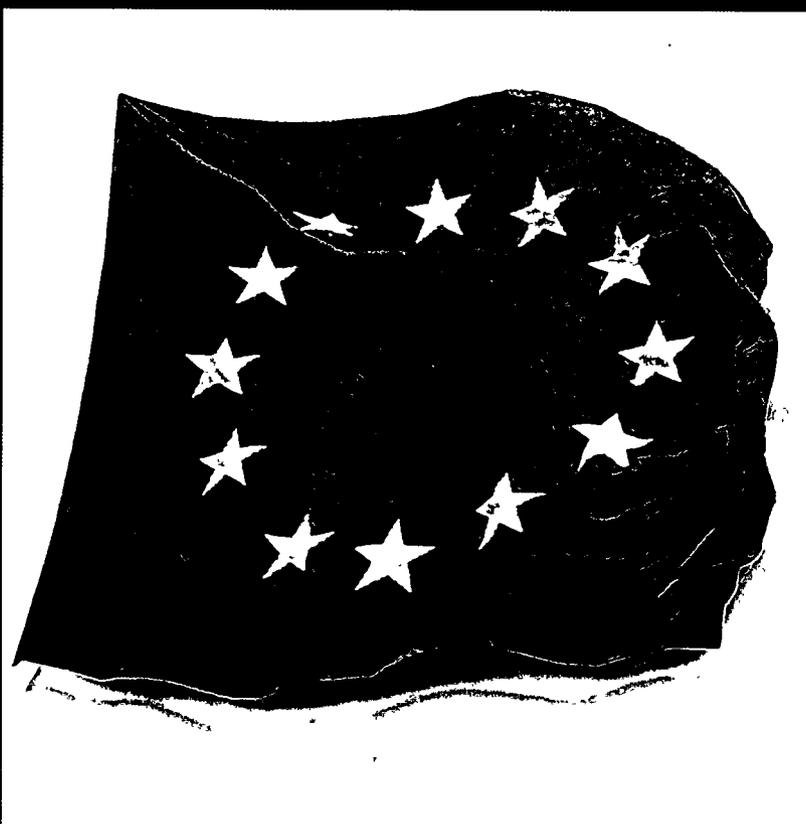




Commission of the
European Communities

Intergovernmental Conferences: Contributions by the Commission



Supplements 1991

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Economic and monetary union

Economic and monetary union

(Communication of the Commission of 21 August 1990)

Draft treaty amending the Treaty establishing the European Economic Community with a view to achieving economic and monetary union

Document drawn up on the basis of SEC(90) 1659 and SEC(90) 2500

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Preface

1987 marked the beginning of a new phase in the process of European monetary integration when the Single European Act invested the Treaty of Rome itself with a new objective in the shape of the gradual achievement of economic and monetary union. However, the really decisive factor in this process will be the new impetus given by the Act for the completion of the single internal market. More explicitly, once a single financial market in which capital can move freely has been established, the EMS, which has proved to be an extremely effective instrument of convergence, will require more delicate handling and, once a single market in which individuals and goods can move freely has been established, the last remaining obstacle to trade will be the continued existence of exchange rates. Ultimately, it was realized that the single market would not be complete and could not function properly without a single currency.

The long haul to economic and monetary union therefore began again with renewed vigour in June 1988 when the European Council instructed a group of experts chaired by Mr Delors to study and propose the practical stages culminating in such a union. Since the publication of the Delors report in April 1989, each meeting of the European Council has provided further impetus for the accomplishment of EMU: in Madrid (July 1989), the conclusions of the report were endorsed and the date for the beginning of the first stage of EMU was set at 1 July 1990; in Strasbourg (December 1989) and Dublin (April 1990), the Council issued a timetable for the Intergovernmental Conference and for the ratification of its results; in Rome (October and December 1990), 11 Member States — the United Kingdom continues to have reservations concerning the end result of the process — agreed on an overall conception of EMU based closely on that arrived at in the Delors report and gave the go-ahead for the Intergovernmental Conferences.

All sides agree that progress at the Intergovernmental Conference on EMU has been greatly facilitated by the quantity and quality of the preparatory work carried out: first and foremost the Delors report but also the Guigou report from the high-level working party on EMU, the draft Statute of the ESCB drawn up by the Committee of Governors of the Central Banks of the Member States, the reports of the Monetary Committee and the European Parliament, etc.

The Commission has also endeavoured to make a significant contribution to the Conference by producing the documents set out in this Bulletin. The communication of 21 August 1990 sets out the official Commission view of the whole concept of EMU and the transition period.

The draft treaty transposes the Commission's views into legal terms and has served as the central thread for the deliberations of the Conference. Finally, the

comments relating to this draft treaty will enable those who are unfamiliar with the language of legal documents to correlate the first two documents more easily.

It is of course too soon to make an assessment of a conference which is unlikely to come to a close before the end of 1991. Furthermore, the 'Draft treaty on the union' (or 'non-paper') presented by the Luxembourg presidency at the end of June is based on the dominant trends which emerged during the work of the conferences. This document is to be seen therefore as no more than a 'snapshot' of the negotiations and, quite understandably, leaves many points in abeyance.

Since the Intergovernmental Conference on EMU opened in December 1990, however, observers have tended to give greater emphasis to certain areas of disagreement (e.g. strengthening of the ecu, the name of the new monetary institution, 'two-speed Europe', etc.) than to the swift progress made in the negotiations, in which all the countries (including the United Kingdom) have played an active part. Indeed, very broad agreement has already been reached on a number of essential points: the principles and objectives of EMU, the monetary architecture of Stage III, ways and means of improving convergence during the transition period, the conditions for the commencement of Stage II. Moreover, a compromise appears to be within easy reach in other fields: external monetary policy, multilateral monitoring arrangements, conditions for transition to Stage III and so forth.

Admittedly, disagreement subsists on a number of important aspects, the main examples being the attitudes to economic policy within EMU, problems connected with institutional balance, the content of Stage II, the nature of the monetary institution to be set up at the beginning of 1994, and the position of the United Kingdom, which remains favourable to the introduction of a parallel hard ecu as from Stage II as an alternative strategy to monetary union. These obstacles to the implementation of the conclusions reached by the European Council in Rome in October 1990 are not surprising. The conclusions were after all those of 11 countries and are far from constituting an enunciation of general principles for the negotiation of a treaty which will then have to be ratified by all the Member States and which will condition the future of the Community as a whole. The conclusions of the European Council and the Council on Economic and Financial Affairs of June 1991 none the less provide optimistic pointers to the further progress of the negotiations. There are two main considerations to be borne in mind here:

(i) the first concerns the programmes of convergence to be set up during Stage I. These programmes, based on individual diagnoses of the different countries and encompassing all economic and monetary indicators, will be drawn up by the Member States for approval by the Community. This new procedure will constitute a qualitative leap forward in multilateral monitoring in the sense that it will lead to greater transparency.

(ii) the second concerns the danger of institutional stalemate arising from the United Kingdom's opposition to a single currency. Under the solution sketched

out in Luxembourg, the United Kingdom Government could, when ratifying the treaty, declare that, when the time came, transition to the final stage of monetary union would be put to a separate vote in the House of Commons. In any case, the Intergovernmental Conference had already discussed the possibility that special arrangements could be made for the transition of certain Member States through the various stages. This goes to show that the debate about a 'two-speed Europe' has now lost some of its immediacy.

These advances would seem to indicate that the main obstacles to rapid progress towards economic and monetary union can be overcome.

Economic and monetary union

Introduction

Progress towards economic and monetary union has a double significance for the current development of the European construction.

On the one hand, it can be seen as the natural complement of the full realization of the Single European Act and of the realization of the 1992 objective: the internal market without frontiers. From an economic and social point of view, the Member States and the citizens of the European Community will only fully benefit from the positive effects of the creation of the large common market and cooperation if they can use a single currency — the ecu — and if they are capable of reinforcing their cooperation, and consequently the convergence of their macroeconomic policies.

On the other hand, to be fully effective, economic and monetary union requires a qualitative institutional jump which will bring the Community considerably nearer to a political union. How is it possible to envisage this union if the Member States are not in agreement either with its necessity or with the objectives of economic and social policy? This agreement, which is already often expressed within the present framework of the functions of the Community, is founded on the conviction that Member States have a common view of their essential interests and are convinced that, by acting in common, they expand their capabilities with regard to both their own internal development and the duties which fall on them in external affairs.

Thus, a new frontier is taking shape for the Community, which, in any case, needs to have the means for reinforcing its capacity for action and its efficiency in the areas of foreign policy and of security, which is the other essential element for building a European union, and which the Single European Act recalls, in its preamble, constitutes the political objective of the 12 Member States.

To advance harmoniously towards this European union, the Community will have to have an institutional schema which meets the two imperatives of

efficiency of action and of democratization of the decision-making process. The preparation of the necessary amendments to the Treaty of Rome is the task of two Intergovernmental Conferences, one for economic and monetary union and the other for strengthening the political dimension of the Community, including the desired expansion of its powers.

These two courses of action are therefore interconnected and must lead to a common philosophy on the institutional framework. A constant link must therefore be maintained between the two series of negotiations in order to ensure a consensus on the objectives and coherent approaches to debate, democratization, decision-making and the implementation of decisions.

Without doubt, this will be the occasion for a wide-ranging debate, enriched — at least as far as the six founder countries are concerned — by the experience of nearly 40 years of living together. What can we learn from this short history? That the founding fathers of the Community, with imagination and realism, devised a system which would make possible the gradual integration of our countries in a setting where the workings of the institutions are open, dynamic and, moreover, realistic, since every step forward must be ratified by the sovereign bodies of each country. Given the success already achieved, thanks in particular to the balanced working of the existing institutions, we must take care that, even with the best of intentions, we do not arrive at a system which is bogged down in sterile tensions between Community institutions or in irresolvable conflicts between Community decisions and national wishes, between the European Parliament and national parliaments.

This consideration, which is of prime importance in the eyes of the Commission, has led it to suggest a plan for economic and monetary union which incorporates the basic principles of the Treaty of Rome so that the interest of the Community is constantly promoted by the European Commission, this being one of the roles assigned to that institution, though not its exclusive privilege. Having noted this, the decision-making mechanism is still based on the

Council of Ministers, while the desire for democratization leads us to recommend more active participation by the European Parliament. Alongside this institutional triangle the European Council is confirmed in its role as a driving force in the construction of Europe. The Court of Justice is destined to become more and more the court of appeal in disputes over the application of the rules of the Treaty, a sort of embryonic constitutional court.

This is the spirit which has inspired the Commission in outlining the institutional aspects of economic and monetary union, on the understanding that a single monetary policy and a single currency can only be managed by a single body yet to be created. This is the only new institution required by this plan. It has been conceived with two considerations in mind: efficiency and the principle of subsidiarity. It will have the independence necessary to carry out its mandate, the unremitting pursuit of price stability, which is required not only to have a strong currency but also to permit continuous, durable growth creating jobs and prosperity.

The same principles will guide the European Commission when, as for economic and monetary union in the present document, it comes to make its proposals for the second Intergovernmental Conference, to be devoted in the European Council's own words to 'political union'.

Of course, nothing would have been done, nothing can be done, without a strong political will expressed clearly by the Member States. But it is worth repeating that nothing would have been done or can be done without an institutional system which, while taking account of the legitimate interests arising from the situation of each country, is also able to identify the general European interest and then to firmly promote it.

The new impetus for economic and monetary union started with the Hanover European Council of 1988 deciding to entrust a committee with 'the task of studying and proposing concrete stages leading towards this union'. On the basis of the Delors Committee report, the Madrid European Council decided one year later that Stage I of economic and monetary union would start on 1 July 1990 and asked for the preparation of the Treaty changes necessary for Stages II and III. Now, the first stage of economic and monetary union has come into effect as foreseen and the June European Council in Dublin has consolidated the drive in favour of economic and monetary union by noting 'that all the relevant issues are being fully and thoroughly clarified', by deciding

that the Intergovernmental Conference for agreeing on the necessary Treaty changes will open on 13 December 1990, and by stating that further work should be carried out 'in such a way that negotiations on a concrete base can be entered into as soon as the conference opens'.

In recent months the Commission has made contributions to the clarification of the major issues in all bodies concerned with the preparation of the Intergovernmental Conference. The present communication not only presents a synthesis of the Commission's view but also attempts to build a consensus in bridging, as far as possible, the opinions expressed in these bodies. The UK Government's position has also recently evolved positively by accepting, in its 'hard ecu' proposal, the necessity of a Treaty revision, the creation of a common monetary institution and that the ecu could eventually become the single currency in Europe. In this communication reference is made to the proposal, but it is not seen as fitting easily into the general conception, based on the Delors Committee recommendations, on which widespread agreement has emerged not only between the other Member States, in the Council as well as in the Committee of Central Bank Governors, but also in the European Parliament.

