence of any such express provision.

Article 2 of the Rome Treaty, on the objectives of the Community, now provides that the Community is to have as its task to promote environmentally sustainable development, high employment, a high level of social protection, and economic and social cohesion. The Article thus reflects a far broader and more modern approach, balancing economic and non-economic objectives.

The same applies to the description of the areas of Community action in Article 3 and Article 3a. These include both the areas of co-operation inserted into the Treaty by the Single Act in 1986 (environmental policy, research and technological development and economic and social cohesion) and the areas now inserted by the Maastricht Treaty (such as education, health, social affairs, development assistance and consumer policy). The list also

mentions energy, civil protection and tourism, which are not specifically referred to elsewhere in the Treaty and which thus continue to be based on general provisions, and on Article 235 in particular. In a declaration annexed to the Treaty it is stated that the treatment of these three spheres will be examined at the next intergovernmental conference in 1996 on the basis of a report to be submitted by the Commission.

Article 3a deals with economic and monetary union.

Articles 3 and 3a thus spell out the areas of Community co-operation falling within the statement of objectives in Article 2.

The three fundamental principles governing the working of the Community are confirmed:

- the principle of legality (Article 4(1) of the Rome Treaty, Article 3b of the Maastricht Treaty);

- the principle of solidarity (Article 5 in both Treaties);

- the principle of non-discrimination (Article 7 of the Rome Treaty, Article 6 of the Maastricht Treaty).

Article 3b of the Maastricht Treaty adds a new leading principle, the "closeness" principle.

The Treaty defines the principle in negative terms: the Community is to take action "only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore ... be better achieved by the Community".

This means that the Commission and the Council have always to show why a particular action can be better achieved by the Community. The "closeness" principle has far-reaching implications for the division of labour between the Community and the Member States.

The first steps towards translating the "closeness" principle into practice were taken in the conclusions of the European Council meeting in Lisbon on 26 and 27 June 1992. It is there stated that the Commission and the Council are to report to the European Council meeting in Edinburgh on 11 and 12 December on the procedural and practical steps to implement the principle.

The third sentence in Article 3b confirms the principle of proportionality, which requires that means be in reasonable proportion to ends. The measures taken to achieve a given objective should go no further than necessary.

The general principles of law have been described in more detail in Chapter II above.

To sum up, the statement of objectives and the description of the Community's areas of activity which are laid down in the Maastricht Treaty go a great deal further to cover what the Community actually does. The inclusion in the Treaty of the "closeness" principles and proportionality emphasizes the change of course which the Union is undertaking, towards a division of labour in which every level - region, nation or Community - handles the tasks to which it is best suited.

### 3.2. THE ROLES OF THE INSTITUTIONS - NEW INSTITUTIONS

The four institutions, the Council, the Commission, the European Parliament and the Court of Justice, maintain their traditional roles in pillar 1 of the Maastricht Treaty. Annex 4 is a diagram showing the typical Community method and the international method of taking decisions.

The Maastricht Treaty creates a shift in the powers of the institutions in favour of the Council and the European Parliament.

The Council will adopt the principle of majority decisions as the dominant rule for pillar 1. The main exceptions are in the areas of co-operation on indirect taxation, culture and industrial policy and in parts of the areas of co-operation on economic policy, research, the environment, social and employment policy, economic and social cohesion and visas.

The question of the role of the European Parliament has been on the agenda on every occasion the Community has discussed changes in the institutions. As the Community has developed from a narrow economic union to a broader Community encompassing a number of other areas of co-operation the focus has come to rest increasingly on the degree of democratic control and legitimacy of the Community's decision-making process. The introduction of direct elections to Parliament in 1979 gave it a democratic mandate without a corresponding increase in its limited powers.

The Single European Act was the Member States' first step in the process of remedying what has gradually become known as the democratic deficit; it introduced the co-operation procedure and the assent procedure. These procedures give the Parliament a more active role in the legislative process.

The Maastricht Treaty further strengthens Parliament's role in two areas. Firstly, Parliament's legislative powers are increased by the introduction of the co-decision procedure in Article 189b, which extends the co-operation

procedure introduced with the Single Act in 1986. Annexes 5 and 6 give more details of the procedure.

The Maastricht Treaty also extends the areas in which the co-operation and assent procedures can be applied. The co-operation procedure is used in the Maastricht Treaty in 14 areas: see Annex 7. The assent procedure is used in 8 areas: see Annex 8.

Thus the Maastricht Treaty strengthens Parliament's role in order to increase its democratic legitimacy.

Secondly, Parliament's control powers are increased in four fields. Article 206 gives it increased powers to examine the Community budget. Articles 138c and 138d give it the right to set up Committees of Inquiry and hear citizens' petitions. Article 138e sets up a European Ombudsman.

In addition, Parliament has the power to subject the members of the Commission as a body to a vote of approval.

As a further part of the question of increasing democratic legitimacy, the Conference discussed the question of the role of national parliaments and democratic control of the Community. The talks resulted in a declaration on the role of national parliaments in the European Union establishing the importance of the national parliaments' participation in the Union. The declaration stresses the need for an increased exchange of information between national parliaments and the European Parliament and for Commission proposals for legislation to be submitted to national parliaments in good time for information or possible examination. It also calls for the national parliaments and the European Parliament to meet together as required in a Conference of the Parliaments in order to be consulted on the main features of the European Union.

There are references to the national parliaments in a number of other provisions of the Treaty. For instance, the "closeness" principle in Article 3b and its reflection in the new specific Treaty provisions can be seen as respect for the role of the national parliaments.

On the initiative of the Danish Government a declaration has been added concerning transparency in Community co-operation. The declaration recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.

In order to ensure that Member States fulfil their Community obligations steps have been taken to give the Court of Justice the capacity to impose a fixed penalty or fine on a Member State failing to comply with a judgment.

The Maastricht Treaty sets up a new Committee of the Regions (Articles 198a-c). This is established using the model used for the Economic and Social Committee with the same number of representatives from each country. The individual Member States appoint the representatives on the Committee. The Committee must be consulted on questions of regional policy and on questions within the fields of education, culture, health and trans-European networks.

As already mentioned, a European Ombudsman on the Danish model is also introduced (Article 138e). He is to receive complaints direct from citizens or conduct inquiries on his own initiative to establish maladministration. If maladministration is established, the institution concerned has three months in which to respond. Finally, Article 4 establishes the Court of Auditors as a Community institution in its own right.

To summarize, we can state that the changes in the roles of the institutions are characterized by a stronger shift towards decentralization and the regional level. In addition, a greater effectiveness has been created in the decision-making system through majority decisions in the Council, and democratic legitimacy has been increased through the strengthening of the role of Parliament. Lastly, better guarantees that Community rules will be complied with have been created.

### 3.3. DECISION-MAKING PROCEDURES

Annex 4 shows the traditional Community method. It can be seen that there are various procedures for decision-making within European co-operation (pillar 1) which involve Parliament to varying degrees.

These five procedures are not changed by the Maastricht Treaty. They are:

- consultation;
- co-operation;
- assent;
- budget procedures and
- notification of Parliament.

The Treaty extends the areas of application of these procedures, which are otherwise unchanged.

The co-decision procedure is an entirely new form of co-operation between Parliament and the Council. Annex 5 shows the procedure in diagram form. As can be seen, the procedure builds on the co-operation procedure introduced into the Treaty by the Single Act and described in Article 189c.

The co-decision procedure contains two essential new aspects. It incorporates a forum - the Conciliation Committee - for direct negotiations between the Council and Parliament. This aspect was not present in the co-operation procedure, which talks only of written communication between the Council and Parliament.

The Conciliation Committee is composed of an equal number of representatives of the Council and of Parliament and takes decisions by agreement between the two sides which each reach agreement separately, the Council representatives by a qualified majority of their members and the Parliament representatives by a simple majority of theirs.

The other new aspect is that Parliament is given the power to reject a proposed act. Where the co-operation procedure tightens up the voting requirements on the Council (unanimity) if the Parliament rejects a proposal, the Parliament is given the right in the co-decision procedure to block adoption of the act. In this procedure, therefore, legislation cannot be adopted if one of these two institutions refuses to co-operate.

The Commission's role is unchanged in the phases before and after the Conciliation Committee, in other words, the Commission retains its right to amend or withdraw its proposal at any time throughout the decision-making procedure. However, at the Conciliation Committee stage the Commission may not amend or withdraw its proposal.

### 3.4. FORMS OF DECISIONS

A distinction must be made between the form and the content of the acts which the Community may adopt.

Their form is set out in Article 189, which defines the five classic types of acts: the regulation, directive, decision, recommendation and opinion. In addition there is the special form of judicial act known as a ruling.

With regard to the content of the acts, the Maastricht Treaty uses three terms for decisions which the Council may adopt: measures, actions and incentive measures. These are defined in more detail in Article 189.

This was a result of the desire by the Member States to indicate that decisions of narrower scope can exist in certain areas.

Incentive measures and actions therefore typically cover programmes, projects and campaigns for which financial support may be received from the Community. The fact that these are narrower in scope is emphasized by the express exclusion of any form of harmonization of laws and administrative provisions with regard to incentive measures within the areas of education, culture and health.

The distinction between form and content therefore implies the following: the form of decisions and their legal implications are described in Article 189. The scope of their content follows from the wording of the text of the Treaty with regard to the specific areas of co-operation.

A specific act may, varying from case to case, take the form of any of the known types of legal act. Thus, for example, there is nothing to prevent an incentive measure taking the form of a regulation, but the content of the act may not go beyond the bounds of what the Treaty sets out for the area of co-operation in question.

## 3.5 AREAS OF CO-OPERATION

### 3.5.1. EXISTING TREATY PRINCIPLES

Annex 9 summarizes the areas of co-operation laid down in the Maastricht Treaty. It can be seen that in some cases the text has not been changed by the Maastricht Treaty. In other cases the only thing that has changed is the decision-making procedure to be used. In yet other cases both the procedure and the substance of the text have been changed. Lastly, some provisions have been added and others repealed.

#### 3.5.1.1. AREAS OF CO-OPERATION WHERE THE TEXT IS UNCHANGED

A number of areas of co-operation have not been affected by the Maastricht Treaty, for example, the common agricultural and fisheries policies (Articles 38 to 47), the original provisions on the establishment of a customs union and the elimination of quantitative restrictions between Member States (Articles 9 to 37). The common rules on competition including the anti-dumping rules are also maintained (Articles 85 to 91), as are the rules on the association of the overseas countries and territories (Articles 131 to 136a).

As we have already mentioned in this section, the areas of co-operation have, however, been placed in a new context which guides the way in which the provisions are to be applied. The new underlying principles in the Maastricht Treaty, including, for example, the principles of subsidiarity and proportionality, therefore also apply to these areas. The areas of co-operation are also covered by the Treaty's statement of aims. As already mentioned, the Treaty introduces a number of new objectives, such as sustainable growth respecting the environment, a high level of social protection and economic and social cohesion. The practical significance of this is that the Member States, in formulating the common agricultural policy, for instance, are obliged to guarantee sustainable growth respecting the environment.

**3.5.1.2. AREAS OF CO-OPERATION WHERE TEXT HAS BEEN AMENDED AS REGARDS THE DECISION-MAKING PROCEDURE**

In a number of areas of co-operation the decision-making procedure alone has been changed, while the content of the provisions remains the same. This is primarily the result of the strengthening of Parliament's role in the law-making process.

The co-decision procedure is introduced for the internal market (Article 100a), the free movement of labour (Articles 49, 54, 56 and 57) and the free movement of services (Article 66). Previously there was a co-operation procedure with Parliament for all these provisions.

In the rules on the harmonization of indirect taxation the obligation to consult the Economic and Social Committee has been introduced (Article 99).

**3.5.1.3. AREAS OF CO-OPERATION WHERE THE TEXT HAS BEEN AMENDED AS REGARDS BOTH THE DECISION-MAKING PROCEDURE AND THE CONTENT**

In by far the majority of the areas of co-operation changes have been made to the existing texts which affect both the decision-making procedure and the content. In this section we will deal with each area of co-operation separately.

**Transport**

A new area of co-operation, "measures to improve transport safety", has been introduced for transport policy (Article 75(1)(c)). This extension of the scope of transport co-operation is a clarification of how the original Article has been interpreted. In other words, it is a continuation of the current legal situation.

The decision-making procedure is changed from that of consulting Parliament to the co-operation procedure.

**Commercial policy**

Rules applying solely to the transitional period (Articles 111 and 114) are repealed, as is Article 116. In contrast, the declarations of intent and rules concerning harmonization of the aid systems for exports to third countries remain unchanged.

There is a minor change in the rules regarding the execution of commercial policy measures in that, where Member States were previously able to take the necessary measures independently in cases of urgency, they must now first request authorization from the Commission (Article 115).

With regard to the decision-making procedure (Article 113) there is now reference to the general Article on the conclusion of agreements between the Community and other States/international organizations. The effect of the change is that Parliament must give its assent to agreements of major significance. (6)

**Employment and social policy**

In the Treaty itself (pillar 1), only minor changes are made in the field of labour law. In Article 2 it is stated that the tasks of the Community include promoting a high level of employment and of social protection. The title of the relevant Chapter is changed from social policy to social policy, education, vocational training and youth. In the provisions on the Social Fund, the Fund's tasks are widened to include adaptation to industrial changes and changes in production systems, in particular through vocational training and retraining.

Where the implementation of the Social Fund provisions is concerned, the procedure is changed from consultation of Parliament to the co-operation procedure.

As a result of the fact that no agreement was reached with the United Kingdom at the Intergovernmental Conference on reinforcing the provisions of the EEC Treaty in this field, the 12 Member States adopted a Protocol which enables 11 of them to make use of the Community's institutions, procedures and mechanisms in seeking greater co-operation between them on social and employment policy.

The Agreement among the 11 comprises three main changes in particular. Firstly, the aims of co-operation are set out. Secondly, qualified majority

(6) In other words, agreements with significant impact on the budget, agreements establishing a specific institutional framework and agreements involving amendment of an act adopted by the co-decision procedure.

voting is introduced and minimum requirements are set for a broad spectrum of areas covered by the Social Charter of 1989. Thirdly, a detailed system is established for involving the social partners in dialogue.

The goal of co-operation is to promote employment, improved living and working conditions, 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 from the labour market.

Qualified majority voting and the co-operation procedure are introduced in the areas of:

- improvement in particular of the working environment to protect workers' health and safety (identical to the previous provisions),
- working conditions,
- the information and consultation of workers,
- equality between men and women with regard to labour market opportunities and treatment at work, and
- the integration of persons excluded from the labour market.

In the areas of:

- 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,
- conditions of employment for third-country nationals legally residing in Community territory,
- financial contributions for promotion of employment and job-creation,

the Council is to act unanimously when adopting minimum requirements.

Pay, the right of association, the right to strike and the right to impose lock-outs are expressly excluded from the relevant provisions in the Agreement between the 11.

The Agreement between the 11 also includes the principle that the Community will not intervene in fields where management and labour are better able to reach their own agreement in preference to agreement at Community level. The Commission is to consult management and labour about guidelines and possible proposals, and the parties are allowed nine months in which to come to an agreement. The implementation of such agreements is to be either through the national member organizations representing management and labour or, at the request of management and labour, through Community legislation. Finally, provision is made for the possibility that Community directives may be implemented nationally by management and labour.

**Environmental policy**

The Chapter on environmental policy, inserted by the Single Act, is reinforced by the Maastricht Treaty in both content and procedures.

As noted earlier, the principle of sustainable growth is introduced, with respect for the environment being one of the general principles for the whole of pillar 1 of the Maastricht Treaty (Article 2).

To the goals in environmental policy flowing from the Single Act, the Maastricht Treaty adds an international dimension (Article 130r(1)). This reflects to a large extent the increased role which the Community is playing at international level in the field of the environment.

In the basic principles it is stated further that Community policy is to aim at a high level of protection, with the addition of the precautionary principle that the environment should be given the benefit of any doubt and that intervention should begin even where there is no more than a risk to the environment.

There is also a more strongly worded provision to the effect that environmental protection is to be integrated into the definition and implementation of Community policies in other fields.

A safeguard clause is introduced allowing the Member States to take provisional national measures in relation to all Community legislation of relevance to the environment.

As regards decision-making, unanimity and consultation of Parliament is replaced by qualified majority voting and the co-operation procedure. However, there are three exceptions requiring a unanimous vote:

- provisions primarily of a fiscal nature,

- measures concerning town and country planning, with the exception of waste management and measures of a general nature, and management of water resources, and
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

In these fields the previous provision applies that the Council can decide by unanimous vote that these fields may be moved in whole or in part into the area of qualified majority voting. Where the Council adopts pluriannual action programmes, this is to be a joint decision with Parliament (Article 130s(3)).

On the subject of finance, the principle of national financing is upheld. A special rule is introduced that a Member State may benefit from a temporary exemption and/or receive aid from the Cohesion Fund if the implementation of a legislative act involves especially high costs for that State.

A Member State is allowed to maintain or introduce tougher protective measures than other countries. This must be notified to the Commission and must be compatible with the Treaty.

**Vocational training**

The new section on vocational training amplifies the existing Article considerably. The new Treaty sets out to create what amounts to a vocational training policy.

The aims of Community action are defined as:

- facilitating adaptation to industrial changes, in particular through vocational training and retraining,
- improving initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,
- facilitating access to vocational training and encouraging mobility of instructors and trainees, particularly young people,
- stimulating co-operation on training between educational or training establishments and firms,

- developing exchanges of information and experience on issues common to the training systems of the Member States.

It is further stated that the Community is to foster co-operation with non-Community countries and international organizations.

The type of decision that can be taken is defined as a measure, excluding any harmonization of the laws and regulations of the Member States.

As for the decision-making procedure, it is to be the co-operation procedure with Parliament. Previously, Parliament has not been involved in the vocational training field.

Under the EEC Treaty, the Council could take a decision by simple majority. In the new Treaty provision is made for the tighter requirement of a qualified majority vote.

**Research and technological development**

In terms of content, only limited changes have been made to the provisions on research and technological development. The aims (set out in Article 130f(1)) have been widened to include "all the research activities deemed necessary by virtue of other Chapters of this Treaty". This opens up scope for research in new areas, e.g. consumer policy, and in areas covered in the EEC Treaty but only given a specific Chapter in the Maastricht document.

It is also stated that all research activities are to be carried out on the basis of these specific provisions.

As for the decision-making procedure, the Framework programme is to be rolled forward on a unanimous vote but in a joint decision with Parliament, in place of the consultation with Parliament required in the previous text. Specific implementing programmes are to be adopted by qualified majority after consultation of Parliament. Previously the co-operation procedure with Parliament was required. The aim is to enable specific programmes to be adopted more quickly in the future.

**Economic and social cohesion**

The Single Act introduced a separate Chapter for economic and social cohesion. The new Treaty provisions update and supplement the original terms.

The statement of aims lays down that economic and social cohesion is to be taken into account not only, as previously, in the formulation of Community policies but also in their implementation, in other words when the Commission makes its proposals.

The Commission is to report on progress towards achieving economic and social cohesion every three years. If specific action proves necessary outside the purview of the structural Funds, these actions are to be decided by unanimous vote of the Council after consultation of Parliament and the Economic and Social Committee.

A major innovation in this area is the establishment, by 31 December 1993, of a Cohesion Fund. The Fund is to make financial contributions to projects in the fields of the environment and trans-European networks in the transport infrastructure sector in Member States where gross domestic product per capita is less than 90% of the Community average.

The procedure for decisions concerning the structural Funds, that is, setting their tasks, priority objectives and organization as well as their general rules, requires the Council to act unanimously with the assent of Parliament. The new Committee of the Regions and the Economic and Social Committee are to be consulted. The same procedure applies to the implementation of the Cohesion Fund.

The main principles for the establishment of the Cohesion Fund are set out in a separate Protocol to the Treaty.

**State aids**

In the provisions on State aids, the only change is aimed at greater clarity; it adds an item to the forms of State aid deemed compatible with the Treaty. Article 92(3)(d) [the present (d) becomes (e)] now specifies "aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest".

As for decision-making procedures, the new element is consultation of Parliament (Article 94).

**Economic and monetary union**

Article 102a(2) of the EEC Treaty (as amended by the Single European Act) stipulates that any further development of economic and monetary policy must be decided within the framework of a new intergovernmental conference. The first stage of EMU began on 1 July 1990 and was implemented by two Council Decisions without any amendments to the Treaty. The Maastricht Treaty, however, makes specific provision for the second and third stages

of Economic and Monetary Union, making several amendments to the EEC Treaty (Article 102a et seq.). A number of Protocols and Declarations also deal with economic and monetary co-operation.

The following is a summary of the second and third stages of EMU. A more detailed discussion of this subject is to be found in Chapter VIII.

The Community's economic policy is to be conducted in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources.

Economic policy will remain a national matter during the second and third stages but will be regarded as a matter of common concern and Member States will coordinate their economic policies. Broad guidelines will be formulated for the economic policies of the Member States and the Council shall monitor economic developments in each Member State. If the economic policy of a Member State is not consistent with the broad guidelines, the Council may make the necessary recommendations, which may be made public (once the Treaty has entered into force).

With effect from 1 January 1994, when the second stage begins, a number of restrictions shall apply to the monetary and budgetary policies pursued by Member States. It will be prohibited, for example, to finance government budget deficits by monetary means (i.e. by printing money) or for public authorities to have privileged access to the capital market. In principle, the Community will not be liable for Member States' commitments. Beginning in the second stage, Member States must also endeavour to avoid any excessive government deficits. The procedure for dealing with such deficits will come into force as from the second stage, but there will be no specific obligation on Member States to avoid such deficits. Only in the third stage will it be possible to impose disciplinary measures.

With effect from the beginning of the second stage the new Treaty provisions on the free movement of capital (Articles 73b to 73q) will also come into force. Broadly speaking, these new Treaty provisions are taken from the 1988 Council Directive on the liberalization of capital movements. A Protocol was added to the Treaty under which "Denmark may maintain the existing legislation on the acquisition of second homes". Full provision has thus been made for the maintenance of the Danish legislation on summer residences.

In the realm of monetary policy the most important aspect of the second stage will be the establishment of a European Monetary Institute (EMI), which will take the place of the Committee of Governors of the Central Banks. During this stage monetary policy will remain a matter for national governments. The tasks of the EMI will be as follows:

- to strengthen co-operation between the national central banks;

- to strengthen the co-ordination of monetary policies;

- to monitor the functioning of the European Monetary System, to hold consultations on issues relating to currency policy or affecting the stability of financial institutions and markets;

- to facilitate the use of the ecu; and

- to oversee the development of the ecu clearing system.

It shall also be the task of the EMI to prepare for the third stage of EMU, including the preparation of the instruments and procedures necessary for implementing a single monetary policy in the third stage.

From the start of the third stage exchange rates will be fixed and a common currency will in fact be introduced. The European Central Bank and the European System of Central Banks will be established and will fully implement the common monetary and exchange-rate policy.

During this stage there will also be an economic obligation to avoid excessive government deficits and the Council will be empowered to take measures against any Member State which does not meet this obligation. For the transition to the third stage a special decision-making procedure has been laid down (Article 109j(2)). A Protocol to the Treaty lays down the conditions for Member States making the transition to the third stage.

Special Protocols deal with the transition of Denmark and the United Kingdom to the third stage. In the case of Denmark the Government is to notify the Council whether Denmark wishes to participate in the third stage. Should Denmark not wish to participate, it will have the same status as those countries which have an exemption on grounds of insufficient convergence. Denmark will not be bound in advance by the obligations which apply during the third stage. At any later date Denmark may request to participate in the third stage of EMU.

The decision-making procedures will be governed by the special EMU rules which differ from the institutional provisions applicable to other common policies. This is because of the special role played by the ESCB and, in particular, because Member States will continue to have responsibility for economic matters.

The European Council will play a special role in the appointment of the ESCB Board and in the discussion of the general guidelines for economic policy. The European Council will also take the decision on the transition to the third stage.

As regards the Commission's role, EMU may mean some departures from the traditional system (sole right of initiative and unanimity) if the Council amends the Commission's proposal. The Commission is obliged to respond to any Member State's request for an initiative. In certain cases the unanimity requirement is waived so that the Council can amend a proposal from the Commission by a qualified majority.

In the EMU context the European Parliament plays a much less prominent role than it does in other areas of co-operation. The general economic provisions simply state that Parliament is to be kept informed and that it is to be consulted on the decision concerning the transition to the third stage. The assent of Parliament is required for any amendments to the Statute of the ESCB and for a number of separate issues there is a co-operation procedure with Parliament (cf. Annex VII).

**International agreements**

Article 228 lays down the procedure for the conclusion of agreements between the Community and one or more States or international organizations. The Maastricht Treaty brings together the procedural arrangements for all international agreements which come under the first part of the Treaty but do not relate to Economic and Monetary Union. This includes the procedural rules for association agreements with non-member countries (Article 238) and trade agreements (Article 113).

The influence of the European Parliament is strengthened by the new provisions in that its assent is required for all agreements which have important budgetary implications for the Community and for any agreements entailing amendment of an act adopted on the basis of a common position.

### 3.5.2. NEW LEGAL BASIS

The Maastricht Treaty lays a new legal basis for certain types of co-operation. In all the areas concerned the Community has taken action in the past, either at international level (in the form of non-binding legislation such as Council conclusions and resolutions) or under general articles of the Treaty such as Article 100a concerning the internal market or Article 235, which enables the necessary action to be taken to attain objectives in the context of the common market.

The new provisions provide a clearer definition of the EC's role and redefine the legal basis for Community action. The individual chapters, by specifying the type of instrument which the Community may adopt, place limits on what the Community can do in the areas concerned.

**3.5.2.1. CO-OPERATION IN SPECIFIC AREAS**

**Education**

The purpose of the provisions concerning education is to establish a clear legal basis in the Treaty for the Community's activities in the educational field. The Community has already turned its attention to education and a number of Council resolutions have been adopted on co-operation in this area. As regards higher education in particular, legislation has been adopted on the basis of Article 128 (e.g. the ERASMUS, COMETT and LINGUA programmes) and Article 49 (e.g. the Directive on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration). The European Court of Justice has ruled that much of the educational sector is already covered by the Treaty of Rome.

The new provisions set the following aims for Community action:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of Member States;
- encouraging mobility of students and teachers;
- promoting co-operation between educational establishments;
- developing exchanges of information and experience on issues common to the educational systems of the Member States;
- encouraging exchanges of young people and youth leaders;
- encouraging development of distance education.

Another aim is to foster co-operation with non-member countries and with international organizations active in the field of education, in particular the Council of Europe.

The Treaty stipulates that such Community action is to supplement that of the Member States and that the cultural and linguistic diversity of the latter is to be respected.

Member States will continue to be responsible for the content of teaching and for the organization of their educational systems.