This communication is the contribution of the Commission for a full and adequate preparation of the Intergovernmental Conference. The Commission is confident that the timetable envisaged by the Dublin European Council of ratification before the end of 1992 can be kept. It is therefore proposed to start Stage II on 1 January 1993. It is essential to make good use of the time until then; indeed, the first stage should make it possible to achieve a high degree of convergence, to reinforce monetary policy coordination and to promote the role of the ecu. The second stage would then become a phase of intensive preparation during which the European System of Central Banks would be set up. While there is already now a clear economic case for a short duration for the transition, the beginning of Stage III and the introduction of the ecu as the single currency would be the subject of political agreement by the European Council.

For the definitive economic and monetary union, the communication advocates a design similar to that of the Delors Committee report. Economic and monetary union is a whole; the European Council would be concerned with the overall coherence of the Community's economic and monetary policy. The Commission proposes that the Treaty should designate the ecu explicitly as the future single currency of the

union. Moreover, a single monetary policy is required which will have to be determined in a centralized way by a new Community institution. The new institution would be independent and democratically accountable; the institution would be committed to the objective of price stability and, subject to the foregoing, should support the general economic policy set at the Community level by the competent bodies.

Economic union would be founded on the internal market, on closer coordination of economic policies and on the development of common policies. This requires a reinforcement of multilateral surveillance. Two rules concerning budget deficits (no monetary financing and no bailing-out) should be introduced into the Treaty. The Treaty should also state the principle that excessive budget deficits must be avoided. Furthermore, two new economic policy instruments would be created: multiannual guidelines for economic policy to be formally endorsed by the European Council and a specific financial support scheme which would be activated when major economic problems arise or when economic convergence calls for a particular Community effort alongside national adjustment strategies in the sense of positive conditionality.

Common policies would be further developed in the economic union with the aim of improving economic efficiency and fostering economic and social cohesion. For improving economic efficiency a growing Community involvement in policy areas with important European-wide effects should be foreseen and, when necessary, present Treaty provisions be extended or modified. In the final stage of economic and monetary union there might also be the need to further strengthen Community structural policies; their instruments and resources would have to be adapted to the needs of the union. For the structural Funds, consideration should be given to widening the eligibility criteria and to endowing them with a greater capacity to respond more quickly and more flexibly. Furthermore, the new special financial support scheme might be used in favour of the cohesion objective on condition that this fosters economic convergence more generally.

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To put the role of the intergovernmental conference in its proper context, it should be recalled that at the same time the construction of Europe is continuing at a rapid pace, stimulated as it is by the results already achieved in the economic and social spheres, by the implementation of the Single Act and the

prospects which it offers, and pushed forward as it is by the demands from the outside world, especially the larger Europe in the process of rapid change.

More than ever since its history began, the Community is under pressure to define the level of its ambitions and to take up the responsibilities which are incumbent on a group of rich countries with their history, culture and material potential.

Without awaiting the outcome of these conferences, the Community must therefore demonstrate its ability to take up these two challenges, internal and external. It must not let itself be diverted by its discussions on the two plans for the future constituted by economic and monetary union and political union. Indeed, it will not be able to put these plans into effect unless as the same time it reinforces the credibility of the objectives of the Single Act and lays the foundations for the new system of international relations in which history has reserved for it, if it has the will and the means, an important role alongside the other great world powers.

Among the objectives which the Community has to achieve, only those which are fully associated with the success of economic and monetary union are mentioned here: the single market by the end of 1992, reinforced cooperation in the fields of research and technology, the environment, infrastructure networks, the social dimension and, even more directly, economic and social cohesion. This last objective, which is written into the Single Act, is at present being pursued by means of structural policies aimed at giving each region a chance with the corresponding responsibility for planning and implementing its own development. A first balance-sheet of these new policies, decided by the European Council in February 1988, will be drawn up by the Commission at the end of next year. Thus, the European Council will be in a position to assess the appropriateness of the approach, the need for adjustments or additional measures and the means to be allocated to the policies, in terms of both financial and human resources.

During the same period, the European Monetary System will further demonstrate its essential contribution to economic convergence and the pursuit of European monetary stability in a world characterized by unstable foreign exchange markets and sharp fluctuations in the financial sector. Together with the multilateral economic surveillance exercises conducted by the Economic and Finance Ministers and the strengthened role of the Committee of Governors, the EMS will be one of the three pillars of Stage I of economic

and monetary union. Once again, therefore, we are reminded of the importance of the Community's day-to-day activities for the achievement of its long-term objectives.

1. Benefits and costs of economic and monetary union

The economic impact of economic and monetary union will deeply affect the workings of the Community economy, and will go to the heart of the determinants of both inflation and growth. Moreover, its repercussions will extend as far as influencing the management of the world economy.

The benefits and costs of economic and monetary union are the subject of an extensive analysis currently being completed by the services of the Commission, with contributions from independent experts. This study will be published by the Commission in the near future, thus underpinning the summary presented in the following paragraphs.

While quantification of many partial features of the overall economic impact will be possible, there are fundamental reasons why an aggregate estimate of the impact of economic and monetary union is not feasible (unlike the Cecchini report on 1992). This is because economic and monetary union will cause a very complex chain of reactions: the systemic changes will lead to policy changes, and both will condition behavioural changes in the economy, before arriving at the final impacts in terms of economic well-being. Much of the impact will therefore be indirect, and conditional on the responses of governments as well as private economic agents.

There will, none the less, be important linkages between the real economic impacts of the completion of the internal market by the end of 1992 and economic and monetary union. A single currency is the natural complement of a single market. The full potential of the latter will not be achieved without the former. Going further, there is a need for economic and monetary union in part to consolidate the potential gains from completing the internal market, without which there could be risks of weakening the present momentum of the 1992 process. Economic and monetary union therefore offers the prospect of con-

solidating the single market as well as bringing its own value-added to the performance of the Community economy.

1.1. Definition

Economic and monetary union is a whole. The definition given here follows the Delors Committee report on both the monetary and economic sides.

Monetary union is recognized as either irrevocably fixed exchange rates or a single currency; a single monetary policy is the central characteristic of both these regimes. The single currency is clearly the first-best in terms of the economic benefit/cost ratio.

Economic union would see a much lesser centralization of policy competences than monetary union, following the principle of subsidiarity. It would be founded on the internal market and would require the Community to have common economic objectives and a close coordination of economic policies as well as the development of the common policies. Budgetary policies, at national and EC levels, would be affected in important ways as proposed below.

For the purpose of analysing the benefits and costs of the definitive economic and monetary union, as just defined, the point of comparison must be identified. For this purpose, the comparison may be made with a Community that would have completed its 1992 programme for the internal market and retained the European Monetary System (1992 plus EMS). However, this is an abstract point corresponding to stated ambitions. In reality such a point may not exist since, in the absence of expectations of progress to economic and monetary union, 1992 plus EMS might well prove not to be stable. This is because complete capital liberalization and exchange rate stability impose virtual unity of monetary policy. In other words, if the dynamics of economic and monetary integration progress are not recognized, extra costs might have to be borne because of difficulties in sustaining the present system. This means that the benefits of moving to economic and monetary union would effectively be greater.

1.2. Major benefits and costs

These may be grouped under the following headings:

(i) *Efficiency and growth.* Elimination of exchange rate variability, uncertainty and transaction costs, and

further refinements to the single market are sure to yield gains in efficiency. Through improving the risk-adjusted rate of return on capital (adjusted for exchange rate related risk and uncertainty factors), and the business climate more generally, there are good chances that a credible commitment to achieving economic and monetary union in the not-too-distant future will help further strengthen the trend of investment, growth, and employment.

(ii) *Price stability.* This is an objective *sine qua non* for economic and monetary union. It is also beneficial economically in its own right, for example through allowing the price mechanism to work efficiently for resource allocation purposes. The main problem for policy-makers is that of attaining price stability at the least cost, and then maintaining it. The Community has the opportunity of being able to build its monetary union on the basis of the reputation for monetary stability of its largest national economy, and more recently, increasingly also of other narrow-band participants in the EMS. Given the paramount importance of credibility and expectations in winning the continuous fight against inflation at the least cost, this is a great advantage.

(iii) *Public finance.* A new framework of incentives and constraints will condition national budgetary policies, which will be generally conducive to macroeconomic discipline and stability. Economic and monetary union will bring valuable gains for many countries' national budgets through reductions in interest rates, as inflation and exchange risk premiums are eliminated. These benefits will outweigh the loss of seigniorage revenue to be experienced by some countries.

(iv) *Employment and regional balance.* The improved prospects for growth outlined above will contribute to increased employment. The main potential cost of economic and monetary union is that represented by the loss of the nominal exchange rate as an instrument of economic adjustment. This loss should not be exaggerated for several reasons: exchange rate changes by the Community in relation to the rest of the world will remain possible, whereas within the Community the nominal exchange rate instrument is already largely abandoned; far from freezing relative labour costs and competitiveness, economic and monetary union, in the right policy context, will encourage necessary changes, and policies at national and Community levels will also absorb shocks and aid adjustment. In its present form, the external current account constraint will disappear for individual Member States which will be a great advantage, even if the national performance in

trade of goods and services will continue to have some influence. For the EC as a whole the constraint will of course remain.

(v) *The international system.* With the ecu becoming a major international currency, there will be advantages for the Community as banks and enterprises conduct more of their international business in their own currency. Moreover the monetary authorities will be able to economize in external reserves and achieve some international seigniorage gains. Economic and monetary union will also mean that the Community will be better placed, through its unity, to secure its interests in international coordination processes and negotiate for a balanced multipolar system.

1.3. Benefits and costs in the processes of convergence and the transition

Much progress has been made in the Community recently in convergence in terms of inflation, cost trends and sound public finance. Even the presently more divergent economies could plausibly now adapt their medium-term economic strategies to the prospects of full participation in economic and monetary union.

The costs of the transition to economic and monetary union (for example disinflation, and the reduction of budget deficits) for those countries would be greatly reduced by the setting of clear political commitments with fixed dates. If economic agents (public authorities, companies, trade unions, individuals) perceive these commitments to be credible, they will anticipate the effects of economic and monetary union in their economic strategies and behaviour. Such a process has already been at work to advantage with the 1992 programme, and a similar strategy could be equally beneficial for economic and monetary union, if not more so.

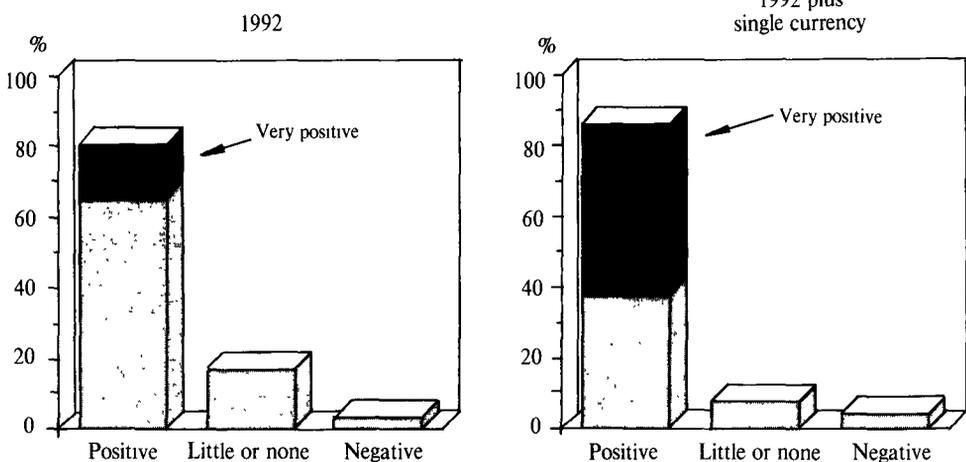
Since most of the costs of moving to economic and monetary union arise in the preparatory stages of the economic and monetary union process, whereas some of the important benefits (elimination of exchange rate uncertainty and transaction costs, a better international system) arise only in the definitive regime with a single currency, there is a clear economic case for a short duration for the transitional period.

As regards the regional distribution of the impact, which is relevant to the objective of longer-term convergence of economic performance, there are no *a priori* grounds for predicting the overall pattern of relative gains and losses. There are risks and opportunities of different types affecting all categories of regions. However, social and economic cohesion involves the reduction of existing regional disparities as well as ensuring that economic and monetary union does not lead to any increase in disparities. Policy actions already seek to achieve these aims and to reduce locational disadvantages. The performance

of structural and regional policies will have to be evaluated and if necessary be adapted and strengthened in the light of experience. However, the key to the catching-up process lies in obtaining synergies between Community policies (for 1992, the structural policies and the move to economic and monetary union) and national efforts to upgrade the least favoured regional economies and to prepare for 1992 by supply-side measures. The fixing of clear policy objectives, such as for the internal market and economic and monetary union, are also highly relevant here for mobilizing such efforts.

GRAPH: A business perception of the microeconomic impact of EMU

Opinions on the prospects for the business climate become very much more positive when a single currency complements the single market.



Source: Business survey undertaken for the Commission of the European Communities by Ernst & Young.