The type of measures which the Council may take are defined as "incentive measures", which means (as explained in Chapter 2.4) that the Community may provide support for national or common programmes and projects. Any harmonization of national laws and regulations is explicitly ruled out. This is in line with the principle of subsidiarity. The new provisions also enable the Council, acting on a proposal from the Commission, to address non-binding recommendations to the Member States.

Measures will be adopted under the joint decision-making procedure involving Parliament and the Council, which will act by a qualified majority. The new Committee of the Regions and the Economic and Social Committee must be consulted before any measures are adopted.

**Culture**

The Community has been contributing to culture since the end of the 1970s and, as in the field of education, various decisions, resolutions and conclusions have been adopted. These include the European media programme, the promotion of books and reading, training for cultural administrators, a European cultural network and the translation of European works of a cultural nature.

Under the new article the Community is to support and supplement the action of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

The main areas for Community action are:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation.

As in the field of education, international co-operation is encouraged, particularly co-operation with the Council of Europe. This reinforces a development which has already begun and which will continue to play an important part.

The type of decisions the Council can adopt are also described here as incentive measures. Any harmonization of the laws and regulations of the Member States is excluded under this provision. Furthermore, the Council can, acting unanimously, make non-binding decisions on cultural matters.

Unanimity is required for the decision-making process in the field of culture. The Parliament acts jointly with the Council through the joint decision-making procedure. The cultural chapter is thus an exception to the general rule of having a qualified majority and involving the Parliament (research is also similarly exempted). As in the field of education, the Committee of the Regions is consulted.

The Community will take cultural aspects into account in any action in other areas covered by the Treaty. This means in practice that when measures are drawn up cultural matters will be considered and included in projects carried out under other provisions of the Treaty.

**Public health**

The new provisions on public health broadly reflect previous Community policy. A number of Council resolutions have been adopted, particularly in connection with the prevention of major health scourges and drug dependence. These include decisions on the setting up of joint action programmes such as "Europe against cancer" and "Europe against AIDS".

A range of directives have also been adopted on the marketing of pharmaceuticals, foodstuffs and medical equipment. The Directive on the labelling of tobacco products and the mutual recognition of training are also part of this policy.

The Community is thus contributing towards ensuring a high level of human health protection by encouraging co-operation between Member States and, if necessary, lending support to their action. The Commission may, according to the provisions and in close contact with the Member States, take any useful initiative to promote such co-ordination.

Community action is directed towards the prevention of diseases, in particular the major health scourges, including drug dependence, by promoting research into their causes and their transmission, as well as health information. It is also stated that health protection requirements shall form a constituent part of the Community's other policies.

The Community and the Member States shall foster co-operation with third countries and international organizations.

The instruments of the policy are the same as for education and culture. The Council can thus adopt incentive measures. As in the other areas any harmonisation of the laws and regulations of the Member States is excluded. Furthermore, the Council may, acting by a qualified majority on a proposal from the Commission, adopt non-binding measures. The Committee of the Regions and the Economic and Social Committee are consulted before a decision is taken.

**Consumer protection**

In the original Treaty of Rome as amended by the SEA (Article 100a(3)), consumer protection is specifically mentioned: the Commission in its proposals on the approximation of the provisions laid down by law, regulation or administrative action in connection with the internal market shall take as a base a high level of protection.

A range of regulations and directives have been adopted on the basis of this and other provisions at Community level, e.g. the directives on the labelling, presentation and advertising of foodstuffs, consumer protection in the indication of the prices of foodstuffs, the approximation of provisions of the Member States on misleading and unfair advertising, consumer protection in respect of contracts negotiated away from business premises, the approximation of the provisions of the Member States concerning liability for defective products, product safety and package holidays.

The new provisions of the Treaty make consumer protection an independent item, which means that the Community is contributing to a high level of consumer protection, partly through the internal market and partly by specific action to support and supplement the policy pursued by the Member States.

It is stressed that such action shall not prevent any Member State from maintaining or introducing more stringent protective measures.

Decisions on specific action are adopted by qualified majority in co-operation with the Parliament and following consultation of the Economic and Social Committee.

**Trans-European networks**

In connection with co-operation on trans-European networks the Community has in recent years initiated a number of activities and projects on transport, energy and telecommunications.

The new provisions on trans-European networks in the areas of transport, telecommunications and energy infrastructures are related partly to the internal market and partly to economic and social cohesion. This is reflected in the Treaty in a specific reference to these two areas of co-operation. All Member States should be able to benefit from the Community's work on co-operation on trans-European networks.

The aim of the Community action is to promote the interconnection and interoperability of national networks as well as access to such networks. The need to link peripheral regions with the central regions of the Community is specifically mentioned.

In order to achieve these objectives the Community:

- shall establish guidelines covering, for example, projects of common interest;

- shall implement any action that may prove necessary to ensure the interoperability of the networks;

- may support the financial efforts made by the Member States for projects of common interest, particularly through feasibility studies, loan guarantees or interest-rate subsidies;

- may also contribute through the Cohesion Fund to the financing of specific projects in Member States in the area of transport infrastructure.

A further provision requires Member States to co-ordinate their national policies among themselves. The Community may also decide to pursue co-operation with third countries to promote projects of mutual interest.

The decision-making procedure varies according to whether the aim is to produce general guidelines or adopt specific decisions.

General guidelines are adopted by qualified majority jointly with the Parliament. Specific decisions involve the Parliament only through the co-operation procedure. The Economic and Social Committee and the Committee of the Regions are consulted in both cases.

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

## Industry

Specific sectors of industry (the motor industry, shipbuilding, textiles and clothing, data processing and electronics, footwear) have been targets for action for many years now.

The new provisions on industrial policy state that the Community's task shall be to ensure the conditions necessary for the competitiveness of the Community's industry. Action shall be aimed at:

- speeding up the adjustment of industry to structural changes;
- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings;
- encouraging an environment favourable to co-operation between undertakings;
- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

The Community's action shall be in accordance with a system of open and competitive markets and shall not provide a basis for the introduction by the Community of any measure which could lead to a distortion of competition.

The preferred instruments of industrial policy are national instruments. The Member States shall consult one another and co-ordinate their activities if necessary. The Community shall help to implement the targets through the activities and policies introduced in connection with other provisions in the Treaty, e.g. in connection with the internal market or research and technological development. A third possibility is to adopt specific measures to support the activities of the Member States.

The decision-making procedure for the adoption of specific measures is based on unanimity following consultation of the European Parliament and the Economic and Social Committee.

## Development co-operation

There has been a special provision for development co-operation in the Treaty for associated countries and territories (the former colonies of the Member States) since the Community was first established (Lomé Conventions).

As early as the 1960s the Community instituted development co-operation with other countries and a number of Community instruments were established, including the generalized tariff preference scheme and food aid. This development co-operation was based on general provisions in the Treaty, particularly Article 235.

The new specific provisions on development co-operation in the Treaty generally reflect and consolidate the policy so far pursued.

The introductory provisions establish that the Community policy is complementary to the policies pursued by the Member States and is designed to foster:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;

- the smooth and gradual integration of the developing countries into the world economy;

- the campaign against poverty in the developing countries.

Furthermore, Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms. Account shall be taken of the objectives for development policy in the other policies of the Community.

With regard to the resources required to achieve these aims the Community shall adopt the necessary measures, which may take the form of multiannual programmes. The Member States shall, furthermore, co-ordinate their development policies as in the past and may undertake joint action.

As regards finance, the European Investment Bank shall contribute to the implementation of measures and the Member States shall contribute if necessary to the implementation of Community aid programmes. (7)

As elsewhere the international aspect of co-operation is stressed. The Community may conclude and negotiate agreements in accordance with Article 228 (see above).

Decisions are adopted by qualified majority on the basis of the co-operation procedure with the Parliament. This does not, however, apply to co-operation

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(7) The European Development Fund is still outside the budget, cf. explanatory notes.

with overseas countries and territories which have not achieved independence, where unanimity is still required, cf. Article 136.

**Sanctions**

The Community has in the past and on the basis of Article 113 imposed economic sanctions under foreign policy on, for example, the Soviet Union, Iran, South Africa, Argentina, Iraq and Serbia-Montenegro.

There is now a new provision enabling the Community to introduce international sanctions on the basis of a joint opinion or joint action adopted under provisions on joint foreign and security policy and breaking off either fully or partially or restricting economic relations with a third country.

In such cases the Council adopts a decision on a proposal from the Commission acting by a qualified majority in order to implement necessary emergency measures.

**Citizenship of the Union**

The first pillar of the Maastricht Treaty introduces Citizenship of the Union for all persons holding the nationality of a Member State.

Citizenship of the Union provides for:

- right of abode with the restrictions laid down in the Treaty and in the implementing provisions,
- the right to vote and to stand as a candidate at municipal elections,
- the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides,
- protection by diplomatic or consular authorities of any Member State when in the territory of a third country,
- the right to petition the European Parliament and to apply to an Ombudsman.

The provisions of the Treaty must be implemented on adoption of the EC Acts. Conditions may be associated with the rights given to Citizens of the Union in connection with right of abode as was the case in previous directives. For example, it is still possible to withhold the right of abode if the person in question does not have sufficient resources for his keep or has no health insurance.

The Council may adopt provisions on the right of abode which will make it easier to secure the right of abode, but this presupposes unanimity and assent.

As far as the right to vote and to stand as a candidate at municipal elections and for the European Parliament and the enforcement of diplomatic protection are concerned, final dates have been set for adoption of the implementing legislation. In the case of municipal elections more detailed provisions and any specific exemptions must be adopted by 31 December 1994; for the European Parliament the final date is 31 December 1993. The Council decides, acting unanimously after consulting the European Parliament.

It is furthermore laid down that rules for diplomatic protection shall be drawn up by 31 December 1993 and that the Member States must before that date start relevant international negotiations in order to ensure such protection. It is finally laid down that the member countries can consolidate and extend the above rights acting unanimously.

Ratification at national level is, however, required before this comes into force. The introduction of Citizenship of the Union does not give citizens of the other Member States rights other than those mentioned above, including social rights.

**Visas**

Under the Maastricht Treaty visa policy has been made an integral part of EC co-operation, unlike the other aspects of co-operation in the fields of justice and home affairs, which will continue to be the subject of co-operation between the Member States, cf. below.

The Council, acting unanimously until 1 January 1996 and thereafter by qualified majority, determines the third countries whose nationals must have a visa to cross the external borders of the Member States. In an emergency situation involving a sudden inflow of nationals, the Council, acting by a qualified majority, may introduce a visa requirement for a period not exceeding six months even before 1 January 1996. This provisional requirement may be made permanent by the Council acting unanimously.

The decision-making procedure is thus different in the periods before and after 1 January 1996. Before 1 January 1996 decisions will be adopted unanimously and after the Parliament has been consulted. After 1 January 1996 decisions will be taken by a qualified majority and likewise after the Parliament has been consulted. Where visas are concerned the Commission is also obliged to submit a proposal if a Member State so requires.

Member States shall maintain law and order and safeguard internal security.

**Energy, civil protection and tourism**

The Treaty does not include a special paragraph on energy, civil protection and tourism but these areas are mentioned in the list of Community activities (Article 3). They are thus covered by the Treaty. The actual shape of Community policy in these areas is affected by other provisions in the Treaty, e.g. the provisions on environment and, where energy is concerned, the provisions on the development of trans-European networks. Community policy, must, furthermore, be based, as before, on existing general provisions, such as Article 100a on the internal market and Article 235. On the basis of these and other provisions in the existing Treaty a number of legal acts have already been adopted. In the field of energy these measures include decisions on the aims of common energy policy, protection of supplies, energy conservation, new technologies and the internal energy market. On the subject of civil protection they include mutual support in the event of natural or technological disasters and the introduction of a common European emergency number. For tourism they include firm projects forming part of the European Year of Tourism 1990 and plans for the management of tourism.

In a declaration annexed to the Treaty it is stated that the question of specifying these areas in the Treaty will be examined on the basis of a report from the Commission at the next intergovernmental conference in 1996.

## 4. CO-OPERATION BETWEEN THE MEMBER STATES (PILLARS 2 AND 3)

### 4.1. THE ROLES OF THE INSTITUTIONS

European political (foreign policy) co-operation and co-operation in the fields of justice and home affairs have so far not been the responsibility of the institutions of the EC. Decisions on political co-operation have been taken by the countries' foreign ministers at special meetings. Decisions on co-operation on justice and home affairs have been taken at special meetings by the Justice and Interior Ministers. The ministers' meetings on political co-operation were prepared by the political directors, and those on co-operation on justice and home affairs partly by senior officials from the Ministries of Justice and the Interior and partly by a whole range of special ad-hoc groups covering various aspects of co-operation. To some extent co-operation has also been co-ordinated by a group of co-ordinators.

Under the Maastricht Treaty it was decided to use the established institutions, i.e. the Council, Commission, European Parliament and Court of Justice, for all three pillars, but with different rules of procedure for each pillar. The result is that the Council takes decisions on all pillars of the

Treaty while the roles of the three other institutions in relation to the pillars 2 and 3 differ from their roles in relation to the pillar 1. This can be seen in Annex 4.

The result is that preparations for decisions are made under the same system, with the Permanent Representatives Committee in Brussels (Coreper) acting as joint preparatory body. This creates consistency, ensures greater transparency and improves co-ordination. Experience had shown that the main problem was co-ordination in a divergent system (e.g. the integration of economic and political aspects of foreign policy).

Even though familiar institutions are being used for co-operation between States, there are special rules to govern the institutions' responsibilities in this area. This is due partly to the fact that co-operation is still between separate States and partly to the fact that these areas make special demands on the decision-making system (e.g. it is often necessary when dealing with matters of foreign policy to take decisions with the minimum loss of time).

The Council is the decision-making body as in the case of EC co-operation. However, where foreign policy is concerned the European Council establishes the main principles and guidelines for the common foreign and security policy and decides whether joint action shall be taken in a given area. The Member States have the right to take the initiative. As a general rule, the Commission will, under the new provisions of the Treaty, also be able to take the initiative (cf. Annex 4). The Court of Justice has no jurisdiction in the field of foreign policy and justice. The only area in which the Court of Justice is competent is on questions relating to the demarcation between EC co-operation and co-operation between the Member States. The Court of Justice can also, within the framework of agreements which may be drawn up in the area of justice, also assume responsibility for interpretation. The European Parliament has a restricted role in both areas in that it must be consulted on important aspects of co-operation. It is, furthermore, regularly kept informed.

### 4.2. DECISION-MAKING PROCEDURES

The main rule for both areas is that decisions are taken by the Council acting unanimously, except on matters of procedure. A declaration attached to the Treaty on common foreign and security policy states that Member States should, as far as possible, avoid preventing a unanimous decision where a qualified majority exists in favour of that decision.

In the areas in which the Council, acting unanimously, decides that joint action shall be taken the Council shall define those matters on which decisions are to be taken by a qualified majority (Articles J.3 and K.3 and K.4). A special decision-making procedure is included in the Treaty for the adoption of joint action (Article J.3).

The Parliament is consulted as indicated on the most important aspects of policy and is kept regularly informed.

**4.3. FORMS OF DECISION**

Regulations, directives, etc. cannot be adopted in the same way as in the case of Community co-operation.

As before, joint opinions can be adopted and the Member States will endeavour to co-ordinate their policies jointly. In the fields of justice and home affairs conventions may also be adopted. The fact that co-operation is laid down by the Treaty does not mean that any change has occurred in the nature of co-operation, which remains co-operation between Member States.

The Maastricht Treaty introduces the term "joint action". Whenever the Council decides on the principle of joint action it shall lay down the specific scope, the general and specific objectives and the means, procedures and conditions for its implementation.

Joint actions commit the Member States in the positions they adopt and in the conduct of their activity. Should there, however, be any major difficulties, a Member States may abstain from participating in joint action, and may refer the matter to the Council (Article J.3,(7)), which shall discuss it and seek appropriate solutions.

As far as the actual implementation of joint actions is concerned, the conclusions of the European Council in Maastricht make clear the main areas of foreign policy subject to joint action. It is clear from the list that joint action can be very varied in nature. Four areas are mentioned:

- the Conference on Security and Co-operation in Europe (CSCE),
- matters concerning the non-proliferation of nuclear weapons,
- disarmament and arms control policy in Europe, including confidence-building measures,
- economic aspects of security policy, particularly the monitoring of transfers of military technology to third countries and arms exports.

On matters of justice and home affairs joint action may, for example, involve

specific programmes and projects in areas such as information systems or courses for customs officials and the police.

## 4.4. AREAS OF CO-OPERATION

### 4.4.1. CO-OPERATION ON FOREIGN POLICY

This section describes the important changes in European Political Co-operation (EPC), which has been repealed and replaced by the provisions of the Maastricht Treaty on common foreign and security policy.

First, co-operation has been extended to cover "all areas of foreign and security policy" while EPC co-operation was restricted to "the political and economic aspects of security" (Article J.1 as compared with Article 30, 6a of the Single European Act).

Second, instruments governing foreign policy have been reinforced. Closer co-ordination of the policies of the Member States is envisaged (Articles J.1 and J.2) and the new instrument - joint action - is introduced.

Third, it has been decided that the diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organizations, shall co-operate in ensuring that the common positions and common measures are complied with and implemented.

Fourth, co-operation is extended to include the eventual framing of a common defence policy which might in time lead to a common defence (Article J.4). The Western European Union (WEU) may be asked to elaborate and implement decisions and actions of the Union which have defence implications. NATO is still the basis for defence of the NATO countries and the policy of the Union shall be compatible with the security and defence policy of NATO. The countries which are members of the WEU have outlined the role of the WEU and its links with NATO and the Union and have produced a declaration on the strengthening of the operational role of the WEU. The Declaration, furthermore, contains an invitation to Denmark, Greece and Ireland to accede to the WEU or to become observers. Other European members of NATO are offered associate membership.

The Treaty allows the provisions governing defence to be revised at the intergovernmental conference in 1996 on the basis of a report to be presented by the Council to the European Council in 1996 evaluating progress made and experience gained.

**4.4.2. CO-OPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS**

Co-operation in the fields of justice and home affairs has so far been conducted outside the EC system in a number of different fora. The Maastricht Treaty also covers the areas in which there has already been co-operation.

Matters considered to be of common interest are broad and cover:

- asylum policy;
- rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
- immigration policy and policy regarding nationals of third countries (conditions of entry and residence, bringing families together, access to employment and measures against unlawful residence);
- combating drug abuse;
- combating fraud on an international scale;
- judicial co-operation in civil matters;
- judicial co-operation in criminal matters;
- customs co-operation;
- police co-operation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs co-operation, in connection with the organization of a system for exchanging information within a European Police Unit (Europol).

In these areas the Member States shall inform and consult one another in order to ensure co-ordination.

The instruments are common positions and agreements and the new "joint actions". In a declaration appended to the Final Act asylum policy is given special priority for joint action.

The Council, acting unanimously, may decide to transfer one of the above areas of co-operation (excluding co-operation in criminal matters, customs

co-operation and police co-operation), to EC co-operation (Article 100c, pillar 1). In this case the Council also determines the relevant voting rules. The decision to transfer a subject to pillar 1 has, however, to be ratified by the Member States before the decision can come into force. The ratification conditions in Article K.9 correspond to those under Article 201 pillar 1) on the EC's own resources. In a declaration annexed to the Treaty the Member States agree that, on the basis of a report from the Commission the Council will consider the possibility of transferring, by the end of 1993, asylum policy to EC co-operation.

## 5. FINANCIAL PROVISIONS (BUDGET)

The Member States contribute to the Community's own resources according to a special scheme adopted by the Council, acting unanimously, and ratified by the national parliaments. The Member States' contributions to the budget are not allocated to separate areas of co-operation but cover all the work of the Community.

In the case of co-operation between the Member States on the common foreign and security policy and on justice and home affairs the Council, acting unanimously, may decide that expenditure on action shall be taken from the general Community budget. In this way actions under pillars 2 and 3 can also be included in the budget.

One area is excluded from the principle of not allocating the Member States' contributions to the budget to individual areas of co-operation. In the Protocol on social policy it is stated that the financial effects of co-operation between the 11 countries which are party to this provision do not apply to the United Kingdom of Great Britain and Northern Ireland, which is excluded from the extended co-operation on social policy.

The Treaty does not indicate whether non-participation in specific areas of co-operation by a Member State shall have budgetary or financial implications.

## 6. THE QUESTION OF PARALLEL EXISTENCE

This can be summarized in three points.

First, the provisions of the Treaty regarding the Community's various areas of competence are defined and set out in detail, including a detailed Treaty-based plan for EMU, and the Community's decision-making structures are strengthened. Apart from the visa question and the right to vote and to stand in local elections in connection with Citizenship of the Union, there is no question of actually extending the EC's area of competence, in that all areas of co-operation have - in the past as well - been considered in the Community on the basis of general Treaty provisions. The main innovation is that the

explicit reference in the Treaty to a series of areas of co-operation now establishes clearer boundaries for Community competence. Furthermore, independent justification is provided for the Community's influence in the areas of co-operation concerned, which up to now has been based mainly on economic premises, e.g. internal market provisions. As regards intergovernmental co-operation on Community foreign and security policy and justice and home affairs the Treaty in some cases provides for a continuation along similar lines, and in others for an extension of co-operation.

Secondly, it is the familiar institutions, i.e. the Council, Commission, European Parliament and Court of Justice, which will be involved in intergovernmental co-operation, albeit on a different footing.

Thirdly, basic principles are established, such as respect for national identity, the principle of "closeness" and the principle of legality, to which all co-operation is subject, including that between States. The principle of "closeness" limits the Community's influence, in favour of decentralization.

The legal framework has no provision for parallel existence between the Treaty of Rome and the Maastricht Treaty, in other words for one or more Member States to continue to operate according to the Treaty of Rome and/or simultaneously accept parts of the Maastricht Treaty, whilst the other Member States adhere fully to the Maastricht Treaty.

By far the majority of the innovative measures contained in pillar 1 of the Maastricht Treaty (the Community) develop or consolidate existing Treaty provisions. For this reason alone it must be accepted that it will be extremely difficult to "separate" the innovative measures in pillar 1 of the Maastricht Treaty from those provisions which already exist in the Treaty of Rome.

As far as pillar 2 (common foreign and security policy) and pillar 3 (justice and home affairs) of the Maastricht Treaty are concerned, it must be assumed that there will not be any insurmountable legal problems if one or more Member States remain apart, whilst the others move forward.

The common Introductions and Final Provisions contain rules on the admission of new Member States and adjustments to the Treaties which apply to all the Treaties. Article 237 of the Treaty of Rome on enlargement of the Community is repealed and replaced by Article O of the Maastricht Treaty, which states that new countries may apply to become members of the Union.

Article 236 on amendment of the Treaty is repealed and replaced by Article N, which states that future intergovernmental conferences shall determine

amendments to the Maastricht Treaty and shall be attended by the Member States which are signatories to the Treaty.

These provisions having been moved from pillar 1 to the common final provisions applying to all the Treaties, it must be said that the legal situation is unclear in that Articles O and N would not apply to a Member State which continued to operate on the basis of the present Treaty situation. For example, the enlargement negotiations with the EFTA countries would be based on Article O of the Maastricht Treaty. Insofar as this Article does not apply to all Member States, there must be some doubt about whether enlargement negotiations will take place with all Member States or only those which are covered by the Maastricht Treaty.

Considering in particular the horizontal amendments which the Maastricht Treaty makes to the existing Treaties, it is extremely difficult in legal and practical terms to imagine a situation in which some Member States operate on the new basis, whilst others still operate on the old one.

For a start, it is hard to imagine, from the practical and legal points of view, how it could be possible for some Member States to operate on the new basis and others on the old one. The problems here are three-fold: principles, decision-making procedures and substance.

- The general principles of the Treaty are amended in a number of respects, including the introduction of the principle of "closeness" and the principle of taking the environment into account in all areas of action. It is practically inconceivable that these horizontal principles, which serve to delimit the institutions' competences, should not apply to all partners. A Member State wishing to continue to operate under the existing Treaties is likely to have difficulties when it wants a regulation to be adopted which cannot be adopted according to the new basis because it would be inconsistent with, for example, the principle of "closeness".

- Various new decision-making procedures are introduced, which in particular reflect the fact that Parliament, the Committee of the Regions and to a certain extent the Economic and Social Committee are involved in new ways. Furthermore, various aspects of the Council's voting rules have been amended. It will be impossible in practical/legal terms to have, for example, two different parliamentary procedures or two different sets of Council voting rules (e.g. on environmental issues, unanimity and deliberation according to the rules of the old Treaty, and a qualified majority and co-operation procedure according to the Maastricht Treaty).

- A whole series of substantive changes in the Treaty basis are introduced, which will considerably complicate the drafting and implementation of specific legislation based on one Treaty in respect of some Member States and another Treaty in respect of the rest.

- Economic and Monetary Union is one example of the introduction of new rules regarding substance and new institutions for the purpose of co-operation. This will take place in stages, and the Maastricht arrangements already make provision for Denmark to elect either to join in or stay out at stage three.

From a practical/legal point of view it is therefore necessary to differentiate between horizontal amendments and other amendments.

- As far as horizontal amendments, the general overriding objectives, the general principles which apply to all or a number of areas, and the institutional provisions including decision-making procedures and voting rules are concerned, it will be practically impossible for some Member States to operate on the basis of the new Treaty and others on the basis of the old one.

- As for the amendments relating to the individual areas of co-operation, from the legal point of view the introduction of a special status cannot be ruled out. A special status would mean that EC rules, including the general co-operation objectives, would not apply to all Member States. This will give rise to various delimitation problems which may be brought before the Court of Justice. It is also conceivable that a test case to establish whether or not a special status is compatible with the Treaty system may be brought before the Court of Justice.

# CHAPTER VIII

# ECONOMIC AND MONETARY UNION

## 1. INTRODUCTION

This Chapter first of all gives a historical account of the process leading up to the provisions of the Maastricht Treaty concerning the establishment of Economic and Monetary Union between the Member States of the European Community. This is followed by a description of the details, including the formal and substantive changes in the sphere of co-operation which the provisions will bring about compared with existing co-operation structures within the Community. Stage 2 of Economic and Monetary Union will not entail changes of substance compared with co-operation at present. During that phase the Member States retain full powers concerning monetary policy. In stage 3 economic policy must be adapted in the light of rules concerning excessively large budget deficits. Apart from this, economic policy will remain within the national sphere of competence in stage 3 as well.

Pursuant to its Article R, the Maastricht Treaty will enter into force on 1 January 1993 or on the first day of the month following the deposit of the instrument of ratification in Rome by the last signatory State to take this step. However, only a few of the Treaty's provisions concerning Economic and Monetary Union will enter into force then. This is because the process leading up to full Economic and Monetary Union is divided into three stages. Stage 1 began on 1 July 1990. Pursuant to the Maastricht Treaty, stage 2 will come into force on 1 January 1994 and stage 3 between 1 January 1997 and 1 January 1999 for the Member States concerned. The Maastricht Treaty's provisions concerning economic and monetary union enter into force during this period, but the provisions entailing significant substantive changes to economic policy co-operation do not come into force until stage 3, and only for those countries which go into that stage. As and when the provisions of the Treaty enter into force, the present Treaty provisions are superseded, and secondary EC legislation will also be adopted on the basis of the provisions of the Maastricht Treaty.

Both Denmark and the United Kingdom have Protocols allowing them to adopt a special position with regard to stage 3 of Economic and Monetary Union, but the UK Protocol differs from the Danish Protocol on a number of points.

## 2. HISTORICAL BACKGROUND

There have been various plans to establish an economic and monetary union between the Community Member States since the end of the 1960s, but they all have a series of common features, for example the definition of

economic and monetary union as an irrevocable locking of exchange rates, full convertibility, free movement of capital and a common monetary policy. In addition, the various plans have generally included a recommendation that a single currency be introduced.

## 2.1. THE WERNER PLAN

At the European Summit meeting in The Hague in December 1969 a Committee was set up under the chairmanship of Pierre Werner, the then Prime Minister of Luxembourg. The Committee was given the task of working out a concrete plan to achieve economic and monetary union. Its report was submitted in October 1970. The report recommended establishing economic and monetary union in three stages covering a total period of ten years. To achieve full economic and monetary union, the report concluded that it would be necessary to set up two common decision-making centres, one for economic policy and a common central bank system. The report also recommended introducing a single currency.

Successive European Summit meetings confirmed the intention to establish economic and monetary union. At the Paris Summit held from 19 to 21 October 1972, which was attended by Denmark, the following statement was issued: "The Heads of State or of Government reaffirm the determination of the Member States of the enlarged European Communities irreversibly to achieve economic and monetary union. The necessary decisions should be taken in the course of 1973 so as to allow the transition to the second stage of economic and monetary union on 1 January 1974, with a view to its completion not later than 31 December 1980".

As a result of the economic crisis that developed in 1973 and 1974 and the Member States' diverse reactions to it, it proved impossible to implement the Werner Plan which did not have binding legal force.

## 2.2. MONETARY CO-OPERATION

However, results were achieved in the monetary sphere in the 1970s. With the collapse at the beginning of the 1970s of post-war international monetary co-operation within the framework of the International Monetary Fund (the Bretton Woods system), the EC countries rapidly created the "snake" under the Basel agreement of April 1972. This co-operation continued with a changing membership, but with Denmark as a permanent member, until the European Monetary System (EMS) started up on 13 March 1979.

The purpose of the EMS was to create a zone of monetary stability in Europe. Co-operation is based on an agreement between the European Community countries, and is therefore not, formally speaking, one of the areas of

co-operation covered by the Treaty of Rome. The most important aspect of monetary co-operation is the Member States' obligation to defend bilateral exchange rates, including the possibility of borrowing unlimited amounts from the other central banks. There are two fluctuation margins, the normal band of +/-2.1/4% and the broad band of +/- 6% around the bilateral exchange rates. The ecu was introduced in the context of the EMS. It is a basket of currencies, with each currency accounting for a fixed proportion. All EC currencies are now contained in the basket.

All the Community Member States are, formally speaking, members of this system, but the major decisions about changes in exchange rates, etc., are taken by the Member States which are in the exchange rate mechanism (ERM), and which have therefore undertaken to maintain fixed bilateral fluctuation margins for their currencies. At the moment, Belgium, Denmark, France, the Netherlands, Ireland, Luxembourg and Germany are in the exchange rate mechanism's normal band. Italy is, formally speaking, in the narrower band, but has suspended its intervention obligation. Portugal and Spain are in the exchange rate mechanism's broad band. The United Kingdom and Greece are not in the exchange rate mechanism.

Decisions on exchange-rate adjustments in the context of the EMS are taken by common agreement between the participating countries. This was already the practice with the "snake" in the 1970s, but was formalized with the establishment of the EMS. Experience has shown that it has had a genuine impact, since both small and large countries have been denied devaluations as big as they originally wanted. The EMS has therefore provided a good starting point for the adaptation of economic policy and hence made a considerable contribution towards bringing inflation under control. From 1987 to September 1992 there were no adjustments of the bilateral exchange rates for currencies in the narrower band.

The continuing process of market integration as a result of the customs union and the internal market entails increased mutual economic dependence between EC countries. An important factor in this connection is the liberalization of capital movements between Member States, contributing to the ever closer integration of financial markets and institutions. This has resulted in an increased interest in and a greater need for closer co-ordination of economic and monetary policy. Last but not least, where the free movement of capital and stable exchange rates are concerned, it is very important to participate in more extensive monetary co-operation in order to continue to ensure monetary stability. Likewise, it is a prerequisite for stable exchange rate conditions that there are reasonably uniform trends in inflation, etc. With fixed exchange rates, excessively large differences in the trends in the underlying economic conditions will, over a period, result in large shifts in

the relative competitiveness of the individual countries, and therefore ultimately require either a change in exchange rates or a change in economic policy, including structural policy, in order to restore the conditions of competition between the countries.

The EMS was established at a time when inflation in Europe was rampant. Politicians reacted by placing the emphasis on the achievement of monetary stability. Some Member States had difficulties in fully satisfying the economic and political requirements involved in the maintenance of exchange rates. However, several countries, including France, discovered that devaluation did not help to resolve the underlying economic problems but mainly resulted in higher inflation. The EMS-related fixed exchange rate policy was therefore widely accepted during the 1980s.

Another reason why the emphasis in economic policy was moving to a greater extent towards achieving monetary stability was the fact that Germany had, generally speaking, achieved positive and stable economic results with a firm low inflation policy. In a number of other Member States, on the other hand, there was generally lower growth and higher unemployment rates. With a view to achieving the same degree of confidence characteristic of German economic policy, the Member States sought, through the exchange rate mechanism, to bring their inflation rates closer to the German level. Stable exchange rate trends vis-à-vis the German mark and hence the other members of the exchange rate mechanism have been a key element of this policy. At the same time, such a policy lacks credibility unless the Member States' other economic policy is organized in accordance with it, as can be seen from recent experience. The fixed exchange-rate policy in Denmark since 1982 has been a central feature of economic policy.

As a result of a more consistent stability-orientated economic policy, the other Member States' interest and inflation levels had to a large extent fallen at the end of the 1980s and the beginning of the 1990s to the levels prevalent before the high inflation period. However, in a number of other fundamental economic areas there are still considerable differences between Member States. One important area is public finance, where some Member States will have to reduce their public budget deficits if they are to inspire greater confidence in their economic policy. For example, maintaining a large public deficit for many years, together with the accumulated burden of debt, may push up interest rates because of uncertainty about whether the country will be able to pay off its debts smoothly. Some EC countries are therefore permanently confronted with the need for constant adjustment of their economic policy.

Member States are satisfying the requirements to a greater extent in a fixed exchange rate system. This is reflected among other things in the fact that exchange-rate adjustments have been less frequent since 1983, and the adjustments in the period up to 1987 were generally smaller than hitherto.

Where the day-to-day administration of co-operation is concerned, it is also significant that fluctuations between currencies have generally been much smaller than the margins would have allowed. The currency stability achieved within the EMS is therefore in sharp contrast to the exchange-rate movements between the main international currencies, with the dollar in particular, but also the yen, fluctuating widely in relation to the EMS currencies. It is significant in this connection that economic integration between the European countries is much greater than for example between Europe and the USA. The exchange rates of a number of European currencies, including the other Scandinavian currencies, also fluctuated considerably in the 1980s, among other things because they were partly linked to the dollar. Several of these countries have now linked their currencies to the ecu (see point 2.4 below).

The fact that exchange rates have fluctuated very little has meant that there has been no need for major interest rate fluctuations in EMS countries. Furthermore, within the EMS major variations in nominal exchange rates in relation to the underlying economic conditions have been avoided. The trend in the exchange rates of the main currencies, on the other hand, has at times been divorced from the underlying economic conditions in the individual countries.

Experience with the EMS in the 1980s contributed to the plans for the further strengthening of monetary co-operation in the Community. Even though the aim of the EMS is to achieve a higher degree of monetary stability in Europe, currencies can vary by up to 4,5% in relation to one another in the normal fluctuation margin. Exchange-rate adjustments cause unwanted capital movements and disturb trade and investment. In addition, in such situations the level of interest rates comprises a risk premium on account of the markets' fear of losing out as a result of the exchange rate adjustments. As the EC countries have made only limited use of exchange rate adjustments for economic policy purposes since 1987, a reduction in uncertainty will reduce the risk element in the interest rate which can therefore be lowered. An irrevocable locking of exchange rates is needed to ensure the complete removal of uncertainty about exchange rate movements between Community currencies. This in turn necessitates a common monetary policy, which therefore forms part of stage 3 of Economic and Monetary Union while stage 2 can be regarded as an extension of the gradual development of the EMS that occurred in the 1980s. For example, new rules were adopted in 1985 to strengthen the ecu and in 1987 the Basel-Nyborg agreement helped to strengthen intervention co-operation.

## 2.3. THE DELORS REPORT

On the Treaty front, the plans to establish economic and monetary union were kept on a back burner until the end of the 1980s. At the European Council meeting in Luxembourg in December 1985 agreement was reached on the Single European Act which contained the necessary amendments to the Treaty of Rome

with a view to achieving the internal market. It also contained a separate chapter with the subheading "Economic and Monetary Union", which specified among other things that the further development of economic and monetary co-operation entailing institutional changes necessitates an amendment of the Treaty.

In the course of 1987 and at the beginning of 1988 proposals were made by various parties concerning closer European economic and monetary co-operation. A major contribution which helped to spark off this debate was a letter and a memorandum which the then French Finance Minister Balladur sent to his colleagues in the Community in 1988 calling for a considerable strengthening of monetary co-operation and for an examination of related institutional questions. Following a series of initiatives which had general support the European Council meeting in Hanover in June 1988 set up a Committee under the chairmanship of Commission President Jacques Delors. The heads of the central banks in the Community and three independent experts also took part in the proceedings of the Committee, which was given the task of studying and proposing concrete stages leading towards economic and monetary union. It submitted the Delors report in April 1989. The report sets out the principal features of economic and monetary union and lays down a phased plan for achieving it.

According to the report the principal features of economic union are as follows:

- a single market within which persons, goods, services and capital can move freely;

- a competition policy and other measures which are aimed at strengthening market mechanisms;

- common policies aimed at structural change and regional development, and

- macroeconomic policy co-ordination, including binding rules for budgetary policies.

The principal features of monetary union are as follows:

- assurance of total and irreversible convertibility of currencies;

- complete liberalization of capital transactions and full integration of banking and other financial markets, and

- elimination of margins of fluctuation and the irrevocable locking of exchange rate parities.

The report also recommends a single currency, but this is not regarded as being absolutely essential in order to establish Economic and Monetary Union. At the same time, it emphasizes the need for a common monetary policy.

A major difference compared with the Werner report of 1970 is that in the Delors report it is not regarded as necessary to set up a common economic policy decision-making centre. Superposed frameworks for finance policies laid down at national level are regarded as being sufficient to secure the economic stability of the Union. There are a number of arguments in favour of finance policy being established at national level, including the subsidiarity ("closeness") principle.

As already mentioned, the report recommends phased progress towards Economic and Monetary Union. According to the report, stage 1 does not entail institutional changes, but will be used among other things to clarify the time frame and the institutional changes needed to establish Economic and Monetary Union. Stage 2 should be a comparatively short transitional phase primarily intended to enable the Member States to become familiar with joint decision-making in connection with the management of monetary policy. Stage 3 would see the final establishment of Economic and Monetary Union with a common monetary and exchange-rate policy. Lastly, the report emphasized that the entire process constitutes a whole and that a decision to initiate the first phase is a decision to complete the entire process.

At the European Council meeting held in Madrid from 25 to 27 June 1989 the objective of establishing Economic and Monetary Union was confirmed, and it was decided to start the first phase in the process leading up to union on 1 July 1990. At the same time it was decided to convene an intergovernmental conference on the changes needed to the Treaty of Rome in order to establish Economic and Monetary Union.

## 2.4. DANISH EXPERIENCE WITH MONETARY CO-OPERATION

Since the collapse of the Bretton Woods system in the early 1970s, Denmark, unlike other Nordic countries, has persisted with an exchange-rate policy involving close co-operation with other western European countries, especially the EC Member States. This is reflected in the present low level of inflation in Denmark and the fall in interest rates in the course of the 1980s. Binding co-operation also brings with it various advantages, in that in principle unlimited resources are available to defend the Danish kroner. The Danish fixed-rate policy has achieved a high degree of confidence, which would have been difficult with a policy of unilateralism, as illustrated by experience since 1990. On 17 May 1991 Sweden changed the course of its exchange-rate

policy; instead of basing the crown on a basket of currencies, it issued a unilateral declaration of its intention to keep it within a band of +/-1,5% around a fixed rate against the ecu. On several occasions both before and after the Swedish declaration, there was pressure on the Swedish crown whilst the Danish kroner remained untroubled. Finland, recently, was unable to maintain its unilaterally declared exchange rate against the ecu.

A number of European countries sought closer co-operation with the EMS countries. First of all, in 1990, Norway tied its currency to the ecu. Sweden followed, as mentioned, in May 1991, and between June 1991 and September 1992 the Finnish mark was also tied to the ecu. It is the declared objective of the Finnish authorities to establish a new fixed rate against the ecu as soon as circumstances permit. Cyprus has also tied its pound to the ecu. However, unilateral action of this type cannot, of course, instill the same degree of confidence, as the countries concerned are not represented in the decision-making bodies. Some of them have also expressed a wish to join the EMS exchange rate mechanism, but none has so far managed to do so. The decisive difference is that maintaining exchange rates is a market responsibility of all EMS members, but those countries whose currency is tied to the ecu as described have to defend their exchange rates alone, even if they have credit agreements with the central banks of EC Member States.

Danish exchange-rate policy within the framework of EC co-operation has stabilized the exchange rate for the kroner against the currencies of the country's most important trading partners, an effect which has become more pronounced as the other Nordic countries (with the exception of Iceland) have tied their currencies to the ecu. Around 75% of Danish exports go to EC Member States or countries which have unilaterally tied their currency to the ecu.

**3. SCOPE OF THE EMU PROVISIONS**

The provisions on Economic and Monetary Union are part of the first pillar of the Maastricht Treaty and include:

- Article B of the introductory provisions, in which the objectives are set out,

- Articles 2, 3a and 4a (objectives),

- Articles 73a to 73h (provisions on capital liberalization),

- Articles 102a-109m (provisions on Economic and Monetary Union),

- various protocols and declarations.

**4. ENTRY INTO FORCE OF THE MAASTRICHT TREATY AND ASSOCIATED AMENDMENTS**

In conjunction with the entry into force of the Treaty, various provisions it contains will also be directly applicable. These are:

- the provisions on objectives in Articles B, 2, 3a and 4a (see section 4.1 below);

- Article 73h on capital movements (applicable only until the start of stage two on 1 January 1994). This Article does not involve any amendment to the legal position as laid down in the fourth Directive on capital liberalization (88/361/EEC);

- Article 102a on economic policy objectives, with special reference to the general objectives of the Community as defined in Article 2 (see section 4.1 below),

- Article 103 on co-ordination of economic policies (see section 4.2 below);

- Article 103a(1), which authorizes the Council, with reference to the provisions of the Treaty, to decide upon measures to be implemented if difficulties arise in the supply of certain products (see Article 103(4) of the current Treaty);

- Article 109c(1) on the Monetary Committee (see section 4.2 below);

- Article 109d, which is an institutional innovation within the Treaty of Rome, to a certain extent supplementing the Commission's unqualified right of initiative. This Article makes it formally possible for the Council or a Member State to request the Commission to make a recommendation or a proposal relating to certain specific areas. The Commission is not legally bound to make a recommendation or a proposal, but is obliged to examine the request and submit its conclusions to the Council;

- Article 109h on support from the Community for a Member State in the event of balance-of-payments difficulties, Article 109i on protective measures in the event of a balance of payments crisis, and Article 109m on the European Monetary System. These Articles replicate Articles 108, 109, 107 and 102a of the present Treaty;

- Article 109g on the freezing of the present currency composition of the ecu basket (see section 4.2 below);

- Protocol on the acquisition of second homes in Denmark (see section 4.3 below).

**4.1. PROVISIONS SETTING OUT OBJECTIVES**

As far as Economic and Monetary Union is concerned, these are Articles B, 2, 3a and 4a. The most important innovation is a reference to the objective of setting up an economic and monetary union and introduction of a single currency. Article 2 in the common introductory provisions to the first pillar and Article B in the common introductory provisions to the entire Treaty contain the objective of establishing an economic and monetary union. Other objectives include:

- sustainable and non-inflationary growth, respecting the environment;

- a high degree of convergence of economic performance;

- a high level of employment;

- a high level of social protection;

- the raising of the standard of living and quality of life (the former is also mentioned in the existing Treaty);

- economic and social cohesion;

- solidarity among Member States.

Both Articles 3a and 4a are new in relation to the existing Treaty. The main content of Article 3a is a reference in paragraph 1 to the fact that Member States' economic policies are to be closely co-ordinated. Paragraph 2 refers to the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu, and the definition and conduct of a single monetary policy and exchange-rate policy, the primary objective of both of which shall be to maintain price stability. Paragraph 3 refers to various guiding principles for the Member States' and Community economies, i.e. stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

Article 4a states that in accordance with the procedures laid down in the Treaty, a European System of Central Banks and a European Central Bank are to be established. This is of significance for stage three only.

The only effect of entry into force of these Articles is that the objectives of the European Community are reformulated in relation to the existing Treaty. It is not possible to adopt secondary legislation on the sole basis of these provisions. However, the provisions setting out the objectives have acquired a

certain importance in connection with the other provisions of the Treaty, in that these objectives can be cited in conjunction with the implementation of secondary legislation.

### 4.2. OTHER ARTICLES WHICH ENTER INTO FORCE AT THE SAME TIME AS THE MAASTRICHT TREATY

The main provisions which enter into force at the same time as the Treaty are Article 103 on co-ordination of economic policies, Article 109c(1) on the Monetary Committee, and Article 109g on the freezing of the present currency composition of the ecu basket.

Article 103 states that the Council shall draft broad guidelines for the economic policies of the Member States and the Community; these will then be discussed by the European Council. Provision is made for multilateral surveillance, the underlying principle of which is that each Member State regards its economic policy as a matter of common interest. As part of the multilateral surveillance procedure, the Council will discuss the economic situations in the Community and the Member States in order to assess whether they are consistent with the general guidelines - although these are not binding. The Council can then decide by a qualified majority to make recommendations to a Member State whose economic policy is not considered to be consistent with the general guidelines, though each Member State continues to have the final word on its economic policy.

The provisions of the Maastricht Treaty and any subsequent legislation will not only replace the existing Treaty provisions but also the existing Council Decision (90/141/EEC) on multilateral surveillance and preparation of an annual economic report, etc., but they do not contain any amendments of a substantive nature.

Article 109c(1) provides for the continuation of the Monetary Committee referred to in Article 105(2) of the present Treaty. This Committee has a large number of advisory functions and serves, among others, the Council of Ministers for Economic and Financial Affairs. In the new Treaty these functions are emphasized with reference to specific Treaty provisions.

The first paragraph of Article 109g states that the currency composition of the ecu basket will not be changed after the Treaty has entered into force. At the moment, the Danish kroner is in the basket to the value of 19,76 øre, which corresponds to a weight of approximately 2,5%.

## 4.3. DANISH LEGISLATION ON HOLIDAY HOMES

The Treaty Protocol on the acquisition of property in Denmark was formulated as the basis in EC law for Denmark's present rules on the right of foreigners to acquire second homes in Denmark. At present the basis of these rules in EC law is Article 6(4) of the fourth Directive on capital liberalization and Article 2(3) in the two Directives on the right of residence for pensioners and the so-called group of rights. The Protocol to the Maastricht Treaty is formulated as an exception to the Treaty as a whole and hence to EC legislation as a whole. The text of the Protocol can be amended only by amending the Treaty.

## 4.4. CONSEQUENCES OF DANISH NON-PARTICIPATION ON THE ENTRY INTO FORCE OF THE MAASTRICHT TREATY

As described the Community's objectives will be changed when the Maastricht Treaty enters into force. If a country in this situation is not covered by these provisions, co-operation as a whole may come to be governed by two sets of paragraphs on objectives. That would raise a series of problems not only of a formal legal nature but also of a political nature. One of the many examples is the introduction of legal acts in which the recitals refer to the objectives of the Community. If the legal act in question is also to apply to a country not covered by the Maastricht Treaty, in future this will presumably not be possible without special references regarding that country.

As far as the procedure referred to in Article 103 is concerned, in the present Treaty it already appears that Member States consider their economic policy as an issue of common interest. The multilateral deliberation procedure has likewise already been introduced on the basis of a Council Decision (90/141/EEC) on the attainment of progressive convergence. That Decision also makes it clear that multilateral deliberation covers all aspects of economic policy, and gives authorization to issue recommendations to a Member State. Thus, laying down this procedure in the Treaty primarily means a formal strengthening of the procedure. As regards the general guidelines, these may presumably be compared with the annual economic report which is drawn up and adopted by the Council once a year within the framework of existing co-operation. The annual report includes recommendations to Member States on the organization of economic policies and has no legal effect.

The provision according to which the ECU basket does not change was introduced primarily for the sake of the financial markets' view of the ecu. At present the ecu basket is revised at five-year intervals in order to take account of changes in the values which have arisen as a result of exchange-rate adjustments and similar factors. The last adjustment of the basket took place in 1989. The

provision is intended to strengthen confidence in the ecu on the financial markets when they no longer have to live with uncertainty as to how far the basket will be revised in the future.

The provision may also be expected to produce effects for a country regardless whether the country is in the Treaty or not. Given that the share of the other eleven Member States' currencies in the ECU basket does not change, it will not be possible for the share of the currency concerned to change either.

The basis for the Monetary Committee is transferred to the Maastricht Treaty. If a country is not covered by that part of the Treaty, it will no longer be represented on that Committee, whose discussions on a number of areas form the basis for the work of the Council of Ministers for Economic and Financial Affairs in particular. If the country concerned can nonetheless still participate in that Committee, a decision will be taken either to maintain two parallel committees or, on a similar ad hoc basis, to invite the country to take part in the Committee which is based on the Maastricht Treaty. In both cases the country's real influence can be expected to be considerably reduced.

To summarize it may be said that, in comparison with existing co-operation on economic policy, the entry into force of the Treaty will not in itself mean any essential change in terms of substance. It will merely involve a number of formal changes in the basis for co-operation. However, full participation in the co-ordination of macro-economic policy is generally regarded as decisive for the functioning of the EMS. It will therefore be of essential significance for a Member State's continued full participation in exchange-rate co-operation that it is covered on an equal footing with the other Member States by the provisions of the Maastricht Treaty discussed here which relate to economic and political co-operation and which are expected to enter into force at the same time as the Maastricht Treaty.

A number of practical/legal questions also arise - with regard to the horizontal amendments in the Maastricht Treaty, see Chapter VII.

## 5. PROVISIONS WHICH ENTER INTO FORCE ON 1 JANUARY 1994, INCLUDING IN CONNECTION WITH THE TRANSITION TO THE SECOND STAGE

A number of provisions come into force on 1 January 1994:

- Articles 67 to 73 of the present Treaty will be replaced by Articles 73b to 73g;

- the second stage for achieving Economic and Monetary Union enters into force in accordance with Article 109e(1). With this the Treaty's provisions concerning this stage enter into force, including in particular Articles 104 to 104b and parts of Article 104c. These Articles include some fundamental prohibitions designed to secure economic stability;

- the European Monetary Institute (EMI) will be established in accordance with Article 109f(1). The statute of the institution, which will function only in the second stage of Economic and Monetary Union, is laid down in a special Protocol to the Treaty.

## 5.1. THE PROVISIONS OF THE MAASTRICHT TREATY ON CAPITAL MOVEMENTS

On 1 January 1994, under Article 73a, Articles 67 to 73 of the present Treaty will be replaced by Articles 73b to 73g inclusive of the Maastricht Treaty. This means in general terms that the present rules in the fourth capital liberalization Directive as a main rule acquire treaty status and direct effect.

Article 73b of the Treaty stipulates that payments are completely free both between EC countries and between EC countries and third countries. However, those Member States which on 31 December 1993 enjoy a derogation on the basis of EC law, which in this case means the fourth Directive on capital liberalization, may maintain such derogations (see Article 73e). This is of relevance only to Portugal and Greece. In the interim, restrictions vis-à-vis third countries which apply at the end of 1993 may be maintained (see Article 73c) and in addition the Council, acting unanimously, can adopt further restrictions, though also only in relation to third countries.

Articles 73f and 73g contain so-called safeguard clauses. Article 73f provides for the possibility of the Council taking safeguard measures where capital movements to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union. Such measures may be maintained for a maximum period of six months. Article 73g allows Member States or the Council to introduce restrictions on capital movements or payments to and from third countries for political reasons. Measures introduced by individual Member States can be abolished by the Council.

## 5.2 FREE MOVEMENTS OF CAPITAL AND TAX CONTROL

Under Article 73d the provisions on free movement of capital may not interfere with the right of Member States to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of

taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security. Moreover, it will continue to be possible to impose restrictions on the right of establishment which are compatible with the Treaty. At the same time it is emphasized that where Member States maintain the right to introduce the measures referred to, these must not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments.

In addition, Member States have the right to apply the relevant provisions of their tax law which distinguish between tax-payers, 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. At the same time in a Declaration annexed to the Treaty Member States have given a political undertaking, though not a legal one, not to introduce any additional tax legislation on the basis of the above provision after the end of 1993.

### 5.3. THE CONSEQUENCES OF DANISH NON-PARTICIPATION IN CONNECTION WITH THE PROVISIONS OF THE MAASTRICHT TREATY ON CAPITAL MOVEMENTS

In terms of content, the provisions of Articles 73b to 73g deviate only to a limited extent from the present provisions on capital movements as contained in the fourth Directive on the liberalization of capital (88/361/EEC), but do, as mentioned, involve the decisive difference that the provisions of the Treaty have direct legal effect.

With regard to the provisions allowing Member States to maintain their tax control legislation, the wording of Article 73d will strengthen the basis for Danish tax control law under the Treaty.

An additional essential difference between the Directive and the new text of the Treaty is the stronger emphasis on the principle of free capital movements in relation to third countries, the "erga omnes" principle. As Denmark introduced the capital liberalizations on 1 October 1988 on the basis of the erga omnes principle, acceptance of these Articles of the Treaty will not require any change in the current state of Danish law.