1.4. Overall evaluation

Summarized in terms of the conventional distinction between the three major objectives of economic policy, the likely impact of economic and monetary union is:

(i) *efficiency and growth*: sure advantages, as a single currency and economic union complements the single market and adds to its impact. Economic analyses supports the perceptions of industrialists. One market needs one money (see Graph);

(ii) *stability*: sure advantages as regards better overall price stability (i.e. both very low inflation on average, and low variability) assuming that the design of the system is handled well, and likely gains also in terms of the stability of the real economy (lesser fluctuations in output and employment);

(iii) *equity*: no *a priori* balance of relative advantage for any particular type of region. Nevertheless, in the light of experience, structural and regional policies will have to be evaluated and if necessary be adapted and strengthened. However, the currently less well-off regions have a real opportunity for rapid catch-up, if they maximize potential synergies between EC policies (in particular the structural ones) with national development efforts. Economic and monetary union, like 1992, is a positive-sum game.

2. Monetary union

2.1. The choice of a single currency

Monetary union is fully completed with a single currency. The analysis (see Chapter 1) shows that the advantages expected from a monetary union can only be reaped fully with a single currency.

Adopting a single currency rather than having national currencies with irrevocably fixed exchange rates would not only have a symbolic character. It constitutes a point of no return. Also it totally eliminates transaction costs. The maintenance of several currencies would leave in existence residual transaction costs on small-sized operations, and makes market transparency less than full. The existence of distinct capital markets would not allow the economies of scale associated with monetary union to be exploited completely. Interest rate differentials could subsist in particular between the long-term segments

of capital markets. Finally, Europe would not appear as a genuine monetary entity; it would not reap the external benefits linked to the emergence of the ecu as a major currency next to the dollar and the yen.

The completion of the monetary union does not imply, however, the immediate establishment of a single currency, which may require a technical and psychological delay in order to deploy the new payment instruments and prepare the public at large to use them. But the final objective must be clear: Europe needs a single currency. This choice influences the conception of the institution that will be responsible for issuing and managing this currency.

From the beginning of Stage III, the Community institution created during the preceding stage would be solely responsible for defining the Community's monetary policy. This centralization removes *a priori* any possibility of conflict between different monetary policies within the zone. This institution would also guarantee unlimited convertibility of the different national currencies and the fixity of their parities. These currencies would thus be perfectly substitutable and by definition there would be a single monetary policy.

2.2. General principles and organization

The Community's monetary policy and the institution responsible for it need to be committed explicitly to the objective of price stability. Given this priority, they have to support the general economic policy objectives defined at Community level by the competent institutions.

The stability commitment needs to be written into the basic legislative texts. But in order to be fully credible, the new Community monetary system also needs to enjoy a high degree of independence *vis-à-vis* national governments and other Community bodies. This independence should concern the system, which would include the existing national central banks, its working conditions and its agents. The appropriate means to meet this requirement are of two types: on the one hand, the freedom not to have to take measures likely to compromise the fundamental stability objective; and, on the other hand, the duration of the mandate as well as the appointment and dismissal conditions with regard to the persons called upon to serve the institution. In addition to

Community legislation, national provisions should be adopted to ensure that the central banks enjoy the necessary independence *vis-à-vis* national authorities.

The Community monetary institution needs to be democratically accountable for its actions. This principle is the necessary corollary of its independence, in order to make the policies defined by the institution acceptable to political representatives and to public opinion at large. The democratic legitimacy of this institution would stem from both the legal provision creating it (a treaty submitted to ratification by the national parliaments) and the method of appointment of its president and the board members, which will be designated by the European Council after consultation with the European Parliament.

Reports would be presented periodically to the European Council and the European Parliament. The president of the institution would be responsible for explaining its policies generally and to the Community institutions: the President of the Council and a Member of the Commission would attend meetings of the decision-making body of the monetary institution. The Commission would make observations which, in its view, relate to the consistency between monetary policy and the general economic policies adopted at Community level.

Taking into account the nature of the Community and the long experience of the national central banks, the new monetary institution should have a federal structure and comprise the existing national central banks and a central body. The system as a whole could be called the European System of Central Banks (or, in brief, 'Eurofed'). Eurofed would be placed under the authority of a Council composed of the 12 governors of the Community central banks and of a smaller number of members from the central body, called the board of directors (in brief 'board').

The Eurofed Council would be responsible for determining the Community's monetary policy: it could for example set main rates and define intermediate objectives. The Council would meet periodically and as often as necessary, in order to determine the monetary policy stance. It would decide by simple majority of its members' votes (one man, one vote).

The board would be responsible for the day-to-day conduct of monetary policy on the basis of the instructions given by the Council. It would manage the central body which would have the necessary capital and sufficient staff to analyse all aspects of the common monetary policy and follow monetary trends. The members of the board would be

appointed because of their professional competence. Their mandate should be of long duration and irrevocable. The president would be a member of the board: he would represent Eurofed.

This set of provisions will ensure to Eurofed the necessary credibility for the effectiveness of its action.

2.3. Internal monetary policy and the ecu

For the conduct of the Community monetary policy Eurofed will be endowed with the means and powers necessary to use the whole range of monetary policy instruments including open-market operations, repurchase operations, intervention rates, reserve requirements, etc. The regulation of the monetary conditions will be made by recourse to market-oriented instruments, mainly open-market operations.

The ongoing process of European financial integration reinforces the trend towards homogeneous financial structures and more uniform methods of monetary regulation. Monetary union eliminates the borders between the national monetary areas: financial instruments of the same nature with identical risks will become perfectly substitutable and provide a unified market where there will only remain one interest rate. In this context any intermediate objective of the Eurofed can only be defined on a Community basis.

The policy defined by the Council of Eurofed will be carried out by the national central banks as executive agents under the authority of the board of directors of Eurofed. With the adoption of instruments compatible with indirect monetary regulation (as defined above), the risk of endangering the coherence of monetary policy will be eliminated. Their instruments will be compatible, even if, at least initially, they still reflect certain specific national characteristics. In other words, a single currency regime will allow a certain differentiation in the technical modalities of how to implement the monetary policy defined at Community level, it being understood that the national central banks will no longer have any room for manoeuvre in fixing the interest rate applicable to the zone in its entirety.

The final responsibility for the payment system will be with the Council of Eurofed. But, in accordance with the principle of subsidiarity, the national central

banks will be responsible for the proper functioning of the national payment systems, the links with national financial institutions and the business communities, the surveillance of the market, etc.

The irrevocable fixing of exchange rates will deprive the basket formula for the ecu of all significance. As a genuine currency the ecu would become the reference unit for non-Community currencies. The continued existence of national currencies in the Community will at this stage have mainly a symbolic significance; it will be technically justified during the period necessary for putting the Community money (coins and bank notes in ecus) into circulation and for linking the payment systems.

But the introduction of a single currency characterizes the full monetary union: the ecu will be that single currency. It will have the full status of a genuine currency and be a symbol of the unity of the monetary area: it will be issued solely on the authority of Eurofed, circulating as the denominator of economic and financial transactions in the area and will be legal tender. At the changeover to the ecu as a single currency, all credits and debts previously denominated in national currency will have to be converted into this new unit. This conversion can take place smoothly given that the interest rates attached to the different currencies will have been equalized at the time of the fixing of the parities.

2.4. The ecu and external monetary policy

The ecu will also have an important role to play in the international monetary system. For the Community the development of the ecu as a major world currency will involve an increasing use of the ecu in international transactions, the possibility of benefiting from the seigniorage accruing to the issuer of an externally held currency, portfolio shifts in favour of ecu-denominated assets as a result of a diversification process, and finally the possibility to hold a smaller amount of foreign exchange reserves.

Economic and monetary union will give the Community an appropriate role in the design and management of a more stable and responsible international monetary system. For this the Community should be represented on the international scene in an analogous way to individual countries, i.e. by those responsible for economic policy, assisted by the monetary authority — Eurofed.

Because the exchange rate is an important element of external economic policy, external monetary relations have a double aspect, monetary in a narrow sense and economic. They therefore require the participation of two actors, the monetary authority and the body responsible for economic policy. Existing models vary from one country to another. The German or US examples show a different sharing of responsibility in the definition of an exchange rate and intervention policy. In the USA the executive is in charge; the German model gives more weight to the central bank. The discussions have revealed some differences of opinion on this point. While there is unanimous agreement that the choice of the exchange rate regime and the negotiation of international monetary agreements should continue to be a matter for the political authorities, assisted by Eurofed, there is some disagreement about the allocation of responsibilities for exchange rate and intervention policy.

However, it is important that the exchange rate policy should be defined in a framework of close cooperation and that it should follow some basic principles: especially that foreign exchange interventions *vis-à-vis* third currencies should not be in contradiction with the principal objective of monetary policy, i.e. price stability. Interventions in the markets for foreign exchange and the daily management of foreign exchange reserves could be conducted on the basis of instructions from the board of Eurofed. The board should be able to decide to use the reserves put at its disposal for its own interventions or to request the intermediation of a central bank.

3. Economic union

3.1. Principles, objectives and coherence

There does not need to be a single economic policy in the same way as for monetary policy, and correspondingly there is not the same need for institutional change. Even in mature federations economic policy is made up of different functions and is conducted at different levels of government. In such federations, the principle of subsidiarity is an important criterion for assigning functions to the different levels of governments implying that it has not only a theoretical but also a solid empirical foundation.

The Community's involvement in economic decision-making should be based on a balance between subsidiarity and parallelism. Most economic policy functions will remain the preserve of Member States even in the final stage of economic and monetary union.

None the less there should be agreement at the Community level on the principal objectives of economic policy as they feature already in the Treaty: a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standards of living, and economic and social cohesion. These objectives should be pursued within the framework of flexible market-oriented economies and of price stability. The latter, of course, is the main objective of monetary policy.

Member States and the Community should be committed to conduct their economic policies in such a way as to attain these objectives. The Community's potential contribution to their attainment will be discussed under the headings of efficiency, cooperation and economic and social cohesion.

The sound functioning of economic and monetary union will require coherence between these three aspects (efficiency, cooperation and cohesion) of economic union as well as coherence between the monetary and economic aspects of the union. Coherence within the economic union requires a decision-making capacity such that the determination of policy at Community level avoids inefficient overlapping and contradictions in the various aspects of economic policy. The European Council should ensure coherence, and more operational cooperation should be established between the Ecofin Council, the Commission and the European Parliament. The Economic and Social Committee should be consulted on matters of its competence.

For the Ecofin Council to make economic policy effectively does not warrant major changes in institutional powers. The Council has the capacity to act in the legislative and budgetary domains, as well as assure coordination. With the increased responsibilities of the economic and monetary union, these functions may be expected to develop strongly, but within the existing institutional framework.

For the consistency between the economic and monetary aspects the Commission will have the responsibility to make observations, and there will be cross-participation of the representatives of the decision-making bodies (see Section 5 below on institu-

tional aspects). A particular responsibility of the Ecofin Council will be to define in cooperation with Eurofed the Community's external economic and monetary policy.

3.2. Efficiency

The main pillar of economic union is the completed internal market within which persons, goods, services and capital move freely. In order to exploit fully the potential of the internal market, the Community should deepen the drive to improve resource allocation and competitiveness, and stimulate innovation through research and technology and entrepreneurship. To this end the Community's involvement in policy areas with important European-wide effects should grow. These concern in particular competition policy, commercial policy, research and technological development, European-wide infrastructure, labour markets, the environment, and some aspects of taxation.

Competition policy and commercial policy have already an important place in the Treaties, but their importance will increase with the completion of the internal market, the realization of economic and monetary union and the increasing cooperation with other European countries including those of Central and Eastern Europe.

The Treaty also provides a legal base for some Community involvement in research and development, European-wide infrastructure, labour markets, the environment and taxation. Policy advances can, to some extent, be obtained on the basis of the present Treaty provisions. However, judging from experience there is the risk that the existing base would not lead to desired progress. In the Commission's view it would be against the principle of parallelism if major progress in the monetary field would not go hand in hand with considerably strengthened Community policies in these fields which are crucial for the overall economic efficiency of the European economy. It might therefore be necessary to extend or modify the present Treaty provisions for at least some of these policy areas.

The decision-making rule of unanimity could prove to be a major obstacle for sufficient progress in the fields of research and technological development, the environment and aspects of taxation, for all of which

a strong economic case can be made for a more substantial Community involvement.

Research and technological development has an important role to play for increasing the competitiveness of European industry. The Community's growing involvement should reduce the fragmentation of national efforts, increase the coherence in long-term strategic objectives and exploit economies of scale. Community environmental policy becomes more important in the context of the internal market for two reasons. First, it can be misused by Member States as an instrument to create a new segmentation of markets in Europe. Secondly, allocative efficiency in economic terms becomes more and more inter-related with ecological efficiency.

In the field of taxation the necessary harmonization for the completion of the internal market has so far progressed slowly and has given rise to considerable difficulties. In economic union, competitive pressures with regard to taxes on mobile factors will intensify. In order to cope with these pressures, Community involvement might need to be stepped up, since otherwise revenues from such taxes might be considerably eroded.