In the event of Denmark not taking part in the Treaty, the problem is more complicated. The Treaty's present Articles concerning capital movements, including Article 67, which is the basis for the fourth Directive on the liberalization of capital will be repealed. This will mean that the fourth Directive on the liberalization of capital will also cease to exist for co-operation based on the Maastricht Treaty. In such a case, for any possible parallel co-operation covering all twelve countries it would have to be ensured

that Article 67, and consequently also the fourth Directive on capital liberalization, continued to apply. In this way, within the overall co-operation process there will arise a situation involving two broadly speaking identical sets of legal regulations on the capital movements. To the extent that supplementary legislation has to be introduced in this field it may realistically be expected that the eleven countries co-operating on the basis of the Maastricht Treaty will reach agreement on the drafting of the provisions. Thereafter the same legislation can presumably be introduced within co-operation covering all twelve member States without any great adjustments. However, this must be expected to occur without any form of negotiation inasmuch as the other 11 countries constitute a qualified majority. In this situation Denmark cannot therefore be expected to exercise real influence on the framing of any possible future legislation.

It should be added that the second home rule mentioned here is contained inter alia in the fourth Directive on capital liberalization.

## 5.4. THE PROVISIONS OF THE MAASTRICHT TREATY CONCERNING THE SECOND STAGE OF ECONOMIC AND MONETARY UNION

Under Article 109e(1), the second stage of Economic and Monetary Union will enter into force on 1 January 1994. At the same time a series of provisions in the Treaty will also enter into force. First and foremost, three basic prohibitions will come into force:

- Article 104, which prohibits public authorities from having access to credit with national central banks (monetary financing);

- Article 104a(1), which prohibits public authorities from being given any form of privileged access to financial institutions;

- Article 104b(1), which provides that neither the Community nor other Member States will be liable for a given Member State's public debt (no-bail-out clause).

Under Article 104a(2), by 1 January 1994 the Council will have laid down more specific definitions on the prohibition barring public authorities and bodies from having privileged access to financial institutions. At the same time, under Article 104b(2) the Council may specify definitions relating to the other two prohibitions in the period between the Treaty's entry into force and the beginning of the second stage. However, the actual prohibition laid down in the Treaty only enters into force at the same time as the second stage.

Legislation against the monetary financing of public authorities and the ban on privileged access to financial institutions for public authorities can

be expected to boost the confidence of the financial markets in the economic policy of the countries taking part in the second stage and in the financial systems.

The three fundamental prohibitions in the Maastricht Treaty correspond to current practice in Denmark, so that the basis for economic policy will not change. In Denmark the public deficit has not been financed in the form of an overdraft with the National Bank for many years, as there has been an understanding between Government and the National Bank that State debt should be covered by the sale of Government bonds. Accordingly, the public authorities do not have any form of privileged access to the financial institutions in Denmark.

Ultimately, the provision that neither the Community nor other Member States are to be liable for the deficit of a given Member State corresponds to the situation today. Denmark naturally has no interest in taking over the debt obligations of other Member States.

In addition, a number of the Treaty's provisions concerning excessive government deficits enter into force but only with regard to the procedures. The actual prohibition of excessive government deficits and possible counter-measures are contained in the provisions of Article 104c(1), (9) and (11), which enters into force only in the third stage.

In the second stage Article 109e(4) will apply, whereby Member States are to endeavour to avoid excessive government deficits. There is thus no question of a legal obligation in this area in the second stage. The second paragraph means that the Commission will examine the development of the budget in the individual Member States with a view in particular to assessing whether budgetary discipline is being maintained. The assessment will be based on whether the ratio of the actual or planned government deficit to gross domestic product (GDP) exceeds a reference value which a Protocol to the Treaty sets at 3% of GDP. However, it is not only the absolute level of the government deficit which is decisive, as the Treaty contains two qualifications: Where the government deficit in percentage GDP has declined substantially and continuously and reached a level that comes close to 3%, or, alternatively, the excess over that figure is only exceptional and temporary and the government deficit as a percentage of GDP remains close to the 3%, this criterion may be regarded as having been met.

In addition, the percentage of GDP accounted for by government debt will correspondingly be less than 60% of GDP. Here again a qualification is inserted, as the criterion may be regarded as having been met where the percentage of debt is sufficiently diminishing and approaching 60% of GDP at a satisfactory pace.

Under Article 104c(3) in the first instance it is the Commission which undertakes an assessment of whether the criteria are satisfied. If in the assessment of the Commission this is not the case, or if the Commission otherwise considers that there is a risk of an excessive deficit in a Member State, it will prepare a report on the situation. Together with the Monetary Committee, the Commission will address an opinion to the Council. On the basis of the two opinions the Council will then take over the examination and assessment of whether there is a question of an excessive budget deficit in a given Member State. In the context of the examination by the Council, the Member State whose situation is being discussed will have the opportunity to put forward any observations it may wish to make. Only after this procedure will the Council assess by a qualified majority, during which process the Member State in question will also have a vote, whether there can be said to be an excessive budget deficit. Thus the ultimate assessment of whether a given budget deficit is excessive will involve a political decision.

If the Council establishes that the budget deficit is excessive, it will make a recommendation to the Member State concerned with a view to bringing that situation to an end within a given period. This recommendation will not be made public. If at the end of the period laid down the Council is able to establish that there has been no effective action in response to its recommendation, it may decide to make its recommendation public. This decision will be taken by a qualified majority, and the Member State with the excessive deficit will not take part in the vote.

No more far-reaching sanctions are available to the Council in this phase.

The Council will formally abrogate the decisions taken with regard to an excessive budget deficit to the extent that the situation has been corrected. If the Council which initiated the procedure to counter an excessive budget deficit has made public a recommendation, a communication will accordingly be issued that an excessive budget deficit in the Member State concerned no longer exists.

If it had been in force the principle of avoiding an excessive budget deficit would not have created problems for Denmark over a period of many years. In addition, it must be emphasized that - as has been stated - in the second phase the Council does not have any form of sanctions at its disposal but can only make recommendations. The Council can already make recommendations to Member States under existing multilateral supervision. The results of the multilateral supervision can also be made public by a special decision.

## 5.5 INDEPENDENCE FOR THE NATIONAL CENTRAL BANKS

Under Article 109e(5), the Member States are to ensure the independence of the national central banks by the end of the second stage at the latest. Article 108 states that that independence is to be ensured at the latest at the date of the estabishment of the ESCB. Independence means in particular (see inter alia Article 107) that the governors of the national central banks may not receive instructions from the national authorities. The Protocol on the ESCB furthermore contains a number of more technical provisions and more detailed provisions which stipulate inter alia that the governors of the national central banks must be appointed for a period of at least 5 years. The date by which these obligations must be fulfilled cannot be decided definitively since no final date has been set for the establishment of the European System of Central Banks. Under Article 109l(1), the System of Central Banks will be deemed to have been established as soon as the Executive Board has been appointed. Under the same provision, this will occur immediately after the decision has been taken to move on to the third stage or by 1 July 1998 at the latest. The obligation to comply with Article 108 will therefore become effective late in the second stage.

As a result the law on Denmark's National Bank can be expected to require amendment. The obligation does not have any significance in practice since the Foketing and the Government do not give the National Bank political directives.

## 5.6. THE EUROPEAN MONETARY INSTITUTE

In the second stage monetary policy continues to fall within national competence. On the institutional level, the European Monetary Institute (EMI) will be established (see Article 109f(1) and the Protocol on the statute of the EMI). In practice the EMI will be a continuation of the present Committee of Governors of Central Banks.

The seat of the EMI has not been fixed but will be decided on by the end of 1992. The Institute will be directed by a Council consisting of a President and the Governors of the national central banks. The President will be appointed following mutual agreement of the governments of the Member States on a recommendation from the Committee of Governors. The vice-President will be elected amongst the Governors of the central banks. Most of the decisions in the Council of the EMI will be taken with a simple majority, with each member having one vote. The President of the Council and a member of the Commission have the right to take part in meetings of the Council of the EMI without having any voting rights. In relation to their roles at the EMI the members of the Council of the EMI will be independent and in this context may neither seek nor take instructions from their governments.

The EMI will become the monetary co-operation organization of the second stage. With the advent of the second stage, the present Committee of Governors will be dissolved, as will the European Monetary Co-operation Fund (EMCF). The Committee of Governors was originally established in 1964, but its legal basis was revised

in March 1990 by a Council Decision (90/142/EEC). The Committee decides on the framework for co-operation between the central banks of the EC countries, including primarily the supervision and control of European Monetary Co-operation (EMC) (see historical introduction). Today, the EMCF mainly has a bookkeeping function for transactions connected with co-operation within EMC.

The EMI will take over the tasks of the Committee of Governors and at the same time will acquire some new ones in relation to the preparation of the third stage. Under Article 109f(2) and the Statute, the EMI's tasks are to:

- strengthen co-operation between the national central banks;

- strengthen the co-ordination of the monetary policies of the Member States, with the aim of ensuring price stability;

- monitor the functioning of the European Monetary System;

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

- take over the tasks of the European Monetary Co-operation Fund, which is to be dissolved;

- facilitate the use of the ecu and oversee its development, including the smooth functioning of the ecu clearing system;

- hold regular consultations concerning the course of monetary policies and the use of monetary policy instruments;

- normally be consulted by the national monetary authorities before they take decisions on the course of monetary policy in the context of the common framework for ex ante co-ordination.

Today, these tasks of co-operation on monetary and exchange-rate policy already fall to the Committee of Governors.

In preparation for the third stage the EMI will furthermore:

- prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage;

- promote the harmonization, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence:

- prepare the rules for operations to be undertaken by the national central banks in the framework of the European system of Central Banks (ESCB);

- promote the efficiency of cross-border payments;

- supervise the technical preparation of ecu banknotes;

- specify the framework for the activity of the ESCB. However, this work, to be carried out by the EMI, is merely preparatory in that the framework will be adopted only once the ECB has been established.

As something new in relation to existing co-operation between central banks, the EMI will have the possibilty of managing foreign-exchange reserves. However, it will only be able to do so on behalf of the central banks, which must request such action and profits and losses from management will be for the account of the central bank concerned.

Furthermore, in the same way as the Commission the EMI will once a year draft a report on the state of preparations for the third stage of Economic and Monetary Union. In particular, the reports will examine whether Member States' legislation on the national central banks is in accordance with the Treaty, which primarily means that their independence is assured. The degree of economic convergence will also be assessed (see Treaty, Article 109j(1)).

In order to carry out its tasks the EMI will be endowed with a number of powers, which will mean that it can:

- formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State;

- submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System;

- make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy;

- decide to publish its opinions, subject to unanimous agreement in the Council.

In addition, the Council will consult the EMI on any Community legal acts within its field of competence, just as the Council can decide unanimously to transfer to the EMI other tasks relating to the preparation of the third stage.

The EMI will be the forerunner of the ECB and will dissolve itself as soon as the ECB is established at the time of transition to the third stage. The EMI - in common with the Committee of Governors today - has no decisive influence over Member States' monetary policy, which will remain within their national competence during the second stage. By building up an institution and a team of staff, the EMI will contribute towards a smooth transition to the third stage in which monetary and exchange-rate policy will be transferred to Community level for those countries which enter the third stage. This means that the third stage must be prepared at technical level. Participation in the third stage will, however, be determined only by the provisions of the Treaty, including the two special Protocols on the subject for Denmark and the United Kingdom.

## 5.7. THE EFFECTS OF DENMARK STANDING OUTSIDE THE PROVISIONS OF THE MAASTRICHT TREATY ON THE SECOND STAGE OF ECONOMIC AND MONETARY UNION

If Denmark does not take part in the second stage of economic and monetary union, from the beginning of the second stage Denmark will be outside the EMI and therefore in practice outside co-operation on monetary and exchange-rate policy. This is because all practical functions relating to the EMS will be taken over by the EMI. It should be noted that, regardless of the fact that the formal basis for monetary co-operation is the Basle Agreement which was entered into by the central banks in the Community, this will be reassessed before the second stage, inter alia because institutionally it is based on the Committee of Governors of the Central Banks, which, as mentioned, will be dissolved.

At the same time Denmark will be outside the formal framework for co-ordination of general economic policy which is accorded increasing importance for the functioning of the EMS. One view is that a country cannot be accorded the right of exchange-rate adjustment initiatives if it is not fully included in the co-ordination of economic policy. At the same time, Denmark will ipso facto be deprived of an opportunity to put its view to the other EC countries.

The problem with a country not being included in the Treaty is that the Treaty and the Statutes concerning the EMI do not take account of the situation in which a Member State does not participate in the second stage of economic and monetary union. This is taken into account as far as the European Central Bank is concerned (see below). The second stage will involve only a very small number of changes in co-operation and these will be institutional in nature. The Treaty

and the Statutes do not therefore allow for the possibility that a Member State might not participate in the second stage of economic and monetary union.

Even if the EMI prepares the third stage the Member States not involved in the second stage will be obliged to take part in the third stage and at the same time it is a tradition in monetary co-operation that all countries are involved in the preparatory work. Thus, the United Kingdom was involved in much of EMS co-operation throughout a period of eleven years without taking part in the exchange rate mechanism.

The third countries which have sought to achieve closer association with the EMS have achieved very little. Thus, a few years ago Norway sought to be admitted to currency co-operation but met with a real refusal. Thus, Norway - and Finland - only secured a number of agreements with the central banks of the Community on mutual credit facilities in the event of a currency crisis. Sweden recently made exploratory enquiries regarding association with the EMS but the discussions have not been concluded. Notwithstanding that the EMS agreements provide an opportunity for association of European countries with close links, the attitude in a number of Member States is that the economic co-ordination necessary for full participation in EMS co-operation is only possible through full participation in the Community's economic and political co-operation.

Against this background a country can hardly be expected to have the opportunity to participate fully in exchange-rate co-operation if that country does not participate in the second stage and therefore in that part of the Maastricht Treaty.

To what extent leaving full EMS co-operation will entail major economic repercussions will depend on whether the financial markets view the alternative association which the country concerned is able to achieve in the field of currency co-operation as being sufficient to lend credibility to its fixed rate policy.

In such a situation the security of Danish fixed rate policy will therefore be clearly reduced in comparison with the situation in which there is full Danish participation in currency co-operation.

## 5.8. PROTOCOLS FOR DENMARK AND THE UNITED KINGDOM CONCERNING POSSIBLE NON-PARTICIPATION IN THE THIRD STAGE OF ECONOMIC AND MONETARY UNION

In two different Protocols to this Treaty, Denmark and the United Kingdom reserved the right not to participate in the third stage of economic and

monetary union. In short, as will be seen below, the Protocols imply that Denmark and/or the United Kingdom, given a particular set of circumstances, have no rights or obligations in respect of the common monetary policy.

The establishment of the ESCB and ECB will mean closing down the EMI. However, this does not mean that Denmark and/or the United Kingdom will remain completely excluded from monetary co-operation if Denmark does not participate in the third stage. Hence a General Council will be set up, within the framework of the ECB and this will comprise Member States with a derogation possibly including Denmark and the United Kingdom. The General Council will be responsible for the furtherance of monetary co-operation among all the Member States. Thus a way has been created within the framework of the ECB of involving in monetary co-operation those Member States unwilling or unable to participate in the third stage.

The Danish Protocol means that Denmark - should it not participate in the third stage - will receive treatment in accordance with this Treaty on a par with Member States which require a derogation on the grounds of their economic situation. States with derogation status include those which may not be in a position to move to the third stage because they do not fulfil the convergence conditions (see Article 109k(1) of the Treaty). The provisions concerning the Articles from which such States are excluded appear in the Treaty's general provision. In contrast, the United Kingdom Protocol is very long and makes direct reference to the provisions from which the United Kingdom would be exempt, should it not wish to participate in the third stage.

Both protocols stipulate that the governments of the countries concerned shall notify the Council of their position concerning participation in the third stage before the Council makes its assessment under Article 109j(2) of the Treaty (see paragraph 1 in both protocols). That assessment will on the one hand identify the Member States which fulfil the conditions for moving to the third stage, and on the other hand decide in 1996 whether it is appropriate for the Community to enter the third stage of economic and monetary union. Should Denmark or the United Kingdom not wish to move to the third stage, they will not be taken into account in 1996 when it comes to deciding whether there is a majority of Member States able to move to the third stage before it can begin. Thus both countries will be able to decide for themselves whether they wish to enter the third stage, and if so when. A desire to enter the third stage at a later date triggers off a procedure whereby the Commission and the ECB submit a report on how far the convergence conditions have been fulfilled (see paragraph 4 in the Danish Protocol and paragraph 10 of the United Kingdom Protocol).

The provisions on which Articles are not applicable to Member States with a derogation are laid down in Article 109k(3) to (6):

- Article 104c(9) and (11): paragraph 9 is the provision in the procedure regarding excessive deficits, which states that the Council may give

notice to a Member State to take measures to reduce its deficit within a specified time-limit. Paragraph 11 contains the counter-measures which the Council can apply as a last resort. Such measures include requiring a Member State to publish additional information before issuing securities, inviting the European Investment Bank to reconsider its lending policy towards the Member State concerned, requiring payment of a non-interest-bearing deposit to the Community and imposing fines of an appropriate size;

- Article 105(1), (2), (3) and (5): the provisions defining the primary objective and basic tasks of the ESCB;

- Article 105a: this authorizes the ECB to issue banknotes and to determine the size of the issue;

- Article 108a: this defines the legal powers conferred on the ESCB and ECB to carry out their tasks, and includes a definition of the legal effect each of those powers involves;

- Article 109: this provision covers the single monetary policy and exchange-rate policy and the allocation of powers between the Council and the ECB in this field;

- Article 109a(2)(b): this provision sets out the institutional framework for the ECB's Executive Board, including a description of who can be appointed to the Board.

As further evidence that Member States with a derogation have no rights or obligations in respect of monetary policy, it is specified in Article 109k(4) that "Member States" in Articles 105(1), (2) and (3), 105a, 108a, 109 and 109a(2)(b) shall be read as "Member States without a derogation". In addition Article 109k(5) stipulates that the voting rights of a Member State with a derogation shall be suspended for the purposes of the aforementioned Articles of the Treaty.

Apart from the Articles referred to in Article 109k, a number of Articles state directly that they cover only Member States without a derogation. This is the case with the following Articles:

- Article 109l(1), second indent, which covers the appointment of the ECB's Executive Board after the third stage has commenced;

- Article 109l(4), which concerns the establishment of the conversion rates between national currencies and the ECU and the rates at which those currencies shall be irrevocably fixed;

- Article 109l(5), which covers the adoption of the conversion rate for a currency in a Member State whose derogation has been abrogated.

In the same way as in the Treaty itself, the Protocol on the Statute of the ESCB and of the ECB specifies the provisions from which a Member State with a derogation shall be exempt. The exemptions in the Protocol both echo those in the Treaty and introduce a number of exemptions of a more technical nature. See Annex 10 for a survey of the Articles concerned. However, it should be noted here that Article 48 of the Statute stipulates that central banks of Member States with a derogation shall not pay up their subscribed capital to the ECB. A decision may therefore be taken to pay in a minimal percentage as a contribution to the operational costs of the ECB.

Just as a Member State with a derogation is exempt from a number of provisions in the Treaty, there are a number of provisions which no longer apply to Member States moving to the third stage but which continue to be applicable to a Member State with a derogation. Such is the case with Articles 109h and 109i and also 109m (see the section on the provisions which enter into force at the same time as the Treaty).

At the same time Article 43(2) of the Statute specifies that the central banks of Member States with a derogation shall retain their powers in the field of monetary policy.

It should be noted that the Danish Protocol differs in a number of respects from the United Kingdom one. Paragraph 5 of the latter Protocol specifies a number of Articles from which the United Kingdom will be exempt. The United Kingdom will be excluded from the rights or obligations laid down in certain Articles which will apply to Denmark. These include:

- Article 3a(2), which sets out the objective. Exemption from this provision gives complete freedom with regard to the aims of irrevocable fixing of exchange rates, introduction of the single currency and conduct of a single monetary policy and exchange-rate policy;

- Article 104c(1), which states that Member States shall avoid excessive deficits. The United Kingdom will however continue to be covered by Article 109e(4) which stipulates that Member States shall endeavour to avoid excessive budget deficits (see paragraph 6 of the Protocol);

- Article 105(4) which sets out an obligation to consult the ECB regarding the introduction of national laws within its field of competence;

- Article 107, which provides that neither the ECB nor a national central bank shall seek or take instructions from national authorities;

- Article 108, which obliges Member States to ensure that their national central banks gain their independence no later than the date of establishment of the ESCB (see above).

In the same way as for Denmark, the United Kingdom's voting rights are likewise suspended in the circumstances described in these Articles (see paragraph 7 of the Protocol). It is also stipulated in that paragraph that the United Kingdom shall not participate in the appointment of the ECB's Executive Board under Articles 109a(2)(b) and 1091(1) of the Treaty, a stipulation echoed in the provisions concerning Denmark. Paragraph 6 of the Protocol lists the Articles which continue to apply to the United Kingdom. This is the same provision as in the Danish Protocol (see above).

Paragraph 8 lists all the Articles in the Statute which, where appropriate, do not apply to the United Kingdom. Paragraph 10 compares a number of Articles with those from which Denmark would be excluded should it not wish to participate in the third stage of economic and monetary union. The Treaty provisions concerning the ESCB and the ECB are repeated in the statute establishing those institutions. In order to ensure that the United Kingdom's derogations from the Treaty and from the Protocol on the Statute of the ESCB and the ECB correspond with each other, it has however also been necessary in certain cases to exempt the United Kingdom from a number of Articles in the Statute from which Denmark is not exempt.

Paragraph 9 of the Protocol lays down that the transitional provisions in the Protocol on the Statute of the ESCB concerning the General Council in Articles 44 to 48 shall continue to apply if the United Kingdom does not move to the third stage, whether or not there is any Member State with a derogation. The purpose of this provision is of course to secure the United Kingdom's participation in monetary co-operation within the Community. The provisions of paragraph 9 are necessary adjustments because the United Kingdom will not officially be treated as a Member State with derogation status. The same applies in the case of paragraph 10 of the Protocol, which concerns the cancellation of the special arrangements for the United Kingdom.

Finally, paragraph 11 stipulates that the United Kingdom Government may maintain its "ways and means" facility with the Bank of England notwithstanding Articles 104 and 109e(3) of the Treaty until it decides to move to the third stage. This facility means that the United Kingdom Government has the right to draw on a Bank of England account and thus amounts to a form of monetary financing.

## 5.9. PROVISIONS AND PROTOCOL ON THE TRANSITION TO THE THIRD STAGE OF ECONOMIC AND MONETARY UNION

Articles 109j, k and l lay down the general provisions on transition to the third stage.

During the second stage, the Commission and the European Monetary Institute will submit reports on the progress made in achieving the conditions for moving to the third stage of economic and monetary union. The reports will, in particular, assess how far Member States have promulgated the necessary legislation to ensure the independence of the national central bank and how far a high degree of sustainable economic convergence has been achieved as a precondition for taking part in the third stage.

The requirements for economic convergence are specified in more detail in a Protocol to the Treaty.

Whether a Member State fulfils the requirements for economic convergence will be assessed mainly on the basis of the following criteria:

- adequate price stability;

- whether the Member State has an excessive budget deficit;

- whether the country has participated in the narrow band of the exchange rate mechanism for at least two years without severe tensions and without on its own initiative having devalued its currency against any other Member States currency;

- whether the interest on long-term bonds does not differ unduly from that of countries with the lowest inflation rate.

The following figures for fulfilment of the first and last requirement are given as a guideline:

- prices must have risen no more than 1 1/2 percentage points over the average rate of price rises in the best three countries with the lowest price inflation, and

- the long-term interest on bonds may not exceed by more than 2 percentage points the average of the best three countries with the lowest rate of price inflation.

Both these guideline rates are to be measured for a period of one year before the situation is reviewed.

Apart from the convergence situation, the reports will also deal with the development of the ecu, the results of the integration of markets, the situation and development of the balances of payments on current account and the development of unit labour costs and other price indices.

On the basis of these reports, the Council will assess whether each Member State fulfils the requirements for moving to the third stage and hence for adopting a

single currency. The Council will in addition assess how far a majority of Member States fulfil this requirement.

The Council will subsequently recommend its findings to the European Council of Heads of State or Government, which will decide no later than 31 December 1996 whether a majority of Member States fulfil the requirements for entry into the third stage and hence for the adoption of a single currency. The Heads of State and Government will also decide whether it is appropriate for the Community to enter the third stage of Economic and Monetary Union and if so set the date for the beginning of the third stage.

The decision on whether to proceed to the third stage at the end of 1996 does not therefore follow automatically as a result of the economic situation in the Member States.

Should the date for transition to the third stage not be set by the end of 1997, that transition will automatically take place on 1 January 1999. In that case the Heads of State and Government will before 1 July 1998 decide which Member States fulfil the convergence conditions for transition to the third stage and hence can adopt the single currency. This will constitute the beginning of the third stage of economic and monetary union. Thus at this juncture there will be no requirement for a majority of Member States to be in a position to enter the third stage.

In decisions on the transition to the third stage, the Council - including the European Council of Heads of State or Government - shall act by a qualified majority.

The EC's decision-making procedure for the transition to the third stage is summarized in the flowchart.