The Community should also have the responsibility, through a combination of coordination efforts and its own interventions, to see that the internal market enjoys European-wide infrastructures that reach the highest standards attained within Member States. The creation of specific Treaty provisions providing a unified legal base for Community action, in particular with respect to highways and railways, telecommunications and energy distribution networks, could greatly facilitate real progress in this area allowing a cheaper and faster circulation of goods, services and information. This is also highly relevant for the objective of cohesion.

Labour markets will have to be adapted further. The essential responsibility for wage determination will remain with the social partners. The Community should have some role in encouraging the adoption by labour markets of the best observed practices for labour market management. This concerns especially mobility, permanent education, training systems, the introduction of new technologies and efficient methods of collective bargaining. The Community should also seek to give concrete substance to the Social Charter while enhancing the capacity of national labour markets to adjust to competitive pressures in an efficient way.

3.3. Cooperation

Cooperation between Member States and the Community covering all aspects of economic policy is an essential feature of economic union. This has already been recognized in Council Decision 90/141/EEC on 'the attainment of progressive convergence of economic policies and performance during Stage I of economic and monetary union' where it has been agreed that multilateral surveillance will cover all aspects of economic policy.

Taking account of the learning by doing foreseen in the Council Decision, cooperation should be further strengthened in the final stage of economic and monetary union. For this purpose, the following specific cooperation instruments are proposed:

- (i) pluriannual economic policy guidelines;
- (ii) reinforced multilateral surveillance of economic policy, including rules for budget deficits;
- (iii) a special financial support scheme.

The pluriannual economic policy guidelines would be drafted each year by the Commission on the basis of a global evaluation of the economic development of the Community and of every Member State. They would set general economic targets for the Community and identify the means to realize them. For enhancing the compatibility of Member States' economic policies, specific reference would be made to public finance policies, labour market developments, and national structural policies. The guidelines would be submitted to the Ecofin Council and endorsed by the European Council, which would also be concerned with the overall coherence of the Community's economic and monetary policy.

Within the framework of the pluriannual guidelines, multilateral surveillance would be reinforced in the light of the experience acquired during Stage I. In the Treaty a new legal basis for this coordination instrument should be provided for, amending the present Article 103. This should allow the contents of and procedures for multilateral surveillance to be redefined by secondary legislation.

Multilateral surveillance should be open-ended in its coverage of all aspects of economic policy and performance that significantly affect Community objectives. The surveillance would include analyses of supply and demand trends, price and cost developments, competitiveness, employment, regional development, public finance, financial markets and the underlying economic policy orientations. Multilateral surveil-

lance would monitor the economic conditions, prospects and policies in the Member States. Periodically, a global assessment of Member States' economic performance would be made. This would include a review of budgetary policies including an evaluation whether a deficit is excessively high.

If the global assessment is not satisfactory, a gradual system of incentives for policy adaptation would come into play. In normal circumstances, the quality and efficiency of the analysis would provide a basis for change. This could be complemented with an attempt to reach agreement in the context of confidential peer-group pressure. Beyond that, formal recommendations would be made which could lead to public declarations. In addition, the special financial support scheme (further outlined below) could play a significant role, relying on positive conditionality, in bringing about policy adjustments since it would help the Member State to overcome particular economic difficulties.

The threat to monetary stability and the sustainability of the union represented by excessively high levels of deficits and debt and the method of deficit financing (i.e. pressure for monetary accommodation, or instability of the financial system) is a matter of special concern. While other matters of common interest such as normal macroeconomic policy interactions can be adequately covered within the multilateral surveillance process, the potential threat of budget deficits and their financing to monetary stability requires additional provisions. It is therefore proposed that two rules should feature in the Treaty:

(a) no monetary financing of public deficits or market privileges for the public authorities concerning the placing of public debt;

(b) no bailing-out; in the case of imbalances, a Member State could not benefit from an unconditional guarantee concerning its public debt either from the Community or from another Member State.

With respect to the method of financing, Member States' external borrowing in non-EC currencies should also be a matter of Community concern given its potential impact on the monetary policy of the Community. While external financing should not be forbidden, Eurofed and the Commission would closely monitor its development and the Council would be empowered to recommend policy changes in the framework of multilateral surveillance.

In addition, excessive budget deficits may endanger the stability-oriented monetary policy. As a matter of principle, excessive budget deficits therefore must be

avoided and this should be stated in the Treaty. In practice, the judgment whether a deficit is excessive is related to the sustainability of the fiscal position, which cannot be evaluated in isolation from an overall assessment of the economic situation and development, and should therefore be an integral part of multilateral surveillance. Nevertheless, some yardstick would seem necessary for the identification of excessive deficits. Despite its definitional shortcomings, the golden rule of public finance, i.e. that public borrowing shall not exceed investment expenditure, appears the most satisfactory from an analytical point of view and is the only one widely applied in existing federations. Complementary to this rule, other objective criteria, such as the deficit and debt to GDP ratios might prove helpful in this context. These rules and criteria will have to be laid down in the Council regulation covering multilateral surveillance.

A special financial support scheme would be provided for in the Treaty, amending the present Article 108. The scheme would be activated when major economic problems arise in one or several Member States or when economic convergence calls for a particular Community effort alongside national adjustment strategies in the sense of positive conditionality. The initiative for activating the scheme could come from the Member State concerned as well as from the Commission. The Council would decide the conditions and details of the support when a case arises, including the need for coherence with multilateral surveillance concerning budget deficits. The support could be given through grants from the Community budget or through loans from a Community financial instrument.

3.4. Economic and social cohesion

It is essential to ensure that the beneficial effects of economic and monetary union are felt in all parts of the Community and thus contribute to cohesion. Unduly large regional imbalances would pose an economic as well as a political threat to the union. For this reason particular attention has to be paid to an effective Community policy aimed at narrowing regional and structural disparities and promoting a balanced development throughout the Community. The Community's existing instruments are already making a substantial contribution to the cohesion objective, as is the greater economic activity associated with the Single Act and the completion of the internal market. Pluriannual programmes for the

development of backward regions and of those requiring reconversion have been established by these regions and cover many aspects that are necessary for the adaptation and development of their economies. Concrete experience of this new approach, which was adopted by the Council in February 1988, has now begun. At the end of 1991 the Commission will make a full assessment of the structural policies, and make recommendations on their continuation and further improvement.

The effects of economic and monetary integration may be at least as beneficial for the less-developed regions as for the more prosperous. A greater amount of inward investment may, for example, be attracted by their comparative advantages. The trend towards service industries and high-value manufactured products is already reducing the importance of transport costs in location decisions. However, some historical experience suggests that regions within an economic and monetary union can be disadvantaged over long periods of time unless sufficient measures are taken.

In the final stage of EMU there might be a need to further strengthen Community structural policies. Instruments and resources would be adapted to the needs of the union. In addition, considerations of absorptive capacity, as well as more general considerations, may point in favour of widening eligibility criteria, such as for education, for support to the least favoured Member States.

While adjustment in the Community exchange rate can absorb external shocks to some extent, the exchange rate can no longer be used by individual Member States as a policy instrument to deal with a loss of competitiveness or to adjust to adverse economic shocks. The adjustment must therefore take place in a different form, for example through labour market flexibility and policy measures. The structural Funds could also be endowed with a greater capacity to respond more quickly and more flexibly. Furthermore in such circumstances a conditional Community support as outlined above in the section on cooperation could be activated.

3.5. Consequences for Community finance

Community finance should reflect and support the gradually increasing Community contribution to the attainment of the principal economic policy objec-

tives related to efficiency, cooperation and economic and social cohesion. Such a gradual increase would not imply a large-scale transfer of major expenditure responsibilities from the national to the Community level but would nevertheless require a significant development of Community financial activity in the form of expenditure from the Community budget and of loans from Community financial instruments. As a consequence, the Community's own-resources system and the budgetary responsibilities of the Community institutions will have to be adapted to the needs of the economic union.

The development of Community financial activity would have two dimensions: an extension of the volume of budgetary expenditure and of loans and a more flexible use of the financial means. The extension would reflect the growing Community involvement in areas with important European-wide effects related to internal as well as external policy requirements. The greater flexibility is necessary in view of the growing concern about economic convergence, including economic and social cohesion, which might be threatened by unforeseen economic shocks.

Greater Community responsibility on the expenditure side would have to go hand in hand with an increased capacity on the revenue side of the Community budget. Moreover, the Community's loan instruments would have to adjust their activities to the needs of the economic union implying in particular a closer and more effective combination with budgetary expenditure. The role and intervention modalities of the EIB will also have to be examined in this context. Moreover, the need for greater flexibility on the expenditure side of the budget would have to have its counterpart on the revenue side involving an adaptation of the present own-resources system.

Greater flexibility of Community finance would require more discretionary powers of the Community institutions, in particular as regards the revenue side of the budget. More generally, the budgetary procedure should be reviewed in order to achieve a better balance of responsibilities between the European Parliament, the Council and the Commission; a balance which should more explicitly recognize the Commission's role already manifest in the 1982 and 1988 agreements. A substitute for the present balance-of-payments loans facility should be devised and its funding extended to budgetary means.

Within the framework of multilateral surveillance the contribution of the Community budget and its borrowing and lending activities to the policy objectives

and to economic policy-making should be assessed and consideration be given to improve their cost/benefit ratio in the various functions affecting economic performance and competitiveness.

4. Transition

4.1. The general conception

The transition is referred to as the time-span between now and the beginning of the third stage of economic and monetary union; four main elements can be considered as essential:

- (i) the transition should be short for the reasons outlined below;
- (ii) Community achievements, notably concerning economic convergence, economic and monetary policy coordination and the consolidation of the EMS, should be reinforced;
- (iii) Eurofed should be created as a new Community institution;
- (iv) the use of the ecu should be stepped up and its development further encouraged.

In fact, the process leading to the achievement of economic and monetary union has already been embarked upon. The first stage started officially on 1 July 1990. Concerning the necessary Treaty amendments for Stages II and III, the Dublin European Council of 25 and 26 June 1990 stated that the inter-governmental conference 'should conclude its work rapidly with the objective of ratification of the results by Member States before the end of 1992'. This strong impulse reflects an increasing convergence of viewpoints on the possibility and necessity for a rapid transition towards a complete monetary union. Indeed:

- (a) in the field of convergence, faster progress than expected can be observed, certainly for the countries participating in the exchange rate mechanism;
- (b) current developments are buoyant. The dynamics of the completion of the single market should be 'capitalized', and the political zest and expectations due to the events in Eastern Europe, in particular German monetary unification, should be profited from;
- (c) the period ahead contains risks of instability due to the gap between the achievement of financial inte-

gration, which facilitates currency substitution and financial mobility, and the completion of monetary union. Furthermore, as convergence increases, other currencies join the German mark in its role as anchor of the system. This calls for a multilateral approach to monetary regulation;

(d) finally, the analysis of costs and benefits of economic and monetary union shows more clearly the gains of the union and especially of the adoption of a single currency. In most important respects, the Community already shows a homogeneity comparable to existing monetary unions; the dynamics of the single market will bring it even closer to being an optimum currency area.

For these reasons, the Commission proposes that the transition should proceed as follows:

- (i) Stage I is important; it should make it possible to achieve a high degree of convergence, to reinforce monetary policy coordination and to promote the role of the ecu;
- (ii) Stage II would be a phase of intensive preparation, both technically and legally, especially of the monetary union. During this phase, Eurofed would be set up; the secondary legislation emanating from the Treaty would be adopted. This stage should start on 1 January 1993, i.e. at the same time as the completion of the internal market and immediately after the ratification of the Treaty revisions;
- (iii) from the start of Stage III, Eurofed would be entirely responsible for the single monetary policy, and the provisions flowing from the Treaty revision would be applied. The timing of the beginning of Stage III and the introduction of a single currency, desirable as soon as possible, would be the subject of political agreement by the European Council based on an assessment of the results achieved during the transition in terms of market integration, convergence, including economic and social cohesion, and economic policy coordination;
- (iv) with regard to the participation of some Member States there might be a need for safeguard clauses during the transition. Moreover, there could be a degree of flexibility concerning the date on which some Member States would join in all arrangements of Stage III, this flexibility should be expressed in terms of specific transitory provisions within Stage III. Member States making use of this flexibility could have representatives in Eurofed without them having the right of vote.

The UK Government has recently put forward its ideas on the transition. According to this proposal a 'hard ecu' would be issued in parallel to the national currencies by a 'European Monetary Fund' created to this end. Representing a positive development of the previous proposal of the British Treasury ('An evolutionary approach to EMU'), it favours a new Treaty, the creation of a common monetary institution, and of exchange-rate policy coordination *vis-à-vis* third currencies; it also accepts that the ecu could eventually become the single currency in Europe. This is therefore an important commitment to the creation of an economic and monetary union in Europe and it should be welcomed as a political confirmation of the Madrid and Dublin Summits.

Nevertheless, the proposal does not fit easily into the conception of the transition outlined above. In fact, the complexity of its implementation and its uncertain success would make it hardly suited for an advantageous rapid transition. In addition, the proposal would not help to reduce the existing differences between national monetary concepts and instruments and does not build on the existing multilateral cooperation between central banks. The technical aspects related to the ecu are discussed below in Section 4.5.

4.2. What is at stake in Stage I?

(a) *The completion of the internal market*

The completion of the internal market by the end of 1992 will mean the elimination of all physical, technical, fiscal and financial frontiers in the Community. Two-thirds of the necessary measures have already been adopted; in particular, the free movement of capital is a reality for eight of the 12 Member States, in accordance with the timetable originally foreseen. The advantages expected from the 1992 deadline, in terms of increased efficiency in the allocation of capital, reduced costs arising from intensified competition and faster growth, are likely to influence the expectations and behaviour of private and public economic operators and have certainly played a part in the recent improvement of the Community's economic situation.

(b) *Intensified economic convergence*

The process of convergence has already made advances in recent years and further progress can be expected as a result of the new arrangements decided by the Council in March (Decision 90/141/EEC):

(i) multilateral surveillance has been established, covering all aspects of economic policy in both the short- and medium-term perspectives. In the context of surveillance, special attention will be given to the evolution of employment, prices and costs, competitiveness, wage-fixing processes and budgets. Member States must also demonstrate that their policies remain coherent with the implementation of the Single Act and that they are making proper use of the structural Funds. The effectiveness of multilateral surveillance relies mainly on the exercise of 'peer pressure' and on the degree of transparency achieved. There must be a passage from the implicit to the explicit, which will have far-reaching economic and political consequences;

(ii) this decision also opens up the possibility of specifically monitoring the development of budgetary policies. Thus, countries where convergence is jeopardized would be encouraged to present medium-term strategies (including for their budgets) for reducing their disequilibria to levels compatible with participation in the subsequent stages of the process of union. These strategies should include the evolution of revenue and expenditure, deficits and the outstanding public debt which would be discussed and, if necessary, amended, during the second half of 1991. Thereafter, Member States should inform the Community about the measures they intend to take.

Moreover, recent advances with respect to the objective of economic and social cohesion should continue; the increasing assistance of Community structural policies should provide an efficient underpinning for the necessary further progress. Their assessment at the end of 1991 provides the opportunity to take stock of the degree to which disparities between the various regions and the backwardness of the least-favoured regions have been reduced.

(c) *Coordination of monetary policies*

Monetary policies must be more closely coordinated during Stage I. The completion of financial integra-

tion (especially the liberation of capital movements) and the objective of exchange-rate stability in the EMS reduce the real autonomy of national monetary policies and call for common responses to externally generated shocks (in particular fluctuations in non-EMS currencies). The Committee of Governors must already prefigure the future Community monetary institution which will be set up at the beginning of the second stage. The existing institutional framework offers the necessary margins of manoeuvre for the development of coordination and makes it possible to begin the learning phase of the common monetary policy.

A decisive step forward in cooperation between the central banks will be accomplished with the introduction of explicit *ex-ante* coordination of monetary policies, accompanied by regular *ex-post* monitoring exercises. During this first stage, the technical aspects of such an exercise are, doubtless, less important than the procedure itself. Indeed, the Member States will continue to take a variety of objectives as reference points (monetary aggregates, domestic credit, exchange rates, etc.) and one task of the Committee of Governors, now with permanent structures, will be precisely to reduce the differences between the various concepts and instruments. Nevertheless, the simultaneous announcement of their objectives by the national central banks will be a tangible sign of the beginnings of a Community policy in the eyes of the public and the markets.

(d) Evaluation of the results of Stage I

At the end of Stage I, i.e. at the end of 1992, the Commission would submit a report to the European Council on the progress on economic and monetary union. The report would contain an in-depth economic evaluation of the results of the first stage in terms of deepened integration in goods, services, capital and labour markets; intensified economic convergence; strengthened economic and social cohesion; and improved policy coordination. In addition, recommendations would be put forward in the report for overcoming difficulties that might have occurred during the first stage. The aim should be to enable all Member States to participate in a rapid transition to the definitive economic and monetary union.

4.3. Consolidation of the EMS

The EMS should be further consolidated. As far as the exchange rate mechanism is concerned, the Basle/Nyborg agreements of September 1987 have shown the way by widening the possibilities for the central Banks to make use of very short-term financing and by strengthening the role of the ecu in the Community's support mechanisms. There is a steadily increasing tendency for central banks to concert their interventions in the foreign exchange markets.

During the first stage, all the Community currencies should be brought into the narrow band of the exchange rate mechanism. Thus, Spain could quickly give up its 6% margin as Italy did last January. For its part, the British Government recently let it be understood publicly that an early entry of the pound sterling into the ERM was likely. The entry of Portugal and Greece into the mechanism will depend on the degree of convergence which they achieve. Rigorous economic policy programmes, supported by the large transfers of resources from which these countries benefit, could lead to entry before the second stage.

The enlargement of the exchange rate mechanism is essential for the creation of uniform monetary conditions throughout the area and for its credibility with respect to non-EMS currencies. Thus, the ecu, in whose composition the pound sterling accounts for 13% of the total, would gain in terms of stability and would be given further impetus.

4.4. The creation of the new monetary institution

The main characteristic of Stage II will be the establishment of a new Community monetary institution, called the European System of Central Banks (ESCB), or Eurofed. In the UK paper it is also proposed to set up a new monetary institution called the European Monetary Fund (EMF).

During the second stage the national central banks will retain the ultimate responsibility for the conduct of monetary policy. This does not imply the creation of an 'empty shell'. This will be a period of intensive learning during which the central body of Eurofed must participate actively in the management of the EMS and of foreign exchange reserves as well as having a pivotal role to play in the coordination of the activities of the central banks; it should also take

over the task of the European Monetary Cooperation Fund. Eurofed should increasingly play an active part in the coordination of monetary policy including the determination of interest rates and the definition of monetary objectives. The statistical, operational, regulatory and logistical instruments to conduct a single monetary policy will be set up and tested. It would also be in charge of making the necessary preparations for the ecu to become the single currency.

There is no contradiction between Eurofed's role in the second stage and its legal status. On the one hand, it is clear that a purely legal conception of monetary sovereignty, already very much a formal matter in the EMS, will no longer have much significance when the Member States are on the verge of entering fully into the monetary union. On the other hand, it should be said that internal conflicts in the Eurofed are likely to be the exception in a context where the objectives will be fixed by agreement and where the central body will exert collective pressure to correct deviations from guidelines voluntarily agreed to at the outset.

4.5. The ecu

As has been argued above, a single currency is an essential feature of economic and monetary union. In the same way as it is not acceptable that the single monetary policy should be determined by one of the existing national central banks, it is not desirable that the single currency should be one of the existing national currencies. Furthermore it should not be a new 13th currency. For these reasons and because public acceptance should be improved, introducing a new monetary denomination, however, requires time and management. Existing arrangements for the ecu should therefore be built upon as much as possible.

The ecu is already to some extent the common currency of Europe. It is a basket of the various national currencies. But it is also destined to become Europe's single currency. With this in mind, it is necessary to consider how its use can be increased during the transition and to define clearly its position in relation to national currencies and to encourage its development.

The expansion of the role of the ecu in commercial transactions and in the markets requires a strong impetus from the national and Community public authorities. This impetus could take several forms:

(a) the removal of all legal and regulatory obstacles to its private use; in particular, economic agents must be allowed freely to make legally binding contracts in ecus;

(b) the generalization of the use of the ecu in the operation of the Community institutions, including for the own-resources system of the Community budget;

(c) the extension of the use of the ecu in operations between the Community central banks, and in their interventions in the foreign exchange markets;

(d) the development of the use of the ecu in the issuing of public bonds and in public borrowing operations;

(e) encouraging the smooth development of the ecu market by central banks and Eurofed.

However, all these efforts will only be fully validated by the clear provision in the Treaty that designates the ecu explicitly as the future single currency of the union. This would reinforce its credibility and act as a powerful stimulus to its use.

In any case, there would be no discontinuity between the present ecu and the single currency of the union; ecu obligations would be payable at face value in ecus. During the transition the ecu would be increasingly used, but in the same way as it is now alongside the national currencies. It would not, however, formally abandon its definition as a basket until the moment of the irrevocable fixing of parities.

From the monetary point of view, the implications are clear: the ecu will continue to be defined by its component currencies until Stage III and the national central banks will retain in the last resort their monopoly over the issuing of money in the area. But during the transition, as realignments become very infrequent and as all currencies fully participate in the exchange-rate system, this basket definition will have increasingly less practical relevance. If all the currencies perform well, the average is as good as the best, and the ecu becomes *de facto* a 'hard ecu'. This is already more and more the case.

There are disadvantages in prematurely abandoning the basket definition of the ecu. The introduction of a 13th currency in the Community, as put forward notably in the UK proposal and even with the precautions taken there to avoid extra money creation, would increase the risks of instability in a period (the completion of the internal market) when it is important to limit the effects of competition between currencies. Furthermore, a parallel currency would not

be consistent with the accepted strategy of strengthening the coordination of monetary policies, albeit on a voluntary basis.

Concluding, the ecu should become an increasingly 'hard' currency during the transition.

5. Institutional aspects

The creation of the economic and monetary union based on the design outlined above necessitates several important Treaty modifications. In particular it will be necessary to agree upon the objectives of economic and monetary union; to define the characteristics of Eurofed, the new Community institution for which the Committee of Central Bank Governors is already drafting a statute proposal; to adapt the economic role of the existing Community institutions; to mention the principal provisions for the transition; to attempt to find a satisfactory balance between the institutions and to clarify their role.¹

5.1. The creation of Eurofed

(a) The Treaty would state three fundamental principles for the institution:

(i) the objective: price stability. Subject to this objective, Eurofed should support the general economic policy set at the Community level by the competent bodies;

(ii) independence of Eurofed from national governments and Community authorities;

(iii) democratic accountability.

(b) The Treaty should also define the tasks of Eurofed. The major ones would be the following:

(i) the formulation and implementation of the single monetary policy and the issue of ecus;

(ii) exchange rate and reserve management in accordance with the guidelines defined by the Council of Ministers; participation in international monetary cooperation;

(iii) participation in the coordination of banking supervision policies and guaranteeing the proper

functioning of the payment system and of capital markets.

(c) The main provisions for the organization of Eurofed would also be included: controlling authorities (council, board, president); relations between the Eurofed Council and national central banks; relations within the system of Eurofed between its central body and the other Community institutions; management and ownership of exchange reserves.

(d) Finally, the Treaty could also deal with the instruments of the common monetary policy as well as other questions concerning the organization of Eurofed (balance sheet, status of the personnel, auditing, etc.). Preferably, the main elements should be defined in the statutes of Eurofed which would be annexed to the Treaty and the other elements should be defined by secondary legislation.

Member States will have to adjust their national legislation on the national central banks in order to ensure conformity with the new Treaty.

5.2. Economic provisions

In the economic field, an institutional framework has already been established under the Treaty of Rome. While on the monetary side a new institution has to be set up, it will not be necessary, on the economic side, to add another institution to the existing ones (European Parliament, European Council, Council of Ministers and Commission), but the roles of the existing institutions should be enhanced and adjusted in accordance with the new tasks which they will have to accomplish in an economic and monetary union.

Similarly, the Treaty provides a definition of the objectives which the Member States and the Community should commit themselves to attain: a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living, and economic and social cohesion.

The reinforcement of multilateral surveillance makes necessary the modification of certain Treaty provi-

¹ The possible results of the second Intergovernmental Conference on political union are not taken into account here.

sions and even more so of the secondary legislation. Two rules concerning budget deficits (no monetary financing and no bailing out) should also be included in the Treaty. The Treaty should also state the principle that excessive budget deficits have to be avoided.

Furthermore, the Treaty would need to provide a legal base for the creation of two new economic policy instruments: multiannual guidelines and the conditional Community financial support scheme; these would also be further specified by secondary legislation.

5.3. Provisions for the transition

The Treaty should specify the procedures for the passage from one stage to another. It should fix the date for the start of the second stage as well as the procedures for determining the beginning of Stage III and for the introduction of the ecu as the single currency.

The Treaty would also provide safeguard clauses for the transition and the possibility of flexibility for some Member States with regard to the date of their full participation in Stage III.

5.4. Balance between the institutions

A satisfactory balance between the institutions of economic and monetary union will have to be found. The creation of a new Community institution in the monetary field, Eurofed, raises the question of the balance to be achieved between this new institution and the existing ones which will be responsible for the implementation of the economic union.

The Council and the Commission would also have to cope with an increase in their respective tasks: the definition of guidelines for economic policy, participation in negotiations and agreements on international monetary matters, dialogue with Eurofed (particularly with regard to the exchange rate policy), regular multilateral surveillance exercises.

The European Parliament will have to play an increasingly more important role in terms of its democratic responsibilities. In the context of the

economic union the reinforcement of the involvement of the European Parliament appears easier to realize in view of the nature of the measures in question, in the form of the control of the executive; it being understood that in addition it should participate in all debates of an economic nature.