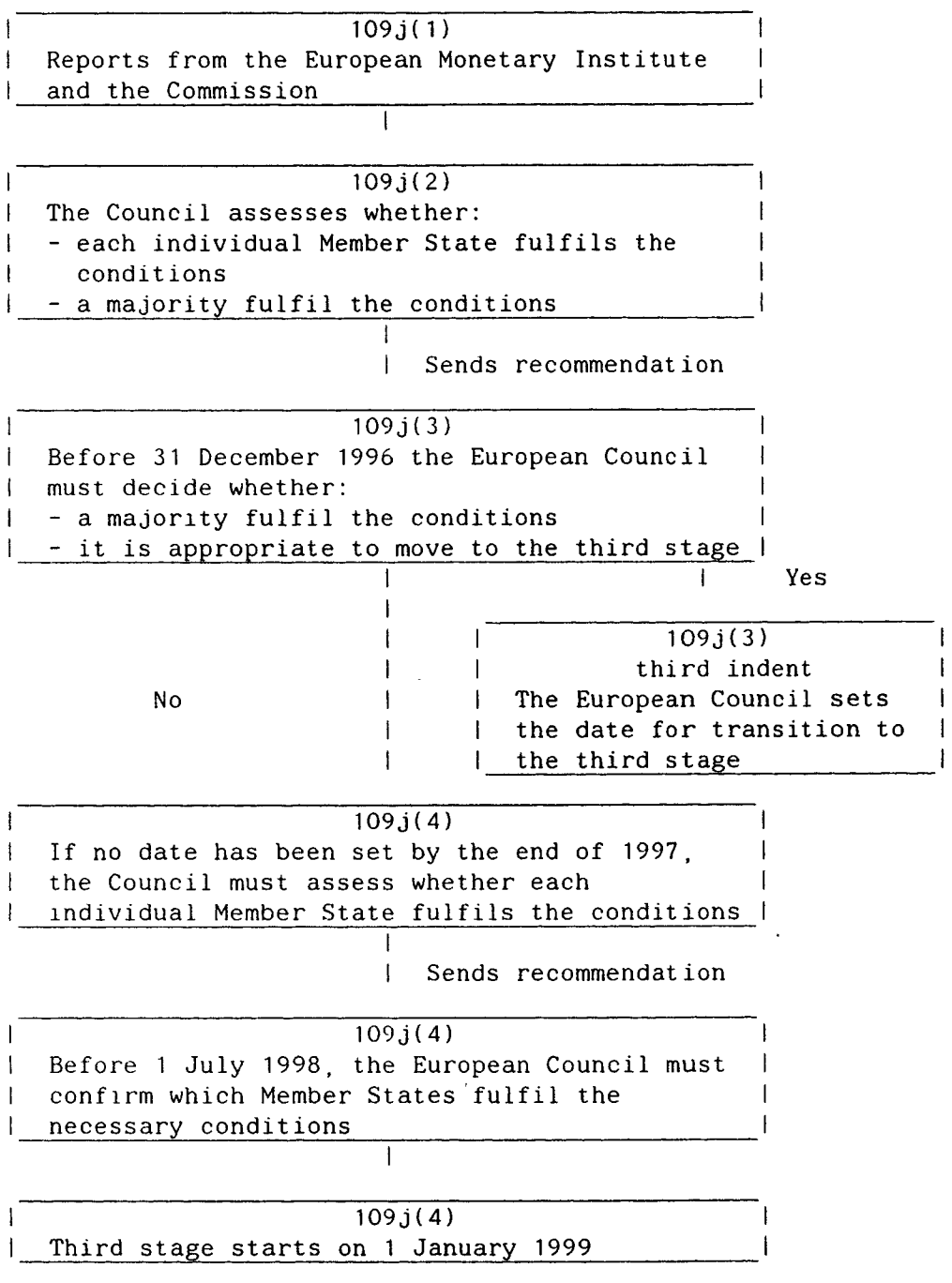
In a Protocol to the Treaty, entitled "Protocol on the Transition to the Third Stage of Economic and Monetary Union", all the Member States, including the United Kingdom, declare that movement to the third stage of Economic and Monetary Union is irreversible. They go on to declare that they will respect the will for the Community to enter swiftly into the third stage and that no Member State shall prevent the entering into the third stage. Finally, the Protocol stipulates that if by the end of 1997 the date for the beginning of the third stage has not been set, the Member States concerned, the Community institutions and other bodies involved shall expedite all preparatory work during 1998 in order to enable the Community to enter the third stage irrevocably on 1 January 1999.

The Protocol serves as an illustration of the political will to complete the establishment of economic and monetary union.

Member States which do not fulfil the conditions for transition to the third stage will receive a derogation (temporary exemption). In such cases, the Council will at least once every two years review the situation to see whether the countries concerned fulfil the conditions for participation in the third stage. Furthermore, the countries concerned will themselves be entitled to ask the Council to re-assess their situation.

Member States not taking part in the third stage will not participate in decisions concerning the single monetary policy and exchange-rate policy; nor will the Governors of their central banks be members of the Governing Council of the European Central Bank.

Flowchart showing the Community's decision-making procedure for transition to the third stage of economic and monetary union.




Note: When the European Council has to take formal decisions in connection with transition to the third stage, it will constitute itself as a formal Council with legal competence to take such decisions. Hence the reference in the Treaty to "the Council, meeting in the composition of Heads of State or Government". All decisions will be taken by qualified majority.

So a General Council will be set up, consisting of the Governors of the central banks of all the Member States and the President and Vice-President of the Executive Board. The General Council will in particular be responsible for the furtherance of monetary policy co-operation between all the Member States, and will continue in existence for as long as there are Member States not participating in the third stage.

The obligation to endeavour to avoid excessive budget deficits also applies to those Member States with a derogation, but the Council will be unable to take action against such States.

## 6. THIRD STAGE OF ECONOMIC AND MONETARY UNION

This section reviews the provisions in the Treaty which enter into force in the participating States at the beginning of the third stage. Member States not participating from the beginning of the third stage will therefore not be covered until they enter the third stage. The provisions are as follows:

- Article 103a(2) on the financial assistance arrangements;

- Article 104c(1), (9) and (11) on the obligation to avoid excessive deficits and the measures the Council can take in specific circumstances;

- Article 105 on the primary objective and basic tasks of the System of Central Banks;

- Article 105a on the issue of banknotes;

- Article 107 on the independence of the central banks;

- Article 109 on the common exchange-rate policy and participation in international monetary co-operation and Articles 109a and b on institutional questions concerning the European Central Bank;

- Article 109c(2), second, third and fourth indents on the Economic and Financial Committee;

- Article 109g on the fixing of the value of the ecu.

For all practical purposes, these are provisions needed for the fixing of exchange rates, the subsequent adoption of the ecu as a single currency and the establishment of a common monetary policy.

In the third stage of economic and monetary union, responsibility for monetary and exchange rate policy will pass to the Community. The European System of

Central Banks, comprising the national central banks together with the European Central Bank, will take over responsibility for monetary policy.

The task of the System of Central Banks is to formulate and take charge of the Community's common monetary policy. It has the task of conducting intervention on the exchange rate market and as part of that to manage Member States' exchange reserves, but not to take over ownership of those reserves. In addition, the System of Central Banks must ensure that the payments system functions.

The System of Central Banks will take sole responsibility for authorizing the issue of banknotes in the Community. Banknotes may be issued both by the national central banks and by the European Central Bank. Coins will continue to be issued in the Member States, although the European Central Bank will approve the size of the issue. At the same time the Council will be able to lay down common provisions on specific technical aspects so as to ensure that coins are able to circulate throughout the Community without difficulty.

The Central Bank itself will be run by a Governing Council and an Executive Board. The Governing Council will comprise the members of the Executive Board and the Governors of the national central banks. The members of the Executive Board are appointed for eight years and their term of office is not renewable.

Both the national central banks and the European Central Bank must be independent of government. On transition to the third stage, the legislation governing the national central banks must be changed to fulfil this requirement. The United Kingdom will therefore by virtue of its special Protocol be exempt from this requirement, insofar as it does not wish to participate in the third stage. Governments and Community institutions may not seek to influence decisions by the national central banks and the European Central Bank. Identical provisions concerning the Commission are already in existence.

The Council may unanimously and with the assent of the European Parliament vote to transfer certain supervisory functions with regard to credit institutions to the European Central Bank.

In most EC Member States it is the central bank which supervises financial institutions etc.

To increase public awareness, the ECB will address an annual report to the Council, the European Parliament and the Commission. In addition, the members of the Executive Board will go before the relevant committees of the European Parliament and explain the Bank's policy if asked to do so. It will also publish quarterly reports. The President of the Council and members of the Commission have the right to participate in Governing Council meetings but will have no vote. The President of the Council may submit proposals for discussion by the Governing Council.

The allocation of powers between the System of Central Banks and the political authorities as regards exchange-rate policy means that the ECB will assume responsibility for the daily conduct of exchange-rate policy. The Council may - after consulting the ECB - unanimously enter into formal exchange-rate agreements between the ecu and non-Community currencies. Within the framework of any such exchange-rate agreements, the Council - after consulting the ECB - may vote by a qualified majority to adjust or possibly abandon the central rates for the ecu.

In the absence of formal exchange rate agreements, the Council - after consulting the ECB - may formulate general orientation for exchange-rate policy in relation to non-Community currencies. However, these orientations must be without prejudice to the primary objective of the ESCB to maintain price stability.

Acting by a qualified majority, the Council - after consulting the ECB - must decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union. Who is to represent the Community in this area is a matter for the Council, acting unanimously, to decide.

A declaration is also annexed to the Treaty, wherein the Community affirms its readiness to co-operate on currency matters with other European countries and with those non-European countries with which the Community has close economic ties.

As an excessive budget deficit will have an adverse influence on the common monetary arrangements, the Council in the third stage of economic and monetary union must offer the possibility of taking additional measures in respect of a Member State which maintains an excessive deficit. Such measures can be taken only in respect of countries participating in the third stage.

If a Member State persists in failing to put into practice the recommendations of the Council, the Council may, in the third stage, order the Member State concerned to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation. In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable.

As long as a Member State fails to comply with such a decision, the Council may, as a last resort decide to apply one or more of the following measures:

- to require the Member State concerned to publish additional information before issuing bonds and securities;

- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;

- to require the Member State concerned to make a non-interest bearing deposit into Community funds;

- to impose fines of an appropriate size on that Member State.

Finally, the Treaty allows for the possibility of financial help to a Member State in serious difficulties in the third stage. Although this applies to "exceptional occurrences beyond its control", the Council may, acting unanimously, decide to grant financial assistance from the Community. Such assistance will be accompanied by economic and political conditions. In addition, the Council, acting by a qualified majority, may decide to grant assistance to a Member State with serious economic problems caused by natural disasters.

The financial loan arrangement may be used to help improve convergence within economic and monetary union.

The possibility already exists for the Community to grant loans accompanied by economic and political conditions to a Member State with balance-of-payments problems.

The Treaty of Rome currently gives a Member State the right to take measures should unexpected balance-of-payments problems occur. This right is maintained in the second stage. Should the measures taken by the Member State concerned not be commensurate with the extent of the problem, the Council may subsequently decide to revoke them.

These provisions will continue to apply in the case of Member States not participating in the third stage.

## 7. SUMMARY

It is clear from the above account that if Denmark does not participate in the Maastricht Treaty provisions on economic and monetary union up to and into the second stage, there will be mounting economic uncertainty in a number of sectors and great practical problems in relation to existing co-operation.

The provisions in the Treaty concerning the second stage of economic and monetary union do not involve any significant substantive changes to existing co-operation. Monetary policy will remain a national matter in the second stage.

The Maastricht Treaty includes a Protocol allowing Denmark to adopt a position individually and independently on whether Denmark will participate in the third stage of Economic and Monetary Union.

Among the problems which will arise in particular if there is no participation in the second stage of Economic and Monetary Union there is the fact that Denmark must in practice expect to drop out of fundamental areas of monetary co-operation (EMS) and to be obliged to work out, through negotiations with the other countries, an arrangement for Denmark's monetary association with the other countries in the EC, albeit without participating in the decision-making mechanisms.

Given that the EC countries' monetary co-operation will continue to constitute the basis for a zone of monetary stability in Europe, it will be in Denmark's interest to continue to be closely associated with such co-operation. A lesser association than the present one may, however, be expected to create greater uncertainty about the Danish interest rate and it is to be anticipated that Denmark's influence in co-operation will be considerably reduced as the real decisions must be expected to be taken in co-operation between the other countries.

As regards the provisions in the Maastricht Treaty which concern the period up to and including the second stage of Economic and Monetary Union, the following applies inter alia:

- the provisions governing capital movements are in line with the legislation which Denmark has already implemented;

- the provisions concerning the second stage of Economic and Monetary Union do not alter the substance of current co-operation;

- in the second stage, the Member States retain full powers with regard to monetary policy while the organization of co-operation (EMI) is, generally speaking, a continuation of existing co-operation between the central banks, albeit under a new name and new institutional structure. However, the EMI takes over responsibility for surveillance of co-operation on exchange rates;

- in the European Central Bank which is set up in the third stage, a well-defined "opt-out position" is provided for those countries that either do not wish to or cannot join the third stage of Economic and Monetary Union. Such an "opt-out position" is not provided for under the second stage.

# CHAPTER IX
# EXTREME OPTIONS AND OUTLINE SOLUTIONS

Article R of the Maastricht Treaty provides that the Treaty "shall be ratified by the high Contracting Parties in accordance with their respective constitutional requirements", that the instruments of ratification must be deposited with the Government of the Italian Republic and that the Treaty "shall enter into force on 1 January 1993, provided that all the instruments of ratification have been deposited, or failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step."

It would therefore appear that the Maastricht Treaty, in its current form, as signed by twelve Member States, can only enter into force if all twelve Member States ratify it. (8)

The current Treaty basis (the Treaty of Rome with later amendments, including the Single Act and the Maastricht Treaty) contains no provisions that take account of the situation that arose as a result of Denmark's referendum of 2 June 1992.

This chapter discusses the question of Denmark's possible position in future co-operation.

The standpoints adopted by other Member States and during the debate in Denmark and in other countries form the starting-point.

By way of introduction, a description is given of the various forms of economic co-operation. This is followed by an outline of the extreme options for a Danish solution, i.e. either withdrawal from the European Communities and accession to the EEA Agreement which comprises the current EFTA countries, or full endorsement of the Maastricht Treaty. This is followed by a survey of outline solutions.

## 1. FORMS OF ECONOMIC CO-OPERATION

Four levels of economic co-operation may be described, ranging from the least comprehensive, i.e. a free-trade area, to the most comprehensive, namely an economic and monetary union. The intermediate stages are, respectively, a customs union and an internal market.

(8) The question of the possibilities for bringing current co-operation unilaterally to an end is discussed in Annex 11.

A free-trade area is defined as an area without internal customs and quantitative restrictions but without a common external customs tariff and a common commercial policy vis-à-vis third countries. Thus, countries in a free-trade area maintain different external customs rates. This means that in the context of trade relations a distinction needs to be made between goods originating in the Member States and in third countries. Only products manufactured in or which have undergone considerable alterations within the geographical boundaries of the free-trade area are covered by the free-trade area.

A concrete example of a free-trade area is the agreement between the original 7 EFTA countries which was concluded in 1959. The EFTA Agreement entailed free movement for the EFTA countries' industrial products, whereas customs rates and external commercial policy remained a matter of national responsibility. In 1973 the EFTA countries and the EC entered into corresponding free-trade agreements for industrial products.

A customs union differs from a free-trade area in including a common customs tariff and a common commercial policy vis-à-vis third countries. Together with the common agricultural policy the customs union constituted one of the two original cornerstones of the Community.

In addition to the customs union, the internal market comprises the free movement of goods, services, capital and persons without internal border controls. Under the Single Act, a timetable was laid down for the completion of the internal market by 31 December 1992.

The Economic and Monetary Union encompasses all the previous stages of economic co-operation, free trade area, customs union and the internal market, but in addition involves co-ordination of the Member States' economic policies. In an economic and monetary union an actual common monetary policy is established, accompanied by the fixing of exchange rates.

## 2. THE EEA AGREEMENT

One extreme option for a solution is the EEA Agreement which was signed on 2 May 1992. National ratification is in progress in the 19 countries and is expected to be completed by 1 January 1993.

Danish association with co-operation based on the EEA Agreement would in such a case need to be negotiated. Association would mean that Denmark leaves current EC co-operation and takes up a new position as a non-member.

The EEA Agreement is something of a hybrid among the four abovementioned fundamental forms of economic co-operation. The Agreement establishes a free-trade area and an internal market, but not a customs union. There is therefore no common customs tariff and commercial policy vis-à-vis third countries, and consequently the EFTA countries do not participate in the Community's wide-ranging external network of bilateral and multilateral

co-operation and commercial agreements. The EEA Agreement also means that the EFTA countries do not take part in the common agricultural and fisheries policy and the agreeement does not provide for free trade in agricultural and fishery products. The EEA Agreement provides a basis for closer co-operation in a number of related areas. However the situation is not that the EFTA countries adopt EC legal acts in these areas, but that there is co-operation, for example in the form of the establishment of common activities and mutual exchange of information (see below).

As regards the institutional provisions, the fundamental principle underlying the EEA Agreement is that the EC institutions remain fully autonomous. Thus the EFTA countries do not participate either in EC institutions or in formal decision-making procedures, although they are involved in the decision-making process in having an opportunity to express their views before the EC takes a decision.

The EEA Agreement is a highly comprehensive body of treaty provisions structured as follows: Part I contains the general principles and objectives, Parts II - VI cover the material provisions, Parts VII and VIII comprise the institutional provisions together with the financial mechanisms [(9)] and, finally, Part IX contains the general and final provisions. In addition, a large number of protocols supplementing and elaborating on these treaty texts have been appended to the EEA Agreement.

The main feature of the EEA Agreement is the establishment of an internal market with free movement of goods and services, labour and capital between the 19 countries.

Thus the EC's internal market is extended under the Agreement to include the EFTA countries, which adopt EC legislation governing the four freedoms (free movement of goods, persons, services and capital). In addition, common rules on competition are established as well as rules on State aid, which means that the EFTA countries partly adopt common EC law and partly to a certain extent, accept the EC Court of Justice's supervision and enforcement of these rules. The EFTA countries' concrete adoption of EC legal acts is specified in a series of Annexes to the Agreement which contain lists of the Acts covered by the EEA Agreement. The cut-off date for the acts currently covered by the Agreement is 31 July 1991.

Specific rules apply in the agricultural and fishery products sectors. As regards trade in agricultural products, the Agreement is confined essentially to a political commitment whereby the partners undertake to continue their efforts with a view to achieving progressive liberalization of agricultural trade. In continuation of this, the partners will carry out at two-yearly intervals reviews

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(9) Economic aid from the EFTA countries for Greece, Ireland , Portugal and Spain.

of the conditions of trade in agricultural products. Thus there is no free access to the market for agricultural products under the EEA Agreement.

In the fisheries area a special Protocol has been attached to the Agreement which regulates access to the market for fishery products. For the EFTA countries' products, three categories are in operation viz. products which gain free access to the market, products for which there is a progressive reduction in customs duties and products which are particularly sensitive and are therefore not liberalized.

As regards resources, the EFTA countries' counter-concession is partly that the EC's share of the maximum cod catch in Norwegian waters is consolidated at 2,9% (instead of 2,14%) and partly that Norway also grants further cod quotas outside the bilateral agreement and Iceland allocates 3 000 tonnes of redfish in exchange for a quota of 30 000 tonnes from the EC's capelin quota in Greenland waters. Certain existing arrangements are consolidated in relation to Sweden.

As regards the transport sector, the EFTA countries adopt the common transport policy as regards transport by road. In connection with this a separate agreement was concluded between the EC and Austria and Switzerland on the conditions governing transit by road through these two countries. On 1 January 1993 the EFTA countries will also adopt the common air transport rules and, with a few exceptions, the common rules governing shipping and rail transport.

Moreover, the EEA Agreement adds a number of so called horizontal provisions of special relevance to the four freedoms, for instance provisons on co-operation in the field of social and labour market policy, consumer protection, the environment, statistics and company law. There are areas of co-operation in which the EFTA countries adopt a number of legal acts while the EC Commission and the EFTA Surveillance Authority take appropriate account of a number of other acts.

The EEA Agreement also entails more intensive co-operation in a number of related areas such as environment policy, social and labour market policy, education, research and technological development, consumer policy, small and medium sized enterprises, tourism, the audio visual sector and civil protection. In these related areas the EFTA countries do not adopt EC legislation but merely co-operate in the form of:

- participation in EC framework programmes, specific programmes, projects or other actions;

- establishment of joint activities in specific areas;

- formal or informal exchange or provision of information;

- joint efforts to encourage certain activities throughout the territory of the Contracting Parties;

- parallel legislation of identical or similar content;

- co-ordination, where this is of mutual interest, of efforts and activities via, or in the context of, international organizations, and of co-operation with third countries.

As regards the decision-making process and the institutional provisions the following applies:

The fundamental principle underlying the EEA Agreement is that at no stage in the decision-making process do the EFTA countries participate in formal EC decisions. The EEA Agreement is characterized by the fact that two different decision-making systems are maintained. The EC's decision making process therefore remains unchanged for the EC countries. The EFTA countries retain a right to be heard at all stages in the decision-making process starting from the Commission's preparation and submission of a proposal until its final adoption in the Council. The EFTA countries are also admitted to a number of the committees which are responsible for the administration of legal acts, but do not participate in the final decision.

The two decision-making systems are bound together by common bodies: the EEA Committee and the EEA Council. The EEA Committee is made up of representatives at official level of the 19 participating countries, while the EEA Council is set up at ministerial level and has general political responsibility.

The actual decision to add new law to the EEA Agreement is taken unanimously in the EEA Committee or, where no agreement can be obtained in that forum, unanimously in the EEA Council. Where no agreement is reached, those parts of the EEA Agreement to which the disputed legislation refers may, as a last resort, become inoperative. The Agreement furthermore provides the possibility for introducing safeguard measures in cases in which it can be shown that there are serious and persistent economic, social or environmental difficulties of a sectoral or regional nature. However, previous consultation in the EEA Committee is required.

As regards legal disputes which concern the interpretation and application of concrete acts, a procedure for the settling of disputes has been set up with the objective of ensuring legal uniformity. EFTA sets up an institutional counterpart to the EC's surveillance authorities and court. Where disparities arise in the application of law between the EEC and EFTA, a solution is first sought within the EEA Committee which, if it agrees, can request that the EC Court of Justice deliver a binding preliminary ruling. Where no agreement can be reached to allow the EC Court of Justice to act as supreme authority for the settlement of disputes, parts of the agreement may be suspended or safeguard

measures may be introduced. Binding arbitration could be requested for the resolution of disagreements about the concrete form of such measures. However, in matters of competition the EC Court of Justice has final jurisdiction over purely EC cases and mixed competition cases concerning the business practice of enterprises with a considerable turnover both in the EC and in EFTA.

This system for the treatment of legal disputes was negotiated after the EC Court of Justice had failed to approve the system originally agreed.

A Joint Parliamentary Committee is also set up which can express opinions on co-operation in the form of reports and resolutions.

As regards the further development of the EEA Agreement it may be noted that 4 of the 7 countries covered by the Agreement have applied for accession to the Maastricht Treaty. Moreover, Norway's Prime Minister stated that he was in favour of Norway requesting membership of the EC Union before the end of the year. This means that at the time - 1995 according to plan - when the 5 countries accede to the Maastricht Treaty (see Chapter III on enlargement) the EEA Agreement will only comprise Iceland and Liechtenstein. In this sense it may be concluded that the EEA Agreement represents an intermediate stage on the way to full membership of the European Union.

Annex 12 gives Denmark's and the EFTA countries' total exports to the EC from 1974 to 1991. As shown, exports rose both for Denmark and the EFTA countries, with 58% of total exports in 1991 going to the EC. These figures stress the economic dependence of the EFTA countries and Denmark on the EC and are one of the fundamental reasons behind the EFTA countries' request for participation in the Union, so as to acquire greater influence in the establishment of the trade conditions governing the EFTA countries' exports.

To sum up, it may be said that what characterizes the EEA Agreement is thus the adoption by the EFTA countries of EC legal acts on the internal market and the common competition policy and rules governing State aid. The EEA Agreement does not, however, involve a customs union and a common trade policy vis-à-vis third countries while the common agricultural and the fisheries policy are not covered by the EEA Agreement. The EEA Agreement, in addition, provides a basis for closer co-operation in a number of horizontal and related areas. In the related areas, including the environment, the EFTA countries do not adopt EC legal acts but there is non-binding co-operation. From an institutional point of view, the EEA Agreement is characterized by the maintenance of full autonomy on the part of the EC Institutions. Thus there is no EFTA participation in EC institutions or in formal decision-making procedures although there is consultation and the setting up of special EEA bodies. As regards the further development of

the EEA Agreement, the prospect is that 5 of the 7 participating countries will withdraw with a view to securing accession to the Maastricht Treaty.

## 3. THE CONSEQUENCE OF AN EEA SOLUTION

This Chapter deals with central parts of the Treaty of Rome from which Denmark will be excluded in the event of an EEA solution and it illustrates the type of problems Denmark will be facing if existing co-operation areas are transferred back to national jurisdiction.

### 3.1. INSTITUTIONAL CONSEQUENCES

In the event of withdrawal from the Treaty of Rome, Denmark will not be able to participate in the common EC institutions, the Council, the Commission, the European Parliament and the Court of Justice and will be excluded from the EC decision-making process. Like the other EFTA countries, Denmark will therefore not take part in the Council's establishment of common positions and the adoption of decisions, although it will be consulted on questions related to the EEA Agreement. Decisions to add new EC law to the EEA Agreement or to suspend parts of the EEA Agreement will be taken in the EEA Joint Committee and in the EEA Council, as referred to above. The EC Court of Justice will, similarly, have final jurisdiction in joint competition cases and in cases where the EEA Committee requests that the Court of Justice deliver a binding preliminary ruling. However, Denmark will not be able to appoint Danish judges to the Court of Justice. The same applies to committees set up to administer a number of legal acts. Denmark will be admitted to a number of these Committees but will not be involved in final decision making.

Compared with the current situation where Denmark is a member, there will therefore be a considerable reduction in the influence which results from full participation in EC institutions and decision-making procedures.

As regards co-operation areas not covered by the EEA Agreement, such as the common agricultural policy, Denmark would obviously have no influence on the framing of Community's policies.

### 3.2. AGRICULTURAL POLICY

A cornerstone of the Treaty of Rome is the common agricultural policy, from which Denmark will be excluded in the event of an EEA solution. Under Article 39 of the Treaty of Rome the objectives of the common agricultural policy are to increase agricultural productivity, to ensure a fair standard of living for the agricultural community, to stabilize markets, to ensure the availability of supplies and to ensure that supplies reach consumers at reasonable prices.

The common agricultural policy is based on three fundamental principles: market unity, Community preference and financial solidarity.

The main instrument of the agricultural policy is the common organization of the market within the EC and the common rules at the EC's external borders. Under that system a guaranteed minimum internal price is maintained and supported through measures (buying-in) designed to reduce supply. Externally, a variable import duty is levied, which means that the imported commodity is not lower than the target price. In addition, export refunds are granted, corresponding to the difference between the world market price and the target producer price, so that farmers receive the same price whether they sell on the free internal market or to third countries.(10)

The other main instrument is the structural policy, which consists partly of a number of horizontal measures such as modernization aid, aid for training and early retirement arrangements, and partly of special regional programmes to support regions with specific problems.

The agricultural policy was developed in the 1960s when the security of supplies was the major consideration. Throughout the years there have been a number of reforms of the agricultural policy as a result of the overriding problem facing EC agricultural policy of ever-increasing rising surplus stocks and agricultural expenditure. The most recent reform, in May 1992, introduced a shift from price support to more direct support, for example aid per hectare and premium arrangements.

Denmark is among the countries which, as net exporters of agricultural products, have clearly benefited from the common agricultural policy in the form of secure access to the market for Danish products, secure prices for farmers and hence a secure development of earnings in the agricultural sector. Annex 13 shows the trend of payments from the Guarantee and Guidance Section of the EAGGF to individual Member States and per capita. It appears that payments to Denmark rose from 1973 to 1991 and, looked at per capita, Denmark is the country which receives the largest payments after Ireland with 1 728 kroner per capita. This does not include the economic advantage constituted by the fact that the sale of agricultural products to the other 11 Member States takes place at EC prices, which are higher than world market prices.

In a situation in which Denmark was no longer a member of the Treaty of Rome and acceded to the EEA Agreement, a whole series of direct consequences for agricultural policy could be mentioned.

(10) This system easily covers the bulk of agricultural products.