The arrangement of Community procedures for the definition of multiannual guidelines and the multilateral surveillance exercise has important political consequences. In their deliberations, the national parliaments will have to take into consideration the guidelines and recommendations flowing from the new procedures. Member States will have to justify their attitudes not only *vis-à-vis* the Community institutions but also *vis-à-vis* domestic public opinion. Consequently, there is a need for these procedures to be highly transparent: sufficient publicity has in particular to be assured for the recommendations which the Community would address to Member States which deviate from jointly agreed guidelines. This necessary transparency of Community procedures is an additional reason for ensuring a balance between the institutions.

5.5. The role of each institution

The organization of a satisfactory balance between the institutions, which should form part of the Treaty, should be based on a reinforcement of the role of each, on a certain degree of specialization, and on a precise definition of their relationships having regard to the attainment of the objectives of economic and monetary union:

(a) the European Council would be concerned with the overall coherence of the Community's economic and monetary policy; it would formally endorse the multiannual economic guidelines and would nominate the President of Eurofed and the other members of the Board; the Presidents of the Ecofin Council and of Eurofed would report to the European Council at least once a year;

(b) the Ecofin Council would be responsible, in addition to its present activities, for deepened multilateral surveillance exercises, the issuing of recommendations, the granting of special financial support and for the major decisions concerning the exchange-rate policy (international agreements); it would take its decisions by qualified majority on a proposal from the Commission after consulting the European Parliament; in cases of urgency the Coun-

cil would have to decide within a fixed delay; its President would participate in the Eurofed Council without the right to vote and represent the Community in international monetary meetings;

(c) the Commission, the executive institution responsible to the Parliament, would play, in addition to its traditional role of impulsion and legislative initiative, an essential role in multilateral surveillance: presentation of annual reports on the economic situation of Member States, the drawing up and monitoring of multiannual guidelines, the drawing up of recommendations for economic policy; moreover, it would monitor the consistency between monetary and the general economic policy adopted at Community level and would make observations, as appropriate; a Member of the Commission would participate in the Eurofed Council without the right to vote and assist the President of the Ecofin Council in international monetary meetings;

(d) the European Parliament would be consulted on the nomination of the President of Eurofed, the definition of multiannual guidelines, the granting of

special financial support, and on the recommendations; in urgent cases it would have to give its position within a prespecified time-limit; it would regularly debate the Community's economic and monetary policy, with a general debate held once a year during which it would give a discharge to the Commission in respect of its economic policy responsibilities; the President of Eurofed would regularly, and whenever exceptional circumstances make it necessary, report on monetary policy; the President of the Ecofin Council and the Commission would regularly report on the economic situation in the Community and would associate Parliament closely in the multilateral surveillance exercises;

(e) Eurofed would be responsible for the tasks set out in 5.1 (b); also, it would be consulted by the other institutions on matters of their competence relating to its objectives and tasks; in this spirit it would participate in multilateral surveillance exercises; it would also assist the Ecofin Council in international monetary meetings; it would regularly report on monetary policy to the European Council and to the European Parliament.

Draft treaty amending the Treaty establishing the European Economic Community with a view to achieving economic and monetary union

Explanatory memorandum

1. Need for coherence between the two Intergovernmental Conferences

The European Council's decision to convene two Intergovernmental Conferences running in parallel, one on economic and monetary union and the other on political union, reflects a desire to integrate moves to achieve apparently different but, in practice, intimately linked objectives into the framework of the existing institutions.

Political union enriches the Treaty of Rome by adding a new dimension to the venture launched more than 30 years ago. EMU very much follows in the direction of that venture. As a natural extension to implementation of the Single European Act, EMU, far from being an end in itself, is both a more effective and a more demanding means of fulfilling the mission assigned to the Community by the Treaty. Effectiveness must be accompanied by the solidarity needed for economic and social cohesion to be achieved, but within the framework of a policy taking full advantage of price stability and the strength of the single currency. EMU and political union alike aim to give the Community a new capacity for action and a genuine external identity. Both are aspects closely linked to one and the same movement: the advance towards European union.

These two approaches are intended to complement the Community's achievements to date — and primarily the creation of an area without internal frontiers by 31 December 1992 — by means of closer economic and monetary integration and the development of the political dimension. They draw inspiration from the same institutional philosophy and are based on the need to reconcile more democracy and greater efficiency.

In view of the complementary nature of the objectives to be achieved within a single Community, and in order to maintain a balance, the work of the two Intergovernmental Conferences calls for parallel progress as regards institutional development, with this alone permitting the osmosis necessary between the political, social, economic and monetary spheres.

Without it being possible or necessary to indicate at this stage the final content and shape of European union, care must be taken to ensure that the conditions for transferring new powers to the Community — however important they may be — do not jeopardize the existing institutional framework, which has a proven dynamism.

The main asset of the Treaty of Rome is the relationship of positive synergy between the three institutions: Parliament, the Council and the Commission. The cooperation between the Council and Parliament works by dint of the intervention of a third institution, the Commission, whose essential task is to attempt to safeguard the general interest while bringing closer together the often diverse positions of the Member States.

The joint exercise of new powers in areas which reach to the very heart of sovereignty — such as currency matters and foreign policy — will require the existing institutional framework to be adapted to a higher degree of Community integration.

It will be for each of the two Intergovernmental Conferences, in exercising the mandate they will have been given, to ensure that a dynamic balance is struck between the new decision-making centres and the existing institutions, which will continue to be in charge of implementing all common policies with due regard to the two criteria of democratic legitimacy and efficiency.

The Parliament will be called on to play an increasingly important role, not only through its being closely involved in the decision-making process but also as a result of the indispensable strengthening of its position in terms of democratic accountability.

It will be for the Council of Ministers for Economic and Financial Affairs to take, on the basis of Commission proposals, the decisions within the competence of the Council.

As for the Commission, it will have to continue to perform the tasks assigned to it by the Treaty as an initiator and executor of Community decisions. Its accountability to the European Parliament satisfies in

part the requirement of greater democratic accountability.

Finally, the European Council will have to provide the necessary impetus, the very role for which it was originally set up, and to ensure the overall coherence of economic and monetary policy in terms of the broad guidelines which it lays down.

2. The march towards economic and monetary union

The march towards economic and monetary union, which has been a Community objective since 1969, gained fresh momentum in June 1988 with the decision of the Hanover European Council to entrust a committee of experts, chaired by Mr Delors, with the task of studying and proposing concrete stages leading to this union.

This was prompted by the realization that, with the creation of the single market forging ahead, considerable gains were to be expected from economic and monetary union, and in particular the adoption of a single currency.

Over and above the direct gains associated with the elimination of transaction costs are the indirect or dynamic gains, which are potentially much greater although certainly difficult to quantify.

These dynamic gains will stem from price stability, enhanced economic efficiency, itself conducive to growth, and more efficient management of public finances owing to a reduction in the real burden of interest and in the size of deficits. This should have a positive impact on employment and on the balanced development of the regions and, finally, should give the Community a greater role to play in the world economy.

On the basis of the Delors Committee's report and the work carried out by the Community institutions, each meeting of the European Council has provided fresh impetus.

In Madrid, the main principles were laid down:

- (i) implementation of EMU in stages, with Stage I to begin on 1 July 1990;
- (ii) parallelism between the economic and monetary aspects;

(iii) subsidiarity;

(iv) diversity of specific situations.

In Strasbourg and Dublin, a link was established between EMU and the strengthening of the Community's political dimension, a decision was taken to convene two intergovernmental conferences, and a timetable envisaging the ratification of the Treaty amendments before 1 January 1993 was adopted.

Finally, in Rome, agreement among 11 Member States was reached on the overall conception of EMU, involving the adoption of a single currency (the ecu) and the fixing of 1 January 1994 as the date for transition to Stage II and of the general conditions for the transition leading from Stage I to Stage III. The conclusions of the European Council constitute, in a way, the mandate given to the relevant Intergovernmental Conference.

The preparatory work has now been completed. It is for the Conference that will open on 15 December to agree on amendments to the Treaty of Rome. It will have less than a year in which to do so, given the time needed to complete ratification of the fruits of its work in 1992.

Consequently, and in order that the negotiations can begin on a sound basis as soon as the Conference opens, as the Dublin European Council requested, the Commission is presenting a draft treaty amending the Treaty establishing the European Economic Community with a view to achieving economic and monetary union.

In the spirit of its document of 21 August 1990, and out of a concern to draw the various points of view together, the Commission has striven to combine the main contributions which have been made, namely:

- (i) the report of the Delors Committee, which was regarded by the European Council — or at least by 11 of its members — as the outline for establishing EMU;
- (ii) the report of the high-level working party on EMU, chaired by Mrs Guigou, which has drawn up a list of essential questions for the Intergovernmental Conference;
- (iii) the work of the European Parliament, and in particular the resolution adopted on the basis of the report presented by Mr Herman;
- (iv) the reports drawn up by the Commission: the communication to the Council of 21 August and the report on the costs and benefits of EMU;

(v) the work of the Council, based on reports presented by specialized committees;

(vi) the work of the Committee of Central Bank Governors, which has led to the presentation of a draft statute for the new monetary institution (the links between the draft statute and the forthcoming treaty should be emphasized).

3. Points of agreement and remaining differences of approach

The draft treaty, presented by the Commission in accordance with the method employed in drafting the Treaty of Rome, establishes in legal form:

(i) the basic principles of EMU, which are designed to supplement the provisions on the 'principles' of the Community (in particular Articles 2, 3 and 4 of the Treaty of Rome); the latter principles will also be enriched by the amendments to be proposed by the Intergovernmental Conference on political union;

(ii) the rules relating to EMU (economic and monetary policies, institutional arrangements), the powers of the new monetary institution, Eurofed (made up of the national central banks and the European Central Bank), the principles governing its operation, and its relations with the Community institutions;

(iii) the principles, rules and procedure relating to the transitional period and the transition to the final stage.

The Conference will centre its deliberations not only on the Treaty but also on the Eurofed Statute, which will take the legal form of a protocol annexed to the EEC Treaty and will constitute an integral part thereof (see Article 239). However, some provisions will have to be amended according to a different procedure and one which is more straightforward than that laid down for the Treaty.

The Commission has taken note of the draft statute drawn up by the Committee of Central Bank Governors: it notes that there is a great deal of common ground between the draft statute and the opinion which it formulated on EMU pursuant to Article 236 of the Treaty.

The Commission is of the opinion that the essential tasks and elements of the system's structure, in particular the principles relating to the balance and relations between the institutions, must be incorporated into the Treaty, whereas the actual operation of the system — essentially that of the new monetary insti-

— must be dealt with by the Statute, even though the latter may, for reasons of clarity, include certain of the Treaty's provisions.

The draft treaty sets out in legal terms the principles and operating rules of EMU, on which there is already a broad measure of agreement.

This will cover a large part of the agenda of the Intergovernmental Conference, and particularly:

(i) on the economic side:

(a) the tools which must be available to the Community in order to achieve better coordination of economic policy, on the basis of commonly-agreed targets, and an improved measure of convergence;

(b) the minimum rules with which Member States will have to comply in the budgetary sphere in order to prevent the appearance of imbalances which might compromise monetary stability;

(ii) on the monetary side:

(a) the principles which underlie the creation of Eurofed: the priority objective, which must be price stability; its structure, which must be federal; its complete independence, which must be reflected in rules enshrined in the Treaty; and democratic responsibility, which is the corollary to Eurofed's necessary independence;

(b) the tasks, organization and main operating rules of Eurofed.

In general the economic and monetary aspects should be tackled in parallel, as the Delors Committee report emphasized. Since the model that has been chosen does not seek to create new institutions in the economic sphere, but rather to give greater responsibilities to the Council (Economic and Financial Affairs), the draft treaty seeks to provide a mechanism for relations between the existing institutions and the new Eurofed based on the two criteria of effectiveness and democratic legitimacy.

Lastly, the draft treaty lays down procedures for movement from one stage to the next, and foresees the possibility of a period of adaptation for any Member State ratifying the Treaty and thus accepting the ultimate goal of EMU.

In addition to giving legal form to the general agreement which exists, the Commission felt it would be useful for the draft to include provisions dealing with the few questions still open, in order to make it easier for the Conference to concentrate on these questions and to settle them. As is its proper role, however, the

Commission has tried to propose solutions which it feels will facilitate the necessary compromises, even where those solutions do not exactly reflect its own initial position.

There are only a few of these questions; they relate essentially to economic union:

(i) *The final shape of economic union.* There is unanimity that certain rules (no monetary financing, no automatic bail-outs) and a principle (the avoidance of excessive budget deficits) should be enshrined in the Treaty. These rules will have to be complied with, but the way in which the principle is to apply can be made more or less binding — sanctions might even be envisaged. The Commission would prefer a system of incentives in a framework of tight multilateral surveillance. An important factor in the success or otherwise of the procedures adopted will be transparency, given its impact on political life in each of the Member States.