This would first of all mean a transition to national financing, as Denmark would be excluded from the Community's joint financing system. Moreover, access to the market for agricultural products would have to be negotiated and agreed on bilaterally with the EC product by product. Such negotiations would be of the same nature as the bilateral agreements which the current EFTA countries have entered into with the Community, whereby only partial liberalization is involved. A conceivable situation might be, similar to what applies with the EEA fisheries agreement, that certain sensitive products would only have limited access to the Community market. In such an event, the prices which farmers would receive would not be guaranteed by the common pricing system but would in the event have to be secured under national guarantee systems. It would be for Denmark to decide to what extent export refunds financed by Denmark would be granted for exports to EC countries and to the rest of the world market. This would involve extensive structural adjustments.

Transferring agricultural policy back to a purely national level furthermore, means that Denmark will have to negotiate on its own at international level with other States and in international fora such as GATT, the FAO and the OECD. The Community negotiates as a body and hence with greater force in such fora and has entered into a considerable number of agreements with third countries. A possible Danish withdrawal from bilateral and multilateral Community agreements may be expected to give rise to considerable problems.

In the event of an EEA solution, Denmark would be excluded from the common fisheries policy. The main feature of the fisheries policy is the resources and conservation policy whereby catch possibilities for individual stocks are distributed on an annual basis after negotiations with the third countries involved and are distributed internally on the basis of a fixed distribution scale.

If Denmark were no longer a member of the Treaty of Rome, it would not be possible for Danish fishermen to fish outside Danish waters without a special agreement.

Fishing rights outside the Danish fishing zone, including in EC waters, could only be obtained if Denmark could offer corresponding catch possibilities in the Danish zone.

The fisheries sector organizes its market in the same way as the agricultural sector. The prices which fishermen are guaranteed through minimum price arrangments would in that case have to be secured through national arrangments.

As a net fish exporter with the emphasis on the EC market, Danish fishery products would be subject to EC customs duties. Access to the market would have to be negotiated bilaterally with the EC product by product, in the same way as the current EFTA countries have entered into agreements with the EC whereby market liberalization only applies to limited areas.

## 3.3. THE CUSTOMS UNION AND THE COMMON COMMERCIAL POLICY

As described above, the EEA Agreement does not involve common external customs tariffs and a common commercial policy. Under the Treaty of Rome the right to issue binding customs provisions is transferred from national law to Community law, while a common commercial policy is established, in particular with regard to changes in duty rates, the conclusion of tariff and trade agreements, and the achievement of uniformity in liberalization measures, export policy and measures to protect trade.

Throughout the years, the Community has entered into a whole series of bilateral and multilateral co-operation and commercial agreements and has since 1960 negociated as a single entity in the GATT negotiations. In this way the EEC countries have jointly acquired greater negotiating power than they would have individually.

It is difficult to gain a clear idea of the legal and substantive consequences of withdrawal from the customs union and the common commercial policy, inter alia as a result of Denmark's changed commercial position.

The Community is a participant in a large and complex international network of trade relations; a transfer back to national level of the authority for entering into such agreements may be expected to give rise to considerable problems. In that case Denmark would have to uphold and enter into international trade agreements, including the securing of access to the market on a national basis and would in that case have to work out national arrangements to take over the many agreements entered into by the Community.

As at 1 December 1991, Denmark was covered by 971 agreements with third countries entered into by the EC, which would have to be transformed into national agreements through new negotiations between Denmark and those countries.

## 3.4. OTHER AREAS OF CO-OPERATION

In the event of an EEA solution, Denmark will be excluded from the co-operation areas which result from and have been extended on the basis of the Treaty of Rome, and which are financed from the common EC budget. This includes in particular projects concerning environment policy, social and labour market policy, economic and social cohesion, research and technological development, the association of overseas countries and territories, the transport policy and vocational training policy. As described in Chapter VII, the Community has in addition to this, on the basis of, for example, Article 235 and Article 100a of the Treaty of Rome, included areas such as health, culture, consumer policy and development policy.

Denmark has set great store by a number of these policies such as, for example, environment policy and social and labour market policy. EC acts have been adopted in all of these areas and common programmes and projects have been

implemented, and the Community takes part in international activities and co-operation in these areas.

The types of legislation and programmes that Denmark will not participate in framing and will not automatically take part in are, for example, the research framework programmes and related specific programmes, the action programme for small and medium-sized enterprises, the extensive Community legislation in the environment sector, the action programme for implementation of the Social Charter of the Fundamental Social Rights of Workers and the activities of the structural funds.

The European Monetary System provides the framework for European financial and monetary policy co-operation. The EMS was established in 1979 outside the framework of the Treaty as co-operation between the Member States' central banks, and express reference is made to the EMS in Article 102a of the Treaty of Rome. This provision was included in the Treaty of Rome through the Single Act. Moreover, the Treaty of Rome contains provisions on the co-ordination of the Member States' economic policies with a view to ensuring the equilibrium of the balance of payments, maintaining confidence in their currencies, ensuring a high level of employment and a stable level of prices (Article 104). Within the framework of the EMS it has been possible to create a zone with greater monetary stability, while co-operation on exchange rates has led to greater price stability and lower inflation in the EC as a whole. If a country withdraws from the EMS, this is bound to create uncertainty about exchange rate policy and economic policy.

If Denmark had to leave the Treaty of Rome, it would be doubtful whether EMS membership could be fully maintained. Denmark would most probably be in the same position as current third countries in relation to the EMS.
EMS co-operation thus contains a provision to the effect that close European countries may be associated with the EMS. In practice, this involves a unilateral adjustment to the fixed rate strategy which characterizes the EMS and to economic and monetary development in the Community. Thus Norway, Sweden and Finland have linked their currencies to the ecu, a link which Finland has provisionally had to give up. In all cases it amounts to a unilateral national decision not involving any commitments for EC central banks, and hence there is no question of Community responsibility. (11) These countries therefore bear sole market responsibility for their exchange rates. It further follows that these countries have no influence on co-operation concerning the EMS.

(11) The central banks of Norway and Finland have established a short-term credit facility with the EC central banks.

As described in Chapter VII, European Political Co-operation (EPC) was included in the Treaty through the Single Act. Where a country remains outside the Treaty of Rome, it follows that this country does not take part either in the joint co-ordination and preparation of common positions on major foreign policy matters and that it remains outside the multilateral network for dealing with external events and conflicts which the Community represents.

In the last few years in particular, i.e. after the opening-up of Central and Eastern Europe, the experience has been that the dividing line between foreign economic matters and foreign policy has been eliminated. Hence the need for an ever greater degree of co-ordination. In line with this, the EC has become the central forum which is increasingly being used to achieve coherence in combined Community relations with the external world.

Any country which remains outside the Treaty of Rome will not have any access either to the wealth of information which is exchanged on a daily basis between the co-operation partners. Information on decisions taken in the context of political co-operation will have to be obtained after the events.

It may be noted that the extreme option represented by Danish accession to the EEA Agreement entails considerable retrograde steps both as regards participation in decision-making procedures and institutions and in relation to the substantial fields of co-operation covered by the Treaty of Rome. The EEA Agreement amounts to a considerable reduction in the influence which is acquired from full participation in EC institutions and decision-making procedures. Moreover fundamental policies in the Treaty of Rome such as the common commercial policy and the common agricultural policy are not covered by the EEA Agreement. A transfer of such policies back to national jurisdiction and financing would involve considerable drawbacks and expenditure for Danish society. This applies both to the protection of Denmark's interests and to administrative effects, as it is to be expected that a long series of laws, regulations, etc. would have to be implemented to replace EC rules.

In addition, the Treaty of Rome contains a number of co-operation areas such as environment and social and labour market policies by which Denmark has set great store. Continued membership of the EMS should also be seen as crucial in view of Denmark's dependence on international trade. Joint co-operation on foreign and security policy gives common European interests greater force in dealing with foreign policy events and conflicts. Only full membership of the Maastricht Treaty will make it possible to take part in shaping future European co-operation, including the negotiations on enlargement.

## 4. THE MAASTRICHT TREATY

The other extreme option for a solution would be full endorsement of the Maastricht Treaty. The other Member States have clearly stated, inter alia in the Oslo Declaration, that they want Denmark to participate.

During debates, especially in a number of Member States, the wish was expressed that Denmark could reassess the matter in the light of developments, including in particular the position the other Member States take but also in the light of the clarifications, especially with regard to the "closeness" principle, which have been initiated by the European Council. This matter will not be further discussed here and reference is made to the previous chapters, in particular chapters II, VII and VIII.

The following examples may be given to illustrate which types of difficulties would arise in the event of a country not fully endorsing the Maastricht Treaty:

(1) The Community section (pillar 1) lays down a series of co-operation areas which the Community also dealt with before without any specific basis in the Treaty. Whereas culture, consumer policy, health, trans-European networks and development co-operation used to be based on other (mainly economic) Articles in the Treaty such as Articles 235 and 100a, pillar 1 now provides a clear legal basis for such policies. Practically speaking this means that clearer limits are set for the extent of EC competence within each individual area. In certain areas these clarifications mean reduction of the EC's scope for action. The curtailment of the EC's scope for action is reflected partly in a limitation of the practical scope of decisions and partly in the concrete criteria which form the basis of individual sections. For example, it is now expressly ruled out in certain sections that reference be made to harmonization of the Member States' laws and administrative provisions, which is not legally excluded under the Treaty of Rome. Such demarcation is further emphasized by the fact that the principle of "closeness" and the principle of proportionality - closeness in decisions and moderation in the means applied - are guidelines for the Community section as a whole (pillar 1).

Where a country remains outside pillar 1 of the Maastricht Treaty, this means for example that the country does not participate in Community programmes and projects which are adopted on the basis of the new provisions in the Maastricht Treaty on culture, health, consumer protection, trans-European networks etc. To date, Denmark has helped shape Community policies in these areas but it will not be possible in future to obtain financial support, for example to implement national programmes in these areas. An example could be the ERASMUS programme (exchange of university students), which was adopted earlier on the basis of Article 128 of the Treaty of Rome. Under the Maastricht Treaty an extension of or adjustment to the ERASMUS programme

would be based on Article 126 of the Maastricht Treaty, which would not apply to a country that remains outside the Maastricht Treaty. Denmark will therefore not be covered by an extension of or adjustment to the ERASMUS programme. The same argument can be applied in respect of the other co-operation areas. Consumer matters, health and culture were previously dealt with on the basis, for example of Article 100a of the Treaty of Rome. A number of directives and regulations have been adopted for example, the Directive on the labelling of tobacco products, the rules governing use of additives, programmes on consumer information and rules on product liability. The Maastricht Treaty provides such co-operation areas with an independent Treaty basis and Denmark would thus remain outside Community co-operation in these areas.

(2) As regards Economic and Monetary Union the following examples may be mentioned:

The Maastricht Treaty does not provide for the situation where a Member State remains outside the second stage of the EMU, in which monetary policy remains under national jurisdiction. During this stage the European Monetary Institute (EMI) is set up, which takes over all institutional and practical duties regarding European Monetary Co-operation (EMC). If Denmark remains outside the EMI, it will not take part in financial and monetary co-operation, nor will it take part in co-operation on the co-ordination of economic policy. The result is that it will be impossible to maintain full Danish participation in EMC. It will be necessary to negotiate another, looser form of association similar to the arrangements which Norway and Finland have secured. In that case it will be impossible to maintain Denmark's influence on financial and monetary policies. There will no longer be a safety net under the Danish Krone, increasing the risk of anxiety about its rate. The demands on economic policy will in any case be greater and there will be an increased risk of higher interest rates in the event of disturbances on the currency markets.

(3) As regards intergovernmental co-operation, mention can be made of close links between foreign policy (pillar 2), foreign economic policy (pillar 1) and parts of co-operation in the fields of justice and home affairs (pillar 3). The international crises which are currently raging in the EC's immediate neighbourhood, e.g. in Yugoslavia, Iraq, Central and Eastern Europe and in the CIS affect all three pillars of the Maastricht Treaty.

Where countries have worked out a common position or common action within the framework of the common foreign and security policy to introduce sanctions against third countries, this decision can be implemented on the basis of pillar 1. Under the new Article 228a in the Community section (pillar 1), the Member States can thus decide to reduce or break off economic relations

with a third country. A country which remains outside the Maastricht Treaty will, however, neither be covered by the new Article 228a nor by common foreign and security policy co-operation. In such a situation, a country might be able to join in economic sanctions on the basis of Article 113 of the Treaty of Rome or alternatively follow the other eleven countries on the basis of a national decision. However, that country would not be able to influence the decision to introduce sanctions taken within the framework of the common foreign and security policy. Where that country did not introduce the same sanctions either, the probable result would be that the eleven other countries would choose to impose border controls to ensure that products from the third country affected by the joint sanctions did not gain access to the common market. (12)

(4) The Maastricht Treaty lays the foundations for further development of co-operation on asylum policy within the framework of co-operation in the fields of justice and home affairs. To date, asylum co-operation has resulted in common procedural rules for determining the Member State which must process an application for asylum (Asylum Convention). The declaration annexed to the Maastricht Treaty creates a basis, partly for the establishment of common material rules to apply in individual Member States in the area of asylum, and partly for ensuring that before the end of 1993 a position is taken on the transfer of the asylum policy to EC co-operation. Any country that does not participate in the Maastricht Treaty will therefore have no influence on or cannot expect to be covered by the further development of co-operation on asylum.

## 5. OUTLINE SOLUTIONS

As appears from Chapters VII and VIII, the text of the Treaty itself does not provide for the situation whereby one or more Member States continue to adhere to the Treaty of Rome whilst the other Member States proceed with the Maastricht Treaty. The Treaty of Rome and the Maastricht Treaty are intertwined and interwoven both from an institutional and procedural point of view and from the point of view of substance.

The Community section enlarges on and clarifies the spheres of competence that are covered by the Treaty of Rome. The new provisions of the Treaty delineate more clearly the extent of the Community's powers and make it easier to arrive at decisions as the qualified majority becomes the predominant voting rule. Moreover, the European Parliament is involved to a greater extent in the decision-making process.

A situation in which a country remains outside pillar 1 of the Maastricht Treaty, entails consequences in all co-operation area, with changes being involved either

(12) The same reasoning will apply to the situation in which a country only takes part in pillar 1 of the Union Treaty.

as regards the substance or the decision-making procedure used. Only the original provisions on the establishment of a customs union, agricultural and fisheries policy, competition policy and the provisions on the association of overseas countries and territories remain unchanged under the Maastricht Treaty. It would therefore be extremely difficult for the two sets of Treaty provisions on EC co-operation to operate simultaneously.

As regards intergovernmental co-operation, European Political Co-operation (EPC) is replaced by the new Treaty's provisions on the common foreign and security policy. The existing co-operation in the fields of justice and home affairs is also replaced by the relevant provisions in the new Treaty.

x x x x

The range of possible options for Denmark's future relationship with the EC may be outlined as below. In the interests of a systematic approach, the outline solutions have been listed with the least far-reaching solution for the twelve Member States given first and the most far-reaching solution for the twelve Member States given last. In between these two extremes a number of intermediate outline solutions are listed. It should be stressed that no appraisal is involved of the political feasibility or the economic effects of these outline solutions.

## 5.1. OUTLINE SOLUTION 1: TREATY OF ROME WITH EFFECT FOR TWELVE MEMBER STATES

This outline solution would only apply if the Maastricht Treaty were dropped for one reason or another. As the international, economic and political developments - which were one of the main reasons for the Maastricht Treaty negotiations - remain unchanged, it is to be expected that steps would at the same time be taken to continue the co-operation provided for in the Maastricht Treaty.

## 5.2. OUTLINE SOLUTION 2: MAASTRICHT TREATY WITH EFFECT FOR ELEVEN MEMBER STATES. EEA AGREEMENT WITH EFFECT FOR DENMARK

This outline solution would involve Denmark negotiating Danish withdrawal from the EC with the 11 Member States. Denmark would also negotiate Danish participation in the EEA with the 11 EC Member States and the 7 EFTA countries. The outcome of these negotiations would be ratified by the 11 EC Member States, the 7 EFTA Member States and Denmark in accordance with their national constitutional procedures.

The result of this outline solution would, as described above, be that Denmark's influence on decisions concerning the areas of co-operation covered

by EEA co-operation would be considerably reduced. In addition, there is the fact that the EEA Agreement does not include fundamental co-operation areas such as agricultural policy, fisheries policy, environmental policy, etc. and participation in foreign policy, judicial and monetary co-operation is confined to the Member States.

It cannot be ruled out that Denmark may be able to negotiate bilaterally with the 11 EC Member States the addition of certain Annexes to the EEA Agreement, for example concerning agriculture and fisheries. It is to be expected that any such negotiations would be based on the principle of national funding so that the negotiations would in actual fact be concerned with access to the 11 EC Member States' markets for agricultural and fishery products. As regards fisheries there would also have to be negotiations on access to fishery resources.

### 5.3. OUTLINE SOLUTION 3: AMENDMENT OF THE MAASTRICHT TREATY WITH EFFECT FOR TWELVE MEMBER STATES

This outline solution would in fact involve renegotiation of the Maastricht Treaty. The result would be that the Treaty of Rome would continue to apply to the 12 Member States and that a new intergovernmental conference would be convened.

This outline solution would apply in a situation where the other Member States had carried out their ratification procedures at national level and in some cases effected constitutional changes. In the Oslo Declaration, the other Member States stated their position that the Maastricht Treaty was not renegotiable.

### 5.4. OUTLINE SOLUTION 4: THE MAASTRICHT TREATY WITH EFFECT FOR ELEVEN MEMBER STATES. THE ROME TREATY APPLIES TO DENMARK

This outline solution would mean that Denmark would not ratify the Maastricht Treaty. On the other hand, Denmark would agree to the 11 Member States implementing the Maastricht Treaty following ratification. This would require an international agreement between the 12.

As stated in Chapters VII and VIII, the Maastricht Treaty was negotiated as a Treaty amending and supplementing the Treaty of Rome and that the Treaties are thus intertwined.

It would appear necessary from a practical and legal point of view for Denmark to accept the amendments which the Maastricht Treaty contains with regard to the decision-making procedures and the institutions and which cover the current scope of the Treaty of Rome.

It is therefore probable that a situation in which it was in practice necessary to manage one legal basis for the Eleven, i.e. the Maastricht Treaty, and two legal bases for Denmark, i.e. the Treaty of Rome and certain horizontal provisions in the Maastricht Treaty, would result in considerable practical and legal confusion.

The present outline solution simply involves Denmark accepting changes to the decision-making procedures and institutions and does not therefore require Denmark to surrender more of its sovereignty in accordance with § 20 of the Constitutional Act. Denmark would on the other hand not take part in further development of the Union, e.g. the forthcoming enlargement negotiations and Governmental Conferences. This means that the Eleven Member States could decide on enlargements and greater co-operation without Denmark having any say.

### 5.5. OUTLINE SOLUTION 5: ADDITIONS TO THE MAASTRICHT TREATY WITH EFFECT FOR TWELVE MEMBER STATES

This outline solution involves Denmark ratifying the Maastricht Treaty and participating in co-operation on an equal footing with the other Member States. The Twelve Member States would negotiate certain additions to the Maastricht Treaty, in order to supplement and clarify its provisions.

An example of this is the current consideration being given to elaborating the "closeness" principle.

Additions could take the most appropriate form in each individual case.

Moreover, derived or secondary EC law could be relevant. It can for example be pointed out that it would be relevant to look at the Council's Rules of Procedure in connection with the question of openness in the Council.

### 5.6. OUTLINE SOLUTION 6: THE MAASTRICHT TREATY WITH EFFECT FOR ELEVEN MEMBER STATES

This outline solution involves Denmark agreeing that the eleven Member States implement the Maastricht Treaty, cf. outline solution 4. Denmark would negotiate and ratify a special arrangement. That would cover the Treaty of Rome but differ from outline solution 4 in that Denmark would agree to parts of the Maastricht Treaty which substantively amend the Treaty of Rome. This outline solution does not involve two legal bases for Denmark unlike outline solution 4. It involves one legal basis for Denmark, i.e. the special arrangement.

It would be possible to consider certain additions concerning Denmark in connection with the special arrangement.

### 5.7. OUTLINE SOLUTION 7: MAASTRICHT TREATY WITH A SPECIAL STATUS FOR DENMARK

This outline solution, like outline solution 5, involves Denmark ratifying the Maastricht Treaty. There would be negotiations between Denmark and the other eleven Member States on certain further special rules for Denmark. The precise legal form would have to be negotiated. Individual additions which interpret or clarify provisions in the Maastricht Treaty with regard to Denmark can also be discussed.

### 5.8. OUTLINE SOLUTION 8: MAASTRICHT TREATY WITH EFFECT FOR THE TWELVE. POSSIBLE TIME LIMIT ON DANISH INVOLVEMENT

This outline solution could be considered if Denmark had to decide to ratify the Maastricht Treaty in the light of the new situation obtaining when the other eleven Member States have applied their national constitutional procedures and ratified the Treaty.

It should be noted that this sort of participation in the Maastricht Treaty could be limited in time so that Denmark can re-assess the situation at some subsequent date. This could be achieved through the law which the Danish Parliament adopts as a basis for ratification by Denmark.

## 6. GENERAL COMMENTS

The above 8 outline solutions raise three further questions, namely the consequences for Denmark, the consequences for the eleven Member States and the question of a time limit.

Regarding the consequences for Denmark, it should be noted that the bill concerning Denmark's accession to the Maastricht Treaty has been dropped following the result of the referendum on 2 June 1992. Leaving aside the situation in outline solution 1, the Government would in the 7 other situations have to submit a new bill to the Danish Parliament, which would in any case be dealt with on the basis of § 19 of the Constitutional Act and in the case of some of the outline solutions on the basis of § 20 of the Constitutional Act.

Regarding the consequences for the other eleven Member States, reference should be made to Chapter VI concerning their ratification procedures. Whether or not new ratification procedures were necessary would depend on the particular outcome of negotiations. A provisional assessment suggests that in the case of those outline solutions (1, 2, 4 and 6) where Denmark does not ratify the

Maastricht Treaty, it is to be expected that most of the other Member States would have to ratify a second time, possibly using a simplified and therefore swifter procedure. In the case of those outline solutions where Denmark does ratify the Maastricht Treaty (5, 7 and 8), this would have to depend on more detailed assessment of the outcome of negotiations.

Regarding the question of a time limit, it should be noted that insofar as Denmark would have to enjoy conditions other than those applying to the Eleven Member States, it is probable that most of the other Member States would in the nature of things want a time limit on such conditions. This could be achieved either by a date or by an event (such as enlargement or until the next Governmental Conference). In exchange, Denmark would be given the option of a simplified procedure for accession to full co-operation. This could be done e.g. by application of a "Faeroes" clause (Article 227(5)(a) of the Treaty of Rome). (13)

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(13) That provision reads as follows:
"This Treaty shall not apply to the Faeroe Islands. The Government of the Kindgom of Denmark may, however, give notice, by a declaration deposited by 31 December 1975 at the latest with the Government of the Italian Republic, which shall transmit a certified copy thereof to each of the Governments of the other Member States, that this Treaty shall apply to those Islands. In that event, this Treaty shall apply to those Islands from the first day of the second month following the deposit of the declaration."

The declaration referred to in the provision has not been made.

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## CHAPTER X

## PROSPECTS FOR EUROPEAN CO-OPERATION

Since 1947 European co-operation in both the economic and foreign policy spheres has been moving in the direction of increasing integration. This has not been a smooth process, but viewed over the last 45 years the tendency has been quite clear. It is also very obvious that moves in this direction have been stepped up in the last few years - the Single European Act, consideration of the future role of the Western European Union (WEU) and the Maastricht Treaty.

Another striking aspect is the enlargement of the EC. From the founding of the Coal and Steel Community in 1952 until 1972 (a period of 20 years) there existed what may be described as the European Economic Community of the same six countries - Germany, France, Italy, the Netherlands, Belgium and Luxembourg. On 1 January 1973 the EC was enlarged to include the United Kingdom and Ireland. On 1 January 1981 the EC was enlarged to include Greece. On 1 January 1986 the EC was enlarged to include Spain and Portugal.

In recent years, the EFTA countries, Austria, Sweden, Finland and Switzerland have applied for membership of the EC. Turkey, Cyprus and Malta have also applied. This means that seven countries are currently applying for membership of the EC.

The EC has concluded Association Agreements ("Europe Agreements") with Poland, Hungary and Czechoslovakia. These Agreements contain a clause which prepares the way for membership. They do not specify any timetables or conditions for such membership.

At the meeting of the European Council in Lisbon in June 1992, it was stated that the agreement on greater co-operation with the EFTA countries had paved the way for opening accession negotiations with those EFTA countries seeking membership. It was also stated that such negotiations should lead to an early conclusion. Official negotiation would be opened immediately after the Maastricht Treaty was ratified and agreement had been achieved on the future financing of the EC (Delors II Package).

On this basis, the conceivable developments in the 1990s are as follows:

- Failure of the Maastricht Treaty to enter into force will be tantamount to placing a question mark over the last 45 years of co-operation and integration in European economics and politics. In such a situation it is to be expected that co-operation within the EC would continue. It cannot, however, be ruled out that it will become more and more difficult to ensure

that Member States comply with the principles and concrete rules of the Treaty. This could happen in a situation where one or more Member States consider re-orientating their interests as a consequence of such a development. It is far from certain that there would be the political will to carry out enlargement of the EC in such a situation. The extent and degree to which such incipient renationalization would prevail over current co-operation is very difficult to assess at the present time.

- If the Maastricht Treaty does not enter into force, a core group of European States will probably emerge as wishing to continue economic and political integration. That might be possible on the basis of the Maastricht Treaty. Those European States which did not wish to take part in such a development would join in a looser association through a process of negotiation which could take a number of years. Such a development would involve the European States gradually separating to form a number of groups depending on the extent to which they participated in the process of ever-closer European co-operation.

- If political agreement is reached by the Twelve Member States and the future new members about the degree of economic and political integration which should form the basis for European co-operation founded on the existing EC, all members - both old and new - will have the same status with the same rights and obligations. This approach formed the framework for enlargement of the EC in 1973, 1981 and 1986. That is the approach behind the Maastricht Treaty and the approach on which EC Member States and applicant countries have hitherto based their thinking.

- The Maastricht Treaty will enter into force at the same time as its practical application adjusts to changed conditions and new currents in the European picture. This was made clear by the referenda in Denmark and France. It is also shown by the increasing interest in concepts such as greater democratic control, more decentralization and greater closeness as well as greater openness and more transparency in the decision-making process. Both the President of the Commission and a number of political leaders from the Member States have seen the necessity of changing course in this way in order to allay people's fear of a decision-making process which is controlled by a small elite over the heads of the people. There seems to be increasing awareness that this problem must be solved in a way which ensures that the EC and/or the European Union are seen by the citizens of the Member States as bodies which solve a number of problems that are important to them. Questions of this nature could be solved in the actual text of the Treaty or elsewhere (additions to the text, etc.). A combination of both possibilities could be envisaged.

The ability to deal with Member States' problems while at the same time continuing and developing co-operation has also been demonstrated in specific

fields. For example, EMS co-operation since 1979 has been forged outside the framework of the EC Treaties. The small group of countries originally participating in such co-operation (fixed exchange rates) was gradually extended to include eleven of the total of twelve Member States. In the week before the French referendum, the United Kingdom and Italy had to abandon co-operation on fixed exchange rates (ERM). Both countries stated that they wished to rejoin at a later time. Eight of the Member States have joined in a specific form of co-operation (Schengen Agreements) on greater co-operation in the matter of movements across frontiers, etc. The Maastricht Treaty includes a special Protocol for the United Kingdom concerning the section on improving conditions on the employment market and in connection with that market (the social dimension). The Danish Protocol and the United Kingdom Protocol on Economic and Monetary Union come into the same category.

It is not therefore in principle unknown in the EC for one or more Member States to be granted special status. Such status has in previous cases been recognized and in the present case negotiated at the time when the Member States decided to press ahead with co-operation in the field in question. Such special status has also been given to one or more countries in specific well-defined areas. At the same time, moreover, decisions have been taken in this connection which make it possible for the other Member States to continue developing co-operation irrespective of the special status of one or more countries. Finally, it has in all cases been laid down that Member States having special status may give up that status and join in continuing co-operation involving the other Member States.

Co-operation from 1952 until 1958 within the framework of the European Coal and Steel Community and from 1958 until the present within the framework of the Treaty of Rome has proved its ability to overcome crises. This was shown in 1954 when France was not able to ratify the draft Treaty on the European Defence Community. It was demonstrated in the early 1960s when the first negotiations on enlargement of the EC failed. It was shown again for a year and a half after 1965 when France pursued the empty chair policy. It was demonstrated in 1974-1975 when the United Kingdom raised the question of the conditions governing its accession including United Kingdom payments to the EC budget and again in negotiations on the United Kingdom's position regarding the EC budget in the 1980s. These experiences show that there is a strong will to overcome difficulties in order to maintain the results achieved and be able to continue with co-operation.

If trends in the 1990s are assessed in the light of the experience acquired, it seems likely that the next ten years will be characterized by a number of major rounds of negotiations, one of which has already been arranged for 1996. It is also to be expected that there will be ongoing adjustments and adaptations to a greater extent than before in order to deal with new tendencies and consequently also new requests for co-operation. It is not certain that all Member States will participate in every aspect of co-operation; but it is to be assumed that any actual non-participation in aspects of co-operation must be negotiated at the time when the relevant Treaty or similar agreement is concluded. The political

desire is to keep all Member States involved together in the central aspects of co-operation. This will also be the case when enlargement to include the EFTA countries enters the picture. It is clear that the EC is not thinking in terms of anything less than full and total membership for the EFTA countries. Neither the Commission's statements on Article 237 of the Treaty nor political statements by the Member States give any support for the view that accession of the EFTA countries could involve anything other than full membership with the corresponding rights and obligations. The fragmentation of co-operation between the Member States into two or more groups could occur only in the event - and with the effect - of happenings in relations between the Member States so drastic that it will become necessary to envisage quite substantive changes not only to present plans for developing co-operation, including the Maastricht Treaty, but also to established and already existing forms of co-operation.

Discussion in recent months in the Member States and a number of applicant countries indicates that the elaboration of a political decision-making process which satisfies the desire for greater transparency of the process and the allocation of responsibility is high on the agenda for the next few years. This question had not hitherto assumed a high profile - or at least not to the extent which occurred after the Danish and French referenda. It is hardly by chance that such demands are being made at the very time when the Maastricht Treaty is poised to launch a process of European integration. It seems natural and inevitable that decisions of the type which, perhaps not immediately but possibly later, the Maastricht Treaty will entail, should be subject to greater democratic control than decisions within the framework of the known Community.

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## INDEX OF ANNEXES

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**ANNEX 1**

TIMETABLE FOR THE PROGRESSIVE IMPLEMENTATION OF THE MAASTRICHT TREATY

1992

**Number of Commissioners/Members of the European Parliament (Declaration):**
- to be discussed by 31.12.1992

**Decision on the seat of the EMI (EMI statute):**
- to be decided by 31.12.1992

**Accession to/observer status in WEU (WEU Declaration of the Nine):**
- discussions to be completed by 31.12.1992

**Asylum (Declaration):**
- harmonization of asylum policy aspects by beginning of 1993.

1993

**Asylum (Declaration):**
- Council to discuss transition to 1st pillar by 31.12.1993.

**Right to vote and stand as candidate in elections to European Parliament (Article 8b(2)):**
- relevant provisions to be adopted by 31.12.1993.

**Diplomatic consular protection of Union citizens (Article 8e):**
- Member States to draw up rules by 31.12.1993.

**Cohesion fund (Article 130d):**
- to be set up by 31.12.1993.

**Right to information from EC institutions (Declaration):**
- Commission to submit report no later than 1993.

**Institution of EC ombudsman (Article 138e).**

1994

**Second stage of Economic and Monetary Union (Article 109e):**
- to be introduced on 1.1.1994

**Ban on privileged access to financial institutions (Article 104a):**
- complementing provisions by 1.1.1994

**Right to vote and stand as candidate in municipal elections (Article 8b):**
- relevant provisions to be adopted by 31.12.1994

**Police co-operation (Declaration):**
- whether to extend such co-operation to be discussed in 1994.

1995

**Removal of restrictions on capital movements (Article 73e):**
- derogations to end on 31.12.1995

**Visas (Article 100c):**
- provisions on uniform format by 31.12.1995

**Cohesion (Article 130b):**
- Commission to submit report end of 1995/beginning of 1996.

1996

**Visas (Article 100c):**
- transition to qualified-majority decisions in Council on 1.1.1996

**Organizational framework of the ESCB (Article 109f):**
- to be laid down by the EMI by 1.1.1996

**Economic and Monetary Union (Article 109j(3)):**
- European Council possibly to set date for beginning of third stage

**Evalution of Common Foreign and Security Policy (Articles J.4 and J.10):**
- report to European Council in 1996

**New Intergovernmental conference, revision of the Treaty (Article N(2)):**
The following Articles of the Treaty on European Union contain provisions which may be discussed at the intergovernemental conference scheduled for 1996:
- Article B(5)
- Articles J.4 and J.10
- Declaration No 1
- Article 189b (8)
- Declaration No 16.

1998

**Economic and Monetary Union (Article 109j(4)):**
- confirmation by 1.7.1998 of which Member States can participate in the third stage.

1999

**Economic and Monetary Union (Article 109j(4)):**
- third stage to begin on 1.1.1999 unless an earlier date has been set.

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**ANNEX 2**

**EFTA COUNTRIES' RATIFICATION PROCEDURES IN CONNECTION WITH POSSIBLE ACCESSION TO THE EUROPEAN UNION**

General:

The following is an account of the ratification procedures for accession to the European Community in the four EFTA countries which have already applied for membership, i.e. Sweden, Finland, Austria and Switzerland, together with Norway which is expected to apply for membership at the end of the year. The countries are treated individually but in such a way that it should be possible to compare the ratification procedures of all five EFTA countries.

For the sake of clarity it is pointed out that the European Council stipulated at its meeting in Lisbon on 26 and 27 June 1992 that applicant States must negotiate on membership of the European Union rather than of the European Community.

## Finland

Finnish accession to the European Community and the concomitant surrender of legislative, executive and judicial powers cannot occur without adjustment of the Finnish constitution currently in force. Where Parliament adopts a constitutional amendment on third reading by a simple majority, it must be confirmed by at least two-thirds of the votes cast in Parliament after Parliament reconvenes following fresh elections in order to enter into force.

It should, however, be pointed out that the Finnish constitution provides for the possibility of the relevant constitutional amendment being declared urgent by five-sixths of votes cast, whereupon it can be adopted by the same Parliament by two-thirds of the votes cast for immediate entry into force.

Finland has no constitutional provision requiring a referendum on Finland's accession to the EC. However, the Finnish government has announced that, when the final negotiation results are in due course available, the people will be given the opportunity to express their opinion in a referendum. A Finnish law on accession to the European Community must be adopted by Parliament by at least two-thirds of the votes cast.

The constitutional law situation of Finnish entry into the EC is currently being examined by a parliamentary committee which will in due course submit specific proposals on the procedure to be followed.

The new law on self-government for Åland, which enters into force on 1 January 1993, provides as follows: where a provision of an international treaty concluded by Finland conflicts with the law on self-government for Åland, a law on the matter must be enacted for the provision to be valid for Åland. The law must be adopted by Parliament in accordance with rules 67 and 69 of its rules of procedure and by the Lagting of Åland by at least two-thirds of the votes cast.

**Norway**

Under the Norwegian constitution a decision on accession to the EC will require a majority of three-quarters of the votes cast in Parliament with at least two-thirds of the members present.

The Norwegian constitution does not provide for the referendum instrument. There is however nothing in the constitution to prevent the holding of a referendum on Norway's accession to the European Community, and there is political agreement that such a referendum should be conducted. According to the Norwegain constitution a referendum on accession to the EC is nonetheless not binding since the authority to transfer state powers to an international alliance is vested solely in Parliament (acting by a three-quarters majority as already stated). To make such a referendum legally binding it would therefore be necessary to carry out a constitutional amendment under the conditions described below.

Whether a possible referendum has a consultative or binding character has proved to be a politically relevant question in the recent EC debate in Norway because some parties and individual members on the "no" side in Parliament have stated that they would not necessarily, in their voting on Norwegian accession to the EC, abide by a "yes" from a consultative referendum.

The question has been asked in the Norwegian EC debate whether Norwegian accession to the European Community can be carried out under the present constitution or whether a consitutional amendment is required. In this connection much stress has been placed, as in the Danish debate, on whether accession involves a transfer of powers in more than "an objectively limited area" (Article 93 of the constitution).

The deadline for submission of proposals for constitutional amendments for adoption in the 1993-1997 legislative period expired on 30 September 1992. By that date no less than 14 proposals had been submitted by various members of Parliament solely for amending Article 93 of the constitution. Together, the proposed amendments, which are partly formulated as alternatives, touch upon all the abovementioned questions. In addition, several of the proposals involve a reduction from three-quarters to two-thirds in the required qualified majority in Parliament.

Under the constitution the proposals submitted cannot be examined until after the next parliamentary elections in September 1993. The substantive aspects of the individual proposals will be discussed and where appropriate adopted complete and unchanged by the Parliament elected at that time. The adoption of constitutional amendments requires the support of two-thirds of the members of Parliament.

It should be noted that neither in the consitution nor anywhere else in Norwegian legislation are deadlines laid down for ratificaton procedures or referenda.

## Switzerland

Swiss accession to the European Community requires no amendment of the constitution.

Once the accession negotiations are completed the government will submit a report to Parliament proposing that the outcome of the negotiations be ratified. The announcement must be examined and adopted unchanged by a simple majority in the two chambers of the National Assembly: the National Assembly and the Cantonal Council (which consists of two members from each canton directly elected by the citizens of the cantons). Proposals for amendments cannot be submitted. The ratification procedure is in practice almost the same as the procedure for amending the constitution.

The Swiss constitution prescribes both a national referendum and cantonal referenda for Swiss accession to the European Community. In the national referendum the accession bill must be adopted by simple majority of the votes cast throughout the country and there must at the same time be a majority in a majority of the cantons. The cantonal referenda are thus not referenda of their own so much as a method of measuring whether there is agreement evenly throughout Switzerland. There must therefore be a simple majority in 13 and a half cantons. There are 26 cantons, of which six are semi-cantons each accounting for one half when the majority is made up in obligatory national referenda.

The entire ratification procedure can be assumed to take between ten and twelve months.

**Sweden**

Sweden's accession to the EC requires an amendment to the Swedish constitution. The possibility of surrendering sovereignty in the Swedish constitution is not sufficiently extensive to include EC membership. It only enables sovereignty to be transferred to a limited extent to international organizations for peaceful co-operation (i.e. to organizations similar to the UN or to international courts). The timetable for Sweden's ratification of the law on accession to the European Community will be determined by the procedure for amending the constitution.

A proposal for the amendment of the constitution must be adopted by Parliament twice with an intervening parliamentary election. The first submission must occur at the latest 9 months before the election. The second adoption takes place after the parliamentary election has taken place. Adoption in Parliament is by simple majority.

The Swedish government has set itself the goal of Sweden's accession to the EC on 1 January 1995. If this timetable is to be adhered to, the constitutional amendment must be submitted to Parliament for the first time no later than 18 December 1993, i.e. nine months prior to the next ordinary parliamentary election on 18 September 1994. The ratification procedure could under these circumstances take about one year.

It would be possible to shorten the ratification period if an extraordinary parliamentary election were held between the two votes in Parliament. The constitution could then be amended independently of the set dates for ordinary parliamentary elections. It would also be possible for the constitutional committee to exempt a proposal for constitutional amendment from the requirement that it be laid before Parliament no later than nine months before an election.

The Swedish constitution provides for the possibilty of holding both consultativ and binding referenda. A consultative referendum may in principle be held at any time. A decision to hold a consultative referendum is taken by Parliament by adopting a law on the matter. Binding referenda can be held on certain subjects (constitutional amendments, approval of binding international agreements requiring constitutional amendments, and in the event of a surrender of sovereignty).

In all three cases the same rules for conducting the referendum apply. Where at least one-tenth of the members of Parliament submit a proposal to that effect, and at least one-third of members vote for it, a binding referendum must be held. An application for the holding of a referendum must be submitted no later than fifteen days after Parliament adopts the relevant proposal for the first time. Binding referenda must be held at the same time as parliamentary elections. A proposal is rejected where the majority of those voting vote against the proposal

and constitute more than half of those who cast valid votes at the concurrent parliamentary elections, otherwise the proposal becomes the subject of definitive decision in Parliament.

The government and the opposition agree that there should be a referendum on Sweden's accession to the EC. It remains to be decided whether the referendum should be binding or consultative. Should it be decided that the referendum is to be binding, it will have to be held in conjunction with the parliamentary election on 18 September 1994 if the government's ambition that Sweden should become an EC member on 1 January 1995 is to be fulfilled.

Once the constitutional amendment and the referendum have been carried out, Parliament will be able before the end of 1994 to vote on the law on Sweden's accession to the EC, dealing with the transfer of sovereignty. The preparations for this vote can take place in parallel with Parliament's proceedings on the amendment of the constitution.

**Austria**

The Austrian constitution consists partly of an actual constitution dating from 1920 with subsequent amendments and partly of a number of laws and sections of laws with constitutional force. Austria's accession to the European Community affects fundamental constitutional matters, and a referendum is therefore obligatory under the Austrian constitution.

Once Austria's accession negotiations with the EC are completed, an enabling bill on Austria's accession to the EC is expected to be laid before the Austrian Parliament, where the National Council (the popularly elected chamber with 183 members) must adopt the bill by a two-thirds majority of votes cast. The bill must then be adopted by the same majority by the Federal Council (whose 63 members are elected by the parliaments of the federal states).

The bill will subsequently be submitted to the people in a referendum. The referendum, which is binding, requires only a simple majority of votes cast. There is thus no requirement concerning the size of the turnout.

Following the referendum the bill (providing it has not been rejected) will be laid before the Federal President. Once he has signed it the enabling act - with constitutional force - will be deemed to have been definitively adopted and the actual ratification procedure under international law can then begin.

After the referendum, the proposal for an accession treaty - which will have been discussed by the two chambers of Parliament either prior to or concurrently with the adoption of the enabling bill - will be laid first before the National Council and then before the Federal Council. Both chambers must adopt the proposal by a two-thirds majority of votes cast. With the Federal President's signature of the accession treaty, authorization to ratify is simultaneously given. However, it cannot be ruled out that the two chambers may decide to adopt the accession treaty proposal before the referendum, but this does not alter the fact that ratification cannot take place until after the referendum.

Since there are by and large no set deadlines for the individual stages of the procedure, the entire procedure can be conducted within three or four months.

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**ANNEX 3**

Progress of ratification procedures from May to July 1992

| | National decision on ratification | Constitutional amendments | May | June | July |
|---|---|---|---|---|---|
| Denmark | No | None | **12.5.92** Adoption by Parliament | **2.6.92** Referendum | |
| Belgium | | To be made after ratification | | | **17.7.92** Adoption of ratification bill by Chamber of Deputies |
| France | Yes | Yes | | **23.6.92** Amendment of constitution | |
| Greece | Yes | None | | | **31.7.92** Ratification |
| Netherlands | | None | | Council of State positive opinion | |
| Ireland | (Yes) | Yes | **5.5.92** Bill on constitutional amendment | **18.6.92** Referendum | |

| | National decision on ratification | Constitutional amendments | May | June | July |
|---|---|---|---|---|---|
| Italy | | To be made after ratification | | | |
| Luxembourg | Yes | Before end of 1994 | Council of State: positive opinion | | 2.7.92: Ratification |
| Portugal | | To be made after ratification | | | |
| Spain | Yes | | | | 30.7.92: constitutional amendment adopted |
| United Kingdom | | None | First and second reading in House of Commons | | |

| | National decision on ratification | Constitutional amendments | May | June | July |
|---|---|---|---|---|---|
| Germany | | Yes | | | 21.7.92: Federal Government approved constitutional amendment and ratification bill |

Progress of ratification procedure from August to December 1992

| | **August** | September | October | November | December |
|---|---|---|---|---|---|
| Denmark | | | | | |
| Belgium | | | Discussion in Senate. Ratification expected to be completed in October | | |
| France | | **20.9.92:** Referendum | | | |
| Greece | | | | | |
| Nether-lands | | | Examination in Second Chamber ends | | Examin-ation completed in Upper Chamber. Ratific-ation by end of year |

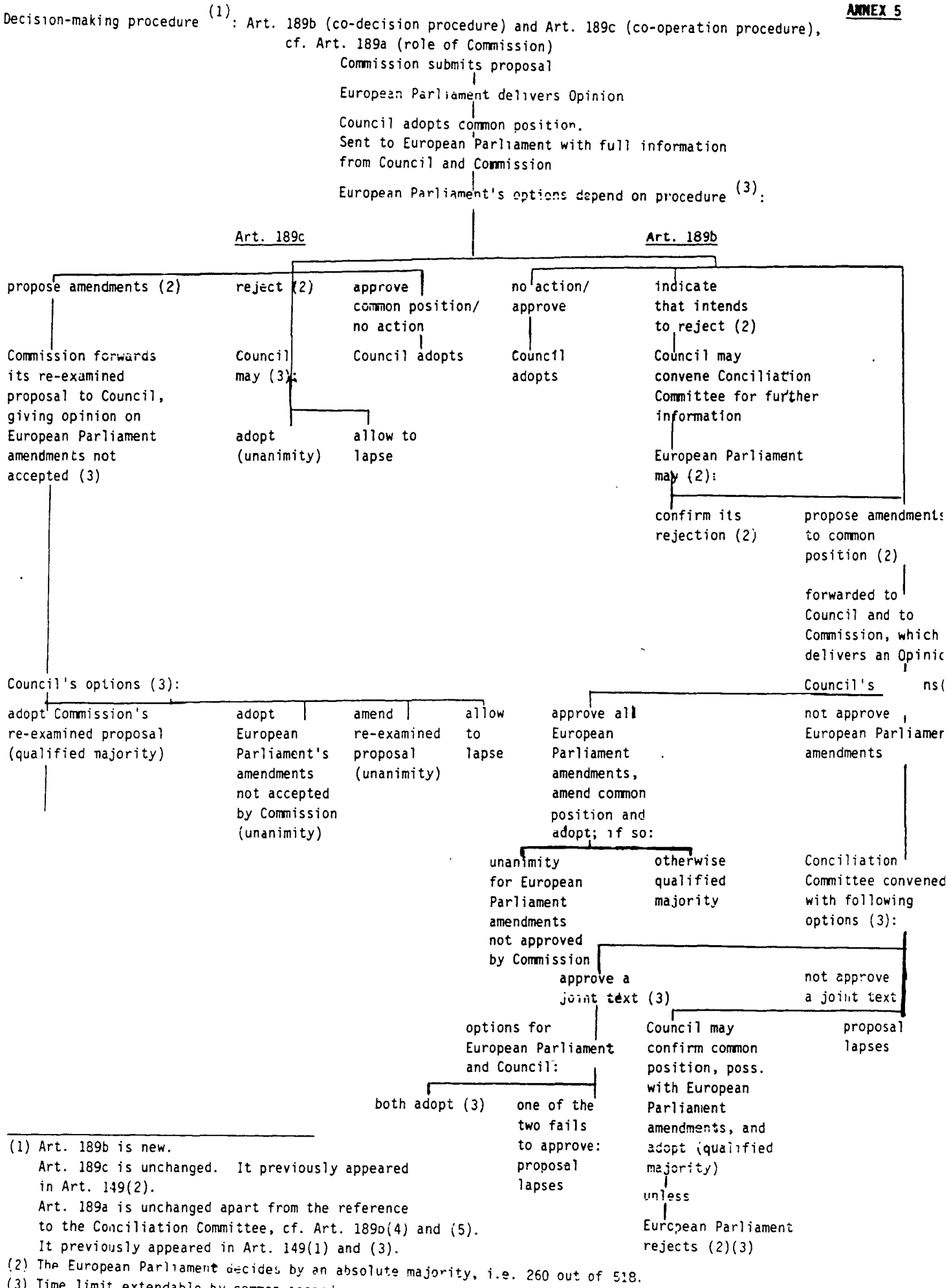
| | August | September | October | November | December |
|---|---|---|---|---|---|
| Ireland | | | | | Ratification by both Chambers of Parliament |
| Italy | | 16.9.92 Adoption of ratification bill by Senate | Chamber of Deputies begins examination of bill | | |
| Luxembourg | 28.8.92 Deposit of ratification instrument | | | | |
| Portugal | | | Ratification discussion begins | | |
| Spain | | | Examination by Congress expected to be concluded | Examination by Senate. Ratification expected to be concluded in November | |

| | August | September | October | November | December |
|---|---|---|---|---|---|
| United Kingdom | | | | | |
| Germany | | Constitutional amendment and ratification bills laid before Bundesrat | Constitutional amendment and ratification bills brought before Bundestag | | Ratification by Bundesrat and Bundestag. Ratification expected before end of year |

## FORMS OF CO-OPERATION

| | COMMUNITY (PILLAR 1) | INTERGOVERNMENTAL CO-OPERATION (PILLARS 2 AND 3) |
|---|---|---|
| COMMISSION | - monopoly of initiative<br>- monitors compliance with Community obligations<br>- represents and negotiates in international fora in areas where the Community has competence | - Member States submit proposals<br>- Commission has same right to submit proposals as Member States<br>- Presidency represents |
| EUROPEAN PARLIAMENT | - compulsory consultation<br>- furthermore 5 procedures for involvement in the legislative process:<br>- co-operation procedure (unchanged) (Art.189c)<br>- co-decision procedure (new) Art. 189b)<br>assent (unchanged) (Arts. 8b, 130d, 138, 228(3), 105 and 106)<br>- information (unchanged)<br>- budget procedure (unchanged) (Art. 203) | - consulted on important aspects and fundamental choices<br>- kept regularly informed |
| COUNCIL | Decision-making body<br>Main rule: qualified majority | Decision-making body<br>Main rule: unanimity |
| COURT OF JUSTICE | Upholds law and justice in the interpretation and application of the Treaty | No jurisdiction * |
| LEGAL ACTS | - Regulations - Art. 189<br>- Directives - Art. 189<br>- Decisions - Art. 189<br>- Recommendations and Opinions - Art. 189<br>- measures<br>- actions<br>- incentive measures | - co-ordination<br>- common position<br>- joint action<br>- conventions |

* But does have jurisdiction in the demarcation between intergovernmental co-operation and EC co-operation




(1) Art. 189b is new.
Art. 189c is unchanged. It previously appeared in Art. 149(2).
Art. 189a is unchanged apart from the reference to the Conciliation Committee, cf. Art. 189b(4) and (5). It previously appeared in Art. 149(1) and (3).

(2) The European Parliament decides by an absolute majority, i.e. 260 out of 518.

(3) Time limit extendable by common accord.

**ANNEX 6**

**APPLICABILITY OF ARTICLE 189b**

- Freedom of movement for workers (Art. 49)

- Right of establishment (Arts. 54, 56 and 57)

- Services (Art. 66)

- Internal market (Art. 100a)

- Education (Art. 126 - incentive measures)

- Culture (Art. 128 - incentive measures
  - Council to act unanimously)

- Health (Art. 129 - incentive measures)

- Consumer protection (Art. 129a)

- Trans-European networks (Art. 129d - guidelines)

- Research (Art. 130i(1) - framework programme
  - Council to act unanimously)

- Environment (Art. 130s(3) - action programme)

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**ANNEX 7**

APPLICABILITY OF ARTICLE 189c

- Discrimination on grounds of nationality (Art. 6)
- Transport (Art. 75 and Art. 84)
- Social Fund (Art. 125)
- Vocational training (Art. 127)
- Trans-European networks (Art. 129d - apart from guidelines)
- Economic and social cohesion (Art. 130e - implementing decisions)
- Research (Art. 130d - implementation of framework programme)
- Environment (Art. 130s(1) and (3) - action and implementation of action programme)
- Development co-operation (Art. 130w)
- Social policy (Art. 2(2) of the Agreement between 11 Member States)

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EMU:

- Rules for multilateral surveillance (Art. 103(5))
- Application of Art. 104a(1) (Art. 104a(2))
- Application of Art. 104 and Art. 104b(1) (Art. 104b(2))
- Harmonization measures for coinage (Art. 105a(2))

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**ANNEX 8**

APPLICABILITY OF ASSENT

- Citizenship of the Union (Art. 8a)
- Economic and social cohesion/Structural Funds (Art. 130d)
- Cohesion Fund (Art. 130d)
- Uniform procedure for elections to the European Parliament (Art. 138(3))
- Important international agreements (Art. 228(3))
- New Members of the Union (Art. 0)

EMU:

- ECB supervision (Art. 105(6))
- Amendment of the ESCB Protocol (Art. 106(5))

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUB-STANCE AMENDED | SUB-STANCE + DECISON-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Common provisions | A-F | | | | | x(1) | |
| Provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community | G | | | | | x | |
| Principles | | 5, 7, 7a, 7b, 7c (2) | | 1, 2, 3, 4 | | 3 a, 3 b, 4 a, 4 b, | 6, 8, 8 a, 8b, 8 c, |
| Citzenship of the Union | 8-8 e | | | | | x | |
| Customs union and elimination of quantitative restrictions | 9-37 | x | | | | | |
| Agriculture | 38-47 | x | | | | | |
| Freedom of movement for workers | | 48, 50, 51 | 49 | | | | |
| Right of establishment | | 52, 53, 55, 58 | 54, 56, 57 | | | | |

(1) Based on Arts. 1-3 of the Single Act.