(ii) *The relationship between EMU and economic and social cohesion.* This question is central to the future of the Community, and will also have to be considered in the negotiations on political union; it has obvious budgetary implications. For the time being, however, as suggested by the analyses that have been carried out so far, the Commission takes the view that practical discussion of this question will not be possible at the Intergovernmental Conference. Only in 1991, when a progress report has been made on the structural policies, can a review of the February 1988 agreement be envisaged and improvements be made to the mechanism applied since 1989.

(iii) *Democratic responsibility in economic union.* Alongside the European Council, which provides the impetus, the main lines of economic and social policy will continue to be set by Council, Commission and Parliament, the institutional triangle set up by the Rome Treaty. The roles of each of these institutions are strengthened and spelt out in the draft treaty, and the balance between them is clarified. Not only will the Council (Economic and Financial Affairs) see a development of its role as multilateral surveillance is tightened; it will also have to take, in collaboration with the new monetary institution (Eurofed), the main decisions on exchange-rate policy. The Commission will have an important role to play in economic union, and it should accordingly be clearly and directly responsible before the Parliament; this will foreshadow the role the Parliament will play when the building of the Community is

complete, that is to say when European union has been achieved.

(iv) *The nature of the transition.* Debate on the duration of the transitional period has obscured its nature. The Commission has taken the side of those favouring a short transitional period, and the reasons which led it to take this position are as strong as ever. Stage I, which began on 1 July 1990, has a vital role to play here. Its success or failure will determine not only the success or failure of the process as a whole but also the duration of Stage II. This can be shorter if Stage I achieves its objectives rapidly, with the Committee of Governors operating as the centre for the elaboration and guidance of monetary policy, while on the economic union side progress is being made on consultation and policy convergence. Stage II represents the introduction of the final mechanism. The Commission is therefore in favour of a transitional stage with a substantial content. In the economic field it is proposing that the final outcome should be anticipated, more in the spirit than in the letter, from the beginning of Stage II. In the monetary sphere, too, the Commission is proposing that Eurofed should be given the task of actively preparing its future role from the day it is set up, and indeed of prefiguring that role. The establishment of an institution and its governing bodies before it takes up its full powers is in line with the thinking and practice of the Rome and Paris Treaties. It allows the institution to make preparations and to take measures necessary for its proper operation while creating a climate of confidence among its members before it enters into full operation. The same thing was done for the introduction of the Rome Treaty and the Community institutions.

(v) *the role of the ecu in the transition.* The nature and role of the ecu in the dynamics of EMU are currently at the heart of a debate which is not simply about method. It is the very essence of the EMU undertaking which is under discussion. In response to those who state that they wish — and are able — to make the ecu an instrument of convergence by 'hardening' it, the Commission takes the view that only a strengthening of the ecu is capable of giving it a central position in the EMU process. But this will not come about simply as a result of its being sanctioned by the market but only if the Community and the 12 Member States adopt a series of decisions to promote the use of the ecu and to make it increasingly attractive. Convinced that convergence can and should proceed with the help of the instruments established at the beginning of the first stage, the Commission has chosen this approach, which involves the decision to entrust to Eurofed, once it is set up, the task of managing the ecu.

4. The Community's responsibilities and the creation of appropriate instruments

By adopting a single currency, the ecu, as a replacement for national currencies, the Member States are transferring to the Community an area of competence in which it currently exercises responsibility only very indirectly.

This is the principal change introduced by the draft Treaty. A new institution is to be set up to administer the Community's monetary policy. It will have at its disposal the whole range of instruments necessary for conducting a market-based monetary policy: open-market operations, repurchase agreements, intervention rate, compulsory reserves, etc. It will be for it to equip itself with those instruments and to use them.

At the same time, economic policy instruments will have to be reinforced. The field of economic policy is very wide and cannot be reduced to budgetary policy. The range of instruments to be used goes far beyond those required for simply coordinating economic policies, even since the Community embarked on the first stage of EMU. In some areas, the Treaty already gives the Community a major role which has a clear economic dimension, even if there is not always awareness of this. Whatever fields are involved — whether competition (Articles 85 to 89), the opening up of public procurement (Article 130f(2)), research and development (Article 130f *et seq.*), European infrastructures (Article 74 *et seq.*), labour markets (Articles 49 and 118), the environment (Article 130r *et seq.*) or taxation (Article 99) — Community policies will have to be reinforced in order to improve the general efficiency of the internal market and to increase the competitiveness of the Community economy, which is essential if the basic objectives of European union are to be achieved.

The coordination of economic policies, which is already an area for which the Community has responsibility, will have to be reinforced in particular. The instruments required for the conduct of economic policies will remain the prerogative of the Member States. For the purposes of coordination, however, various additional instruments and procedures will have to be set up:

(i) multiannual economic policy guidelines which will define general objectives for the Community and indicate means of achieving those objectives;

(ii) reinforced multilateral surveillance of economic policies, which will cover all aspects of policy and

performance likely to have a significant impact on economic and social objectives. This will lead to the necessary economic policy adjustments as a result of the discussions which will take place in the Council of Ministers, the peer pressure that may be exerted at such meetings and, if necessary, formal recommendations which could be published. Observance of the budgetary rules referred to above forms part of these arrangements. The transparency of these procedures gives promise of their impact;

(iii) a specific financial support mechanism which will be brought into operation in the event of major economic difficulties in one or more Member States or where economic convergence calls for a special Community effort to be made alongside national adjustment strategies. Such support will be conditional; it will take the form of special Community grants or loans as part of a comprehensive programme.

Arrangements need to be made to ensure day-to-day coordination of economic and monetary policy: the participation, without the right of vote, of the President of the Council and of a Member of the Commission in the meetings of the Eurofed governing body (and, in return, the participation of the President of Eurofed in the multilateral surveillance exercises) and the possibility open to the Commission to comment on progress towards EMU in order, where it considers it necessary, to instigate discussion in the various Community institutions.

Cooperation between institutions will be particularly necessary in order to define exchange-rate policy, ultimate responsibility for which will lie, as is the case in the Member States, with the institutions responsible for economic policy. The Council of Ministers will have a special role to play, in close collaboration with the new monetary institution, in defining the Community's position in international monetary and financial bodies.

At the same time — and this task is also one for the Conference on Political Union — it will be necessary to amend and rearrange the Treaty provisions on external economic policy in order to reinforce the Community's capacity to act and the way in which it is represented in all international bodies.

Democratic accountability in EMU will take three practical forms: first of all, the Commission, alone responsible to the Parliament, will have to give it an account of the way in which it is fulfilling its duties, i.e. the way in which it is carrying out its task of coor-

dinating economic and monetary policy. Secondly, Eurofed will explain its policy and report to Parliament. Finally, Parliament itself will hold a general debate on the multiannual guidelines and specific recommendations, during which it will express its view.

All of these arrangements and instruments will ensure that, in addition to there being a clear division of roles between each institution, there is a satisfactory balance of powers, that the need for democratic accountability is satisfied and that the system works effectively.

Draft treaty

The EEC Treaty as amended is to read as follows:

PART ONE

Principles

Article 1

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

Article 2

The Community, having due regard to the personality of the States it unites and working on the basis of its achievements to date, shall have as its task progressively to achieve economic and monetary union, which shall be based on a single currency, the ecu, social development and the pursuit of a common policy with regard to external relations and security.

It shall be founded on respect for democracy and fundamental rights and on the principle of subsidiarity.

In carrying out its tasks, it shall seek:

(i) to promote within its ambit a harmonious development of economic and social activities, growth, a high level of employment and cohesion in conditions of stability, an accelerated raising of the standard of living and closer relations between the States and peoples it unites;

[(ii) to speak with one voice on the international scene and to act with cohesion and solidarity in order more effectively to defend its common interests and its independence.¹]

Article 3

For the purposes set out in Article 2, the activities of the Community shall include, subject to the conditions and within the time-limits laid down therein:

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

(b) the establishment of a common customs tariff and of a common commercial policy towards third countries;

(c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;

(d) the adoption of a common policy in the sphere of agriculture;

(e) the adoption of a common policy in the sphere of transport;

(f) the institution of a system ensuring that competition in the common market is not distorted;

(g) the institution of a common economic policy based on the definition of common objectives, close coordination of Member States' economic policies, and the implementation of the other common policies;

(ga) the definition and pursuit of a single monetary policy whose primary objective shall be to maintain price stability and, without prejudice to that objective, to support the common economic policy;

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

(i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;

(j) the establishment of a European investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;

(k) the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development.

Article 4

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

Note to the reader: For ease of reference, the sections of the EEC Treaty amended by the new Treaty have been shown in consolidated form, incorporating the amendments.

The amendments are shown in italics.

¹ To be reviewed in the light of the proceedings of the Intergovernmental Conference on political union.

- a EUROPEAN PARLIAMENT,
- a COUNCIL,
- a COMMISSION,
- a COURT OF JUSTICE.

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

2. Monetary policy shall be defined and pursued by a European System of Central Banks (hereinafter referred to as 'Eurofed') acting within the limits of the powers conferred upon it by this Treaty and the Statute annexed hereto.

3. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.

4. The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.

Article 5

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

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

Article 6

(Coordination by Member States of their economic policies)

Repealed.

Articles 7 to 8c

Unchanged.

PART TWO

Foundations of the Community

TITLE I

Free movement of goods

Articles 9 to 37 unchanged.

TITLE II

Agriculture

Articles 38 to 47 unchanged.

TITLE III

Free movement of persons, services and capital

Chapter 1

Workers

Articles 48 to 51 unchanged.

Chapter 2

Right of establishment

Articles 52 to 58 unchanged.

Chapter 3

Services

Articles 59 to 66 unchanged.

Chapter 4¹

Capital

Article 67

1. All restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested *shall be prohibited as between the Member States.*

2. Current payments connected with the movement of capital between Member States *shall be free.*

[The repeal of Articles 68 to 73 has still to be considered.]

TITLE IV

Transport

Articles 74 to 84 unchanged.

PART THREE

Policy of the Community

TITLE I

Common rules

Articles 85 to 102 unchanged.

TITLE II

Economic and monetary union

Article 102a

Economic and monetary union shall be founded on close economic integration and a single monetary policy.

It shall be brought about gradually over a period divided into two stages preceding the final stage, with par-

allelism between economic policy and monetary policy being ensured.

Building on the developments which have taken place since Stage I began, on 1 July 1990, Stage II, or the transitional period, shall begin on 1 January 1994.

During this transitional period, Articles 109b to 109e shall apply. A finding that the conditions for transition to the final stage are met shall be made by the European Council in accordance with Article 109f.

Chapter 1

Economic policy

Article 102b

1. *The economic policy of the Community shall aim to ensure growth, a high level of employment and equilibrium in the Community's balance of payments, in a context of price stability, generally balanced public finances, and economic and social cohesion.*

It shall be based on an internal market which has been completed in accordance with the objectives of Article 8a and on the various policies of the Community, in particular competition policy, commercial policy, research policy and structural policies.

It shall also be based on the progress achieved with regard to convergence since the beginning of Stage I of economic and monetary union.

2. *The Member States shall pursue their economic policies with a view to contributing to the realization of the objectives of economic and monetary union in the context of the measures adopted by the Community to that end.*

Article 102c

1. *The Commission shall submit multiannual guidelines to the European Council, which shall discuss them after consulting the European Parliament. The guidelines shall relate in particular to:*

¹ This Chapter is to be brought into line with the content of Chapter 4 of the Title on economic and monetary union.

the development of Member States' budget balances;

the control of production costs, having due regard to the freedom of the two sides of industry to enter into contracts;

the level and promotion of saving and investment;

the adaptation of Community policies for achieving economic and social cohesion;

the development of structural policies in the Member States.

2. The Council, acting by a qualified majority and taking into account the deliberations of the European Council and the opinion of the European Parliament, shall adopt these guidelines.

3. On the basis of an annual report from the Commission, the Council shall each year decide, in accordance with the procedure provided for in paragraph 2, on the adjustments that need to be made to the multiannual guidelines.

Article 102d

1. Within the framework of the multiannual guidelines adopted pursuant to Article 102c, and without prejudice to Article 103, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, which must issue an opinion within a maximum period of two months, may, where necessary, adopt recommendations specific to each Member State concerning the general thrust of its economic and budgetary policy.

2. The Commission shall see to it that these specific recommendations are implemented; it shall involve the relevant Committee of the European Parliament in the monitoring of their implementation.

3. Where it is observed that a Member State has failed to implement these recommendations, and notwithstanding Articles 169 to 171, the Commission shall, after alerting the Member State concerned, present to the Council a confidential proposal for a recommendation concerning the measures which must be taken to rectify the situation.

If the Council does not take a decision within one month, the Commission may make its proposal for a recommendation public.

Article 103

1. Member States shall regard their conjunctural policies as a matter of common concern. They shall consult each other and the Commission on the measures to be taken in the light of the prevailing circumstances.

In this connection, an overall evaluation shall be carried out regularly at Community level of the short and medium-term economic developments in the Community and in each of its Member States.

Moreover, the guidelines and recommendations adopted in accordance with the procedure described in Articles 102c and 102d shall serve as a framework for the multilateral surveillance undertaken by the Council with a view to assessing the results of the coordination of Member States' economic policies.

2. Without prejudice to the other procedures provided for in this Treaty, the Council may, acting on a proposal from the Commission, decide unanimously on the measures appropriate to the situation.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall, where necessary, issue the directives needed to give effect to the measures decided on under paragraph 2.

4. The procedures provided for in paragraphs 2 and 3 shall also apply if any difficulty should arise in the supply of certain products.

Article 104

1. Where a Member State is in difficulties or is seriously threatened with difficulties, the Commission may propose to the Council, which shall act by a qualified majority, that, subject to certain conditions, the Member State concerned be granted Community financial assistance which may take the form of a support programme accompanied by budgetary intervention or special loans.

2. The general conditions for such intervention by the Community shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament.

3. The Council may establish a system of borrowing in order to finance the special loans referred to in paragraph 1. It shall lay down the maximum volume of such borrowing. These measures shall be decided on in

accordance with the procedure provided for in paragraph 2.

Article 104a

1. The following shall be recognized as incompatible with the economic and monetary union and shall accordingly be prohibited:

(a) the financing of budget deficits by means of direct assistance from Eurofed or through privileged access by the public authorities to the capital market;

(b) the granting by the Community or the Member States of an unconditional guarantee in respect of the public debt of a Member State.

2. Excessive budget deficits shall be avoided. The Council may, to this end, adopt appropriate measures pursuant to the provisions of this Chapter.

Article 105

(Coordination by Member States of their economic policies)

Paragraph 1 is repealed.

Paragraph 2 (Monetary Committee) is transferred, in an abridged form, to Article 109a.

Chapter 2

Monetary policy

Article 105

Monetary union shall entail the circulation of a single currency, the *ecu*, the pursuit of a single monetary policy and the establishment of Eurofed.

Article 106

1. Eurofed shall be made up of the European Central Bank and the central banks of the Member States.

2. The European Central Bank shall have legal personality.

3. The Statute of Eurofed and the European Central Bank is set out in a protocol annexed to this Treaty.

The Council may, acting by a qualified majority at the request of the European Central Bank, amend Articles [...] of the Statute after consulting the Commission and the European Parliament.

Article 106a

1. With a view to achieving the objective set out in Article 3(ga), the European Central Bank shall carry out its tasks on its own responsibility under the conditions laid down in this Treaty and in the Statute annexed hereto.

2. In performing their duties, the European Central Bank, a central bank of a Member State and members of their decision-making bodies shall neither seek nor take instructions from the institutions of the Community or its Member States or from any other body.

The Community and the Member States shall not seek to influence the European Central Bank, the central banks of the Member States and the members of their decision-making bodies in the performance of their tasks and shall respect their independence. To that end, the Member States shall amend, where necessary, legislation governing relations between their central banks and their national governments.

3. The European Central Bank may under no circumstances grant to the Community or to one of its Member States or to any public body a loan or other credit facility intended to make good a budget deficit.

Article 106b

1. For the purposes of the preceding Article, Eurofed's tasks shall be:

(i) to determine and conduct monetary policy;

(ii) to issue notes and coins denominated in *ecus* as the only legal tender throughout the Community, subject to the provisions of Article 109h(2);

(iii) to conduct foreign-exchange operations in accordance with the guidelines laid down by the Council;

(iv) to hold and manage foreign reserves;

(v) to participate in international monetary cooperation;

(vi) to monitor the smooth operation of the payments system;

(vii) to participate as necessary in the formulation, coordination and execution of policies relating to banking supervision and the stability of the financial system.

2. In order to carry out the tasks assigned to it, Eurofed shall:

(i) conduct credit operations and operate in the money and financial markets;

(ii) hold the foreign reserves of the Member States, ownership of which will have been transferred to the Community;

(iii) have its own decision-making powers, and in particular the power to require credit institutions to lodge reserves with it.

3. The European Central Bank shall be consulted by the Commission regarding any draft Community legislation or any proposed international agreement on monetary, prudential supervision, banking or financial matters.

It shall also be consulted by the authorities of the Member States regarding any draft legislation on such matters.

Article 107

1. Eurofed shall be administered by the decision-making bodies of the European Central Bank.

2. The European Central Bank shall be administered by a Council, hereinafter referred to as the 'Council of the Bank' made up of the 12 governors of the national central banks and the six members of the Executive Board, one of whom, the President of the European Central Bank, shall chair meetings of the Council of the Bank.

The members of the Council and the Executive Board of the Bank shall carry out their tasks in a completely independent manner in the general interests of the Community.

3. After discussion by the European Council and after consulting the European Parliament, the President and the other members of the Executive Board of the Bank shall be appointed for a period of eight years by the Council, acting unanimously.

4. The Council of the Bank shall take the decisions necessary to ensure performance of the tasks entrusted to Eurofed under this Treaty. It shall determine the Community's monetary policy and shall adopt the guidelines necessary for its implementation.

5. The Council of the Bank shall adopt its decisions by a majority vote of its members.

The conditions governing the casting of votes by the members of the Executive Board are laid down in the Statute of Eurofed and the European Central Bank.

6. The Executive Board shall take the necessary administrative decisions in line with the guidelines and decisions adopted by the Council of the Bank.

In addition, the Executive Board may, subject to the conditions set out in the Statute, be delegated certain powers by decision of the Council of the Bank.

7. The President of the Bank shall chair the Executive Board, represent the European Central Bank externally, act in its name in judicial or other matters and exercise authority over all its departments.

8. The division of responsibilities between the Council of the Bank and the Executive Board is set out in the Statute.

Article 108

1. The Council, acting by a qualified majority on a proposal from the Commission and in close cooperation with the European Central Bank, shall lay down guidelines for the Community's exchange-rate policy.

In accordance with those guidelines, the European Central Bank shall conduct an appropriate intervention policy.

2. The Council shall adopt, in accordance with the same rules and, where necessary, by urgent procedure, the Community's position in international monetary or financial bodies.

3. Within those bodies, the Community shall be represented by the President of the Council, the President of the Bank and a Member of the Commission.

Chapter 3

Institutional provisions

Article 109

1. The President of the Bank shall attend meetings of the Council that deal with the coordination of economic

policies and the examination of the specific recommendations referred to in Article 102d.

He may transmit to the Commission opinions of the Council of the Bank on developments in the economic and monetary situation in the Community or in certain Member States.

2. The President of the Council and a Member of the Commission may attend meetings of the Council of the Bank but shall not be entitled to vote.

3. The Commission may address to the President of the Council and to the President of the Bank observations which, in its view, have a bearing on the consistency between economic and monetary policy. Those observations may be published.

4. The European Central Bank shall, each year, transmit a report on Eurofed's activities and on monetary developments to the European Parliament, the European Council and the Commission.

5. The European Parliament shall hold a general debate once a year on the conduct of economic and monetary policy at Community level on the basis of a report from the Commission and the report from the European Central Bank.

The President of the Bank shall take part in that debate.

6. In addition, the President of the Bank may, at the request of the European Parliament or on his own initiative, be heard by the competent committee of the European Parliament.

*Article 109a
(former Article 105 (2))*

A Monetary Committee with advisory status is hereby set up. It shall have the following tasks:

(i) to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;

(ii) to deliver opinions at the request of the Council or of the Commission or on its own initiative, for submission to these institutions.

The Member States and the Commission shall each appoint two members of the Monetary Committee.¹

Chapter 4

(for information)

The contents and title of this chapter are to be determined in the light of the Treaty amendments relating to political union. This chapter could in particular group together all the other economic provisions relating to EMU in the Treaty (notably the provisions relating to the free movement of capital). (See Article 67 *et seq.* above).

Chapter 5

Transitional provisions

SECTION 1

Transitional period

Article 109b²

The transitional period³ for achieving economic and monetary union shall begin on 1 January 1994.

2. By that date, the following shall have been achieved:

(i) the abolition, as between Member States, of all obstacles to the free movement of capital;

(ii) the participation of the largest possible number of Member States' currencies in the exchange-rate mechanism of the European Monetary System (EMS);

(iii) the existence of effective arrangements preventing, in each Member State, the monetary financing of public-sector budget deficits and ensuring that the Community or the Member States are not liable for the debts of another Member State.

3. [...]⁴, the Member States shall initiate the process for ensuring the independence of the members of

¹ The composition and functions of this Committee shall be amended in the light of the overall approach of economic and monetary union.

² The numbering is provisional and will have to be adjusted in line with the number of articles included in Chapter 4 above.

³ *Corresponding to Stage II of the Delors Committee's plan.*

⁴ *Date of entry into force of the Treaty amending the EEC Treaty with a view to achieving economic and monetary union.*

Eurofed, which is to be completed not later than the time of the transition to the final stage of economic and monetary union.

Article 109c

1. During the transitional period, the Community shall adopt appropriate measures to reinforce the convergence of economic and monetary developments in the various Member States and in particular price stability and the consolidation of public finances. It shall, in particular, ensure that the instruments and methods of the multilateral surveillance exercise are improved in the light of the experience gained during Stage I.

2. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may implement, in so far as necessary, some or all of the provisions set out in Articles 102d to 104 of the Treaty.

Article 109d

1. At the start of the transitional period, Eurofed shall be established pursuant to Article 106, in particular with a view to:

- (i) reinforcing the coordination of monetary policies;*
- (ii) establishing the instruments and procedures necessary for the future conduct of the single monetary policy;*
- (iii) supervising the development of the ecu.*

2. The Community and the Member States shall take all appropriate measures to set up the various bodies of the European Central Bank and to allow Eurofed to operate.

3. For the purposes referred to in paragraph 1, the Community shall adopt the acts provided for in this Treaty and the Statute annexed hereto so as to enable Eurofed to perform its duties.

4. As soon as they are set up, the bodies of the European Central Bank shall perform the tasks and comply with the obligations provided for in Article 109.

Article 109e

1. As soon as it is set up, the European Bank, having due regard to the responsibilities incumbent upon the

authorities of the Member States as regards the formulation and conduct of their monetary policies:

(i) shall perform the duties entrusted to the European Monetary Cooperation Fund (EMCF) and the Committee of Governors of the Central Banks and, in particular, shall ensure the smooth operation of the EMS;

(ii) shall be empowered to make recommendations, which it may publish, to the central banks of the Member States concerning the conduct of their monetary policy;

(iii) may hold and manage foreign-exchange reserves, assist in the definition and conduct of a Community exchange-rate policy and, in particular, intervene on the foreign exchange markets;

(iv) shall ensure the smooth operation of the ecu market and, in particular, shall assume responsibility for the ecu bank clearing system;

(v) shall participate in the harmonization of monetary and financial statistics and in the approximation of monetary policy instruments;

(vi) shall make preparations for linking up payments networks and money and financial markets;

(vii) shall supervise the devising and technical preparation of means of payment and notes and coins in ecus.

2. The European Central Bank shall be consulted by the Commission on any draft Community legislation or any proposed international agreements in the monetary, prudential supervision, banking or financial fields.

It shall also be consulted by the authorities of the Member States on any draft legislation on such matters.

3. Having due regard to the provisions of the Statute of Eurofed and of the European Central Bank, the Council, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the European Central Bank, shall adopt the measures required to allow the performance of the duties defined in paragraph 1.

Under the same procedure, the Council shall adopt the arrangements for transferring the assets and liabilities of the EMCF to Eurofed.

4. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may entrust other functions to the European Central Bank

within the limits provided for in Article 106b. It shall, in accordance with the same procedure and in so far as is necessary, adopt the measures required to allow the performance of such functions.

SECTION 2

Transition to the final stage

Article 109f

Within three years of the start of the transitional period, the Commission and the Council of the Bank shall report to the European Council on the results obtained and in particular on the progress achieved on convergence.

On the basis of such reports, and after consulting the European Parliament, the European Council shall establish that the conditions for moving from the transitional period to the final stage of economic and monetary union have been met.

It shall do so on the basis of an assessment of the results of market integration and of the convergence of economic and monetary developments in the Member States.

Article 109g

Having established the fact referred to in Article 109f, the Council, acting by a qualified majority in favour cast by at least eight members, shall immediately take the decisions required on a proposal from the Commission.

It may, in particular, decide on the principle of a temporary derogation for a Member State which, because of economic difficulties, is not yet in a position to participate fully in the monetary-policy mechanisms specified for the final stage of economic and monetary union.

On the basis of a report drawn up by the Commission and after consulting the European Central Bank, it shall also lay down, in accordance with the same procedure, the duration and implementing arrangements for such derogation. The Council and the Commission shall immediately send the European Parliament a report on the decisions taken.

Article 109h

1. Immediately after establishing the fact referred to in Article 109f, the Council shall adopt the fixed exchange

rates between Member States' currencies and the measures necessary for introducing the ecu as the single currency of the Community, acting in accordance with the procedure provided for in paragraph 3.

As from such time, Eurofed shall exercise fully its functions in the monetary policy field.

2. The Council, acting in accordance