(2) Art. 7 of the Treaty of Rome becomes Art. 6, Arts. 8 and 8a-8c become Arts. 7 and 7a-7c.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Free movement of services | | 59-65 | 66 | | | | |
| Capital and payments | | 67-73 until 1994, when replaced by 73 b-73 g | | | | 73 a-73 h | |
| Transport | | 74, 76-84 | | | 75 | | |
| Competition rules and dumping | 85-91 | x | | | | | |
| State aid | | 93 | | 92 | 94 | | |
| Tax provisions | | 95-98 | | | 99 | | |
| Approximation of laws (internal market) | | 100 b, 101, 102 | 100, 100 a | | | | |
| Visas | 100 c-100 d | | | | | x | |
| Economic and monetary policy | 102 a-109m(3) | | | | | x | |
| Common commercial policy | | 110, 112 | 113 | 115 | | | Arts. 111, 114, 116 |

(3) Arts. 102a-109 of the Treaty of Rome are replaced by Arts. 102a-109m.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Social policy | 117–122 | x ([4]) | | | | | |
| European Social Fund | | 124 | | 123 | 125 | | 126, [5] 127, ([5]) 128 |
| Education | 126 | | | | | x | |
| Vocational training | 127 | | | | x | | |
| Culture | 128 | | | | | x | |
| Public health | 129 | | | | | x | |
| Consumer protection | 129 a | | | | | x | |
| Trans-European networks | 129 b–129 c | | | | | x | |
| Industry | 130 | | | | | x | |
| Economic and Social cohesion | | 130 c | 130 e | 130 a<br>130 b | 130 d | | |
| Research and technological development | | 130k ([6]) 130 l, 130 m 130 n, | | 130 g,<br>130 f,<br>130 h, | 130 i<br>130 o | 130 j, 130 p | |

([4]) See the Protocol on social policy and the Agreement between 11 Member States annexed thereto.

([5]) These Articles are replaced by the new Articles on education (Art. 126), vocational training (Art. 127 (Art. 128 of the Treaty of Rome)) and culture (Art. 128).

([6]) Renumbered, with Art. 130 j being inserted.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Environment | 130 r -130 t | | | 130 r, 130 t | 130 s | | |
| Development co-operation | 130 u -130 y | | | | | X | |
| Association of the overseas countries and territories | 131-136 a | X | | | | | |
| European Parliament | | 139, 140 141 142, 143 | 138 | 137, 144 | | 138a, 138 b 138 c, 138 d 138 e | |
| Council | | 145, 146(7) 147, 148 150, 152 153, 154 | | 151 | | | 149 |
| Commission | | 155, 156(7) 157, 160 162, 163 | | 159 | 158, 161, | | |

(7) Arts. 147, 154, 157, 160, 162 and 163 correspond in content to the provisions of the Merger Treaty.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Court of Justice | | 164, 166<br>167, 168<br>169, 170<br>174, 178<br>179, 181<br>182, 183<br>185, 186<br>187, 188 | | 165,<br>171<br>172,<br>173<br>175,<br>176<br>177,<br>180 184 | 168 a | | |
| Court of Auditors | 188 a-188 c (8) | 188 | | 188 a<br>188 c | | | |
| Provisions common to several institutions | | 192 | | 189,<br>190<br>191 | | 189 a, 189 B 189 c | 149 |
| Economic and Social Committee | | 193, 195<br>197 | | 194,<br>196<br>198 | | | |
| Committee of the Regions | 198 a-198 c | | | | | x | |
| European Investment Bank | 198 d-198 e | | | | | x | |
| Financial provisions | 199-209 a | 202, 203,<br>204, 205 a,<br>207, 208 | | 199,<br>201,<br>205,<br>206,<br>209 | | 201 a<br>209 a | 200<br>206 |

(8) Renumbered, with Arts. 206-206a of the Treaty of Rome being replaced by Arts. 188a-188c of the Treaty on European Union.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| General and final provisions | 210–240 | 210, 211,[9] 212, 213, 214, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 229, 230, 231, 232, 233, 234, 235, 239, 240 | 238 | 215, 227 | 228 | 228 a | 236,[10] 237[10] |
| Setting up of the institutions | 241–246 | X | | | | | |
| ECSC | H | | | | | X [11] | |
| EAEC | I | | | | | X [11] | |

[9] Arts. 212 and 218 correspond to the provisions of the Merger Treaty.
[10] Replaced by Arts. N and O.
[11] Amendments consequent upon those introduced by the Treaty on European Union.

| SUBJECT MATTER | ARTICLE NUMBERS | UNCHANGED | DECISION-MAKING PROCEDURE AMENDED | SUBSTANCE AMENDED | SUBSTANCE + DECISION-MAKING PROCEDURE AMENDED | NEW ARTICLES | REPEALED |
|---|---|---|---|---|---|---|---|
| Provisions on a common foreign and security policy | J-J11 | | | | | X | Treaty provisions on European Co-operation in the sphere of foreign policy (Art. 30 of the Single Act) |
| Provision or co-operation in the fields of justice and home affairs | K-K9 | | | | | X | |
| Final provisions | L-R | | | | | X ([12]) | |

([12]) Arts. L and M are based on Arts. 31 and 32 of the Single Act, Art. N.1 on Art. 236 of the Treaty of Rome, Arts. N.2 and P are new, Art. O corresponds to Art. 237 of the Treaty of Rome and Arts. Q, R and S are based on Treaty of Rome Arts. 240, 247 (Art. 33 of the Single Act) and 248 (Arts. 34 of the Single Act).

**NEW PROTOCOLS:**

- Protocol on the acquisition of property in Denmark

- Protocol concerning Article 119 of the Treaty establishing the European Community

- Protocol on the Statute of the European System of Central Banks and of the European Central Bank

- Protocol on the Statute of the European Monetary Institute

- Protocol on the excessive deficit procedure

- Protocol on the convergence criteria referred to in Article 109j of the Treaty establishing the European Community

- Protocol amending the Protocol on the privileges and immunities of the European Communities

- Protocol on Denmark

- Protocol on Portugal

- Protocol on the transition to the third stage of economic and monetary union

- Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland

- Protocol on certain provisions relating to Denmark

- Protocol on France

- Protocol on social policy

- Agreement of social policy concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland

- Protocol on economic and social cohesion

- Protocol on the Economic and Social Committee and the Committee of the Regions

- Protocol annexed to the Treaty on European Union and to the Treaties establishing the European Communities.

**NEW DECLARATIONS:**

- Declaration on civil protection, energy and tourism

- Declaration on nationality of a Member State

- Declaration on Part Three, Titles III and VI, of the Treaty establishing the European Community

- Declaration on Part Three, Title VI, of the Treaty establishing the European Community

- Declaration on monetary co-operation with non-Community countries

- Declaration on monetary relations with the Republic of San Marino, the Vatican City and the Principality of Monaco

- Declaration on Article 73d of the Treaty establishing the European Community

- Declaration on Article 109 of the Treaty establishing the European Community

- Declaration on Part Three, Title XVI, of the Treaty establishing the European Community

- Declaration on Articles 109, 130r and 130y of the Treaty establishing the European Community

- Declaration on the Directive of 24 November 1988 (Emissions)

- Declaration on the European Development Fund

- Declaration on the role of national parliaments in the European Union

- Declaration on the Conference of the Parliaments

- Declaration on the number of members of the Commission and of the European Parliament

- Declaration on the hierarchy of Community Acts

- Declaration on the right of access to information

- Declaration on estimated costs under Commission proposals

- Declaration on the implementation of Community law

- Declaration on assessment of the environmental impact of Community measures.

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**ANNEX 10**

**PROVISIONS OF THE PROTOCOL ON THE STATUTE OF THE ESCB AND OF THE ECB FROM WHICH DENMARK AND THE UNITED KINGDOM WILL BE EXEMPTED, SHOULD THEY NOT PARTICIPATE IN THE THIRD STAGE OF ECONOMIC AND MONETARY UNION**

Should Denmark not participate in the third stage of Economic and Monetary Union, it will be exempted from the provisions on a common monetary policy. In the Protocol on the Statute of the ESCB and of the ECB, this entails exemption from a large number of Articles, some of which restate the provisions of the Treaty while others are more technical provisions concerning the ESCB and the ECB. The provisions in question appear in Article 43 of the Statute and they entail that the following Articles do not confer any rights or impose any obligations on a Member State with a derogation:

- Article 3 dealing, like Article 105(2) of the Treaty with the tasks of the ESCB;

- Article 6 concerning international co-operation, including a requirement for ECB approval in order for national central banks to participate in international co-operation;

- Article 9.2 containing a stipulation that the ECB is to ensure the ESCB's tasks are implemented;

- Article 12.1 concerning implementation of the common monetary policy by the Governing Council (the ESCB's highest authority) and the Executive Board;

- Article 14.3 stipulating that the national central banks form an integral part of the ESCB and are therefore subordinate to the Governing Council;

- Article 16 establishing, like Article 105a(1) of the Treaty, that the Governing Council has the exclusive right to authorize the issue of banknotes;

- Article 18 authorizing the ECB to operate in the financial markets and also to establish principles for the national central banks' market operations;

- Article 19 entitling the ECB to require credit institutions to hold minimum reserves with the ECB or national central banks;

- Article 20 enabling the Governing Council, by a 2/3 majority, to use methods of monetary control other than those specified in the Treaty;

- Article 22 concerning clearing systems, including provision for the ECB to make regulations in this field;

- Article 23 empowering the ECB and national central banks to establish external relations with central banks and financial organizations and to conduct transactions with them;

- Article 26.2 governing the drawing-up of the ECB's annual accounts;

- Article 27 concerning auditing of the ECB's activities;

- Article 30 concerning the transfer by Member States of foreign reserve assets to the ECB;

- Article 31 concerning foreign reserve assets still to be administered by national central banks themselves;

- Article 32 determining the allocation of monetary income accruing to national central banks in the performance of the ESCB's monetary policy function;

- Article 33 governing the allocation of net profits and losses of the ECB;

- Article 34 laying down, like Article 108a of the Treaty, the ECB's powers to issue legal acts and the legal effects of such acts;

- Article 50 concerning the initial appointment of the ECB's Executive Board;

- Article 52 concerning the exchange of banknotes in those countries moving to the third stage of Economic and Monetary Union.

The Statute also specifies that "Member States" should be read as "Member States without a derogation" in Articles 3, 11.2, 19, 34.2 and 50 thereof. In addition to the Articles listed above, this means exemption for Denmark in practice from rights and obligations under:

- Article 11.2 laying down, in accordance with Article 109a(2)(b) of the Treaty, general rules on the appointment of the ECB's Exeuctive Board and on eligibility for membership of it.

  Similarly, "national central banks" should be read as "central banks of Member States without a derogation" in Articles 9.2, 10.1, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 52. This further entails exemption from rights and obligations under:

- Article 10.1 stipulating, in accordance with Article 109a(1) of the Treaty, that the Governing Council is to comprise the Executive Board of the ECB and the Governors of the national central banks;

- Article 10.3 providing, in the case of some decisions in matters specifically affecting the bank's capital, for the votes of the Governing Council's members to be weighted according to the national central banks' shares in the subscribed capital of the ECB;

- Article 17 authorizing the ECB and the national central banks to open accounts for private and public institutions and entities.

Lastly, "shareholders" in Articles 10.3 and 33.1 should be read as "central banks of Member States without a derogation" and "subscribed capital of the ECB" in Articles 10.1 and 30.2 as "capital of the ECB subscribed by the central banks of Member States without a derogation". This, of course means that Member States with a derogation will not be required to pay up their subscribed capital in the ECB apart from anything it might be decided has to be paid up as a contribution to the ECB's operational costs. That is spelled out in Article 48 of the Statute.

Paragraph 8 of the United Kingdom Protocol lists those Articles of the Protocol on the Statute of the ESCB and of the ECB from which the United Kingdom will be exempted, should the United Kingdom not participate in the third stage of Economic and Monetary Union. It also states that references in those Articles to the Community or the Member States do not include the United Kingdom and references to national central banks or shareholders do not include the Bank of England. The United Kingdom will also be exempted from some Articles of the Statute from which Denmark will not be exempt. This is mainly due to the Treaty's provisions on the ESCB and the ECB being restated in the Statute of those institutions. In order to ensure consistency between the United Kingdom's exemptions under the Treaty and under the Statute, it was therefore also necessary to exempt the United Kingdom from the relevant Articles as repeated in the Statute. The Articles in question are as follows:

- Article 4 stipulating, like Article 105(4) of the Treaty, that the ECB is to be consulted by national authorities in its field of competence;

- Article 7 laying down, like Article 107 of the Treaty, the independence of the ECB and the national central banks;

- Article 14.1 and 14.2 stipulating, in accordance with Article 108 of the Treaty, that the national central banks are to become independent at the latest at the date of the establishment of the ESCB and also laying down some rules concerning the Governors of central banks;

- Article 14.4 stipulating that national central banks may perform functions other than those specified in the Treaty unless the Governing Council finds that these interfere with the objectives and tasks of the ESCB;

- Article 26.1, 26.3 and 26.4 dealing with a number of accounting matters concerning the ECB and the ESCB.

The United Kingdom does not, however, enjoy an exemption from rights and obligations under Article 17 of the Statute, concerning the opening of certain accounts, as does Denmark. Irrespective of whether or not a country is specifically exempted from that Article, it is unlikely to be of any significance for a Member State not participating in the third stage of Economic and Monetary Union.

ANNEX 11

THE QUESTION UNDER INTERNATIONAL LAW OF ONE OR MORE MEMBERS WITHDRAWING FROM EC CO-OPERATION

The question has been raised of whether 11 Member States can denounce the Treaty of Rome and then conclude the Maastricht Treaty among themselves with the adjustments required on account of such narrower membership.

The Treaty of Rome makes no provision for denunciation. On the contrary, Article 240 of the Treaty states that: "This Treaty is concluded for an unlimited period.".

With regard to amendments to the Treaty, Article 236 states that: "The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements". Corresponding provisions appear in Articles Q and R of the Maastricht Treaty.

On the basis of those provisions in the Treaty of Rome, it may be concluded that any repeal of the Treaty must be negotiated between the parties pursuant to Article 236. Moreover, the Treaty of Rome contains no provisions on whether it can be denounced, suspended or otherwise terminated in respect of any or all of the parties without the consent of all.

It is therefore necessary to look to the overriding body of law, international law, which lays down general rules governing treaties.

The account used in tuition at Copenhagen University states, for instance, that: "A distinction may be drawn between termination having its legal basis in the treaty itself, in the parties' freedom of decision in other respects and in general international law, cf. Articles 54 to 64 of the Convention on the Law of Treaties." (International Law by Guimann, Bernhard and Lehmann).

As has already been mentioned, the Treaty itself is silent on this question. Clearly, too, there is no answer to be found in the doctrine of mutual consent by the parties since that requires the co-operation of all of the parties. The parties can, of course, at any time jointly decide on whatever they might agree upon, including as regards the future of the Treaty.

General international law, however, has a number of rules on the termination of treaties, applicable save where a specific treaty provides otherwise. The 1969 Vienna Convention on the Law of Treaties refers in the first place to a breach, impossibility to perform and a fundamental change of circumstances as grounds for termination and these must be taken to apply irrespective of the wording of Article 240 of the Treaty of Rome. Article 240 thus brings out a point already implicit in the basic rule governing treaties under international law that treaties are to be observed and complied with by the parties in good faith ("pacta sunt servanda"). That maxim, as clearly reflected in Article 240

of the Treaty of Rome, requires that good reasons be given by a party invoking grounds for termination in order to withdraw from an otherwise binding treaty relationship.

Of the grounds for termination mentioned, a breach and impossibility to perform are not applicable in this situation. On the other hand, the provision in the Convention on the Law of Treaties (Article 62) concerning the occurence of a fundamental change of circumstances with regard to those existing at the time of conclusion of the treaty (the "rebus sic stantibus" clause) may be considered to apply. It can always be maintained that circumstances have changed. However, in order to form valid grounds for withdrawal, there must be fundamental changes which: were not foreseen by the parties at the time of conclusion of the Treaty of Rome; formed an essential basis for the parties' consent to be bound by the Treaty; and will radically alter the scope of the obligations still to be fulfilled under the Treaty.

Even though, as stated, the Treaty of Rome makes no provision for denunciation, general international law as embodied in the Vienna Convention on the Law of Treaties does afford some scope for withdrawing from a treaty where it can be established that:

(a) the parties intended to admit the possibility of denunciation or withdrawal, or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty. (Article 56 of the Convention).

If the two situations mooted by the rule in Article 56 are considered, it should first be noted that there is scarcely any basis in the Treaty of Rome for inferring from the "nature" of the Treaty that it should be open to denunciation. On the contrary, the constitutional nature of the Treaty, in conjunction with the provision in Article 240 that it is to apply for an unlimited period, points to the opposite conclusion. The focus of attention then turns to whether it can be established that the parties intended to admit the possibility of denunciation or withdrawal.

No preparatory work on the Treaty of Rome has been published and so no further light can be shed on the matter from that angle.

It should, however, be noted that discussions in Denmark prior to accession to the Treaty of Rome arrived at the conclusion that Denmark could, de facto and rightly under constitutional law, leave the Community at any time by passing an ordinary law, irrespective of whether or not such withdrawal might be contrary to international law.

The appendix, giving an account of the Treaties, which was attached to the commentary on the bill on Denmark's accession, states inter alia that:

> "Commentaries on constitutional law also agree that a law introduced under the rules in § 20 can under constitutional law be validly repealed at any time by passing an ordinary law, the adoption of which requires only a simple majority in the usual way, and that it is not necessary for this purpose that such repeal should also be in accordance with international law.".

The question arose in Denmark again in 1979, when the SF (Socialist People's Party) put forward a proposal for a parliamentary resolution concerning a consultative referendum on Danish membership of the EC. The proposal was rejected, but during its first reading Foreign Minister Christophersen stated inter alia that:

> "The procedure which would, if appropriate, best accord with the constitutional and with Danish constitutional tradition would therefore be for a majority in the Danish Parliament to repeal the law on accession by means of a special law, which could then be confirmed or otherwise by a referendum under § 42 of the constitution." (26 January 1979, Report of Parliamentary Proceedings for 1979, column 5324).

Here, too, it was taken for granted that a Member State can withdraw if it so wishes and that, in Denmark's case, it can do so by passing a law which, if approriate, may be put to a referendum.

As this account shows, Denmark has taken the view that it would be possible under constitutional law to denounce or withdraw from the Treaty unilaterally.

Whether that attitude in Denmark - based on constitutional considerations - can be invoked by the other EC partners from a standpoint of reciprocity as grounds for withdrawing from the Treaty of Rome is doubtful but the argument cannot simply be rejected out of hand.

Legal commentaries do not agree on the extent to which the general rules of international law governing treaties are applicable to the Treaty of Rome. A number of European writers have variously advanced the view that the constitutional nature of the Treaty of Rome precludes or limits the application of the general rules of international law. If necessary, the final legal judgment would have to be made by the EC Court of Justice or by the International Court of Justice in The Hague, and it would take several years before a ruling could be given. In the meantime, the legal situation could thus remain unresolved.

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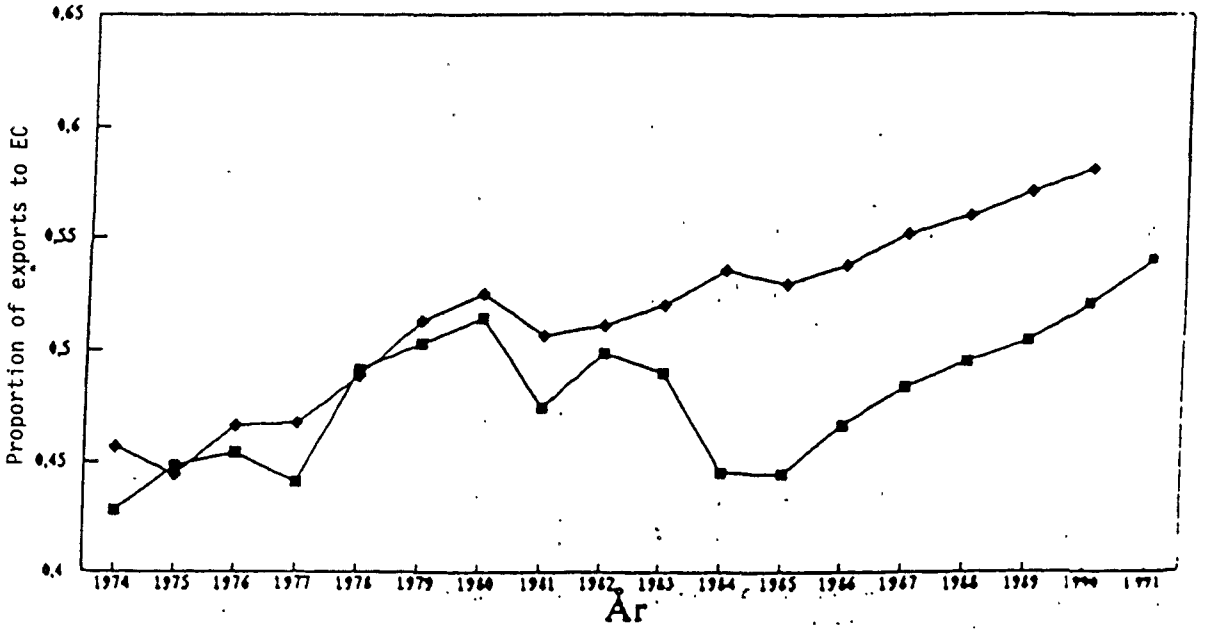
**ANNEX 12**

**PROPORTION OF TOTAL EXPORTS TO THE EC FOR DENMARK AND THE EFTA COUNTRIES FROM 1974 TO 1991**

| Year | Denmark | EFTA |
|---|---|---|
| 1974 | 42,8% | 45,7% |
| 1975 | 44,8% | 44,4% |
| 1976 | 45,4% | 46,6% |
| 1977 | 44,1% | 46,7% |
| 1978 | 49,1% | 48,8% |
| 1979 | 50,3% | 51,3% |
| 1980 | 51,4% | 52,5% |
| 1981 | 47,4% | 50,6% |
| 1982 | 49,8% | 51,1% |
| 1983 | 48,9% | 52,0% |
| 1984 | 44,5% | 53,5% |
| 1985 | 44,4% | 52,9% |
| 1986 | 46,6% | 53,7% |
| 1987 | 48,3% | 55,1% |
| 1988 | 49,4% | 55,9% |
| 1989 | 50,4% | 57,0% |
| 1990 | 52,0% | 58,0% |
| 1991 | 53,9% | |

Source: Danish Statistical Office




Proportion of total exports to EC for DK.

Proportion of total exports to EC for EFTA countries.

Trend of payments from the EAGGF Guarantee Section and Guidance Section to individual Member States
(Dkr.m)

| | 1973 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Belgium | 1.738 | 4.052 | 4.344 | 4.971 | 5.615 | 7.348 | 7.809 | 6.614 | 5.807 | 4.847 | 7.040 | 11.524 |
| Denmark | 2.751 | 4.186 | 4.558 | 5.515 | 7.027 | 6.747 | 8.549 | 8.403 | 9.618 | 8.104 | 8.875 | 9.585 |
| Germany | 6.565 | 16.996 | 16.786 | 25.038 | 26.811 | 29.167 | 35.360 | 32.301 | 39.478 | 33.925 | 35.791 | 41.283 |
| Greece | 0 | 1.286 | 5.488 | 8.576 | 7.965 | 10.481 | 11.985 | 11.353 | 11.519 | 14.807 | 17.426 | 17.356 |
| Spain | 0 | 0 | 0 | 0 | 0 | 0 | 2.810 | 5.365 | 15.863 | 16.541 | 19.017 | 26.023 |
| France | 9.663 | 25.712 | 23.841 | 30.000 | 28.758 | 37.640 | 44.401 | 46.358 | 50.873 | 39.174 | 43.379 | 50.287 |
| Ireland | 739 | 4.023 | 4.621 | 5.628 | 7.563 | 9.823 | 10.153 | 8.264 | 9.126 | 10.700 | 14.078 | 13.588 |
| Italy | 4.664 | 17.865 | 20.726 | 22.726 | 32.395 | 28.948 | 25.301 | 31.392 | 35.546 | 38.350 | 34.721 | 42.280 |
| Luxembourg | 46 | 49 | 34 | 48 | 60 | 44 | 30 | 42 | 40 | 42 | 77 | 24 |
| Netherlands | 4.770 | 9.465 | 11.439 | 13.708 | 15.620 | 16.443 | 18.051 | 21.522 | 30.119 | 29.599 | 22.609 | 21.054 |
| Portugal | 0 | 0 | 0 | 0 | 0 | 0 | 499 | 1.644 | 2.191 | 2.777 | 3.578 | 2.481 |
| United Kingdom | 1.375 | 9.436 | 10.642 | 14.523 | 17.690 | 16.001 | 16.410 | 14.386 | 16.289 | 15.661 | 16.318 | 18.840 |

Payments from the EAGGF Guarantee Section and Guidance Section per capita
(Dkr)

| | 1973 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | Population (1.000) 1990 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Belgium | 175 | 407 | 437 | 500 | 564 | 739 | 785 | 665 | 584 | 487 | 708 | 1.158 | 9.948 |
| Denmark | 536 | 815 | 888 | 1.074 | 1.369 | 1.314 | 1.665 | 1.636 | 1.873 | 1.578 | 1.728 | 1.867 | 5.135 |
| Germany | 82 | 212 | 210 | 313 | 335 | 365 | 442 | 404 | 493 | 424 | 447 | 516 | 80.000 |
| Greece | 0 | 128 | 546 | 854 | 793 | 1.043 | 1.193 | 1.130 | 1.147 | 1.474 | 1.735 | 1.728 | 10.046 |
| Spain | 0 | 0 | 0 | 0 | 0 | 0 | 72 | 138 | 408 | 425 | 489 | 669 | 38.925 |
| France | 172 | 457 | 423 | 533 | 511 | 669 | 789 | 823 | 904 | 696 | 770 | 893 | 56.304 |
| Ireland | 211 | 1.147 | 1.318 | 1.605 | 2.157 | 2.801 | 2.895 | 2.356 | 2.602 | 3.051 | 4.014 | 3.875 | 3.507 |
| Italy | 81 | 310 | 360 | 395 | 563 | 503 | 439 | 545 | 617 | 666 | 603 | 734 | 57.576 |
| Luxembourg | 123 | 131 | 89 | 127 | 158 | 116 | 79 | 112 | 106 | 112 | 204 | 62 | 378 |
| Netherlands | 320 | 636 | 768 | 920 | 1.049 | 1.104 | 1.212 | 1.445 | 2.022 | 1.987 | 1.518 | 1.414 | 14.893 |
| Portugal | 0 | 0 | 0 | 0 | 0 | 0 | 48 | 159 | 212 | 269 | 346 | 240 | 10.337 |
| United Kingdom | 24 | 164 | 185 | 253 | 308 | 279 | 286 | 251 | 284 | 273 | 284 | 328 | 57.409 |

Source: EC Commission

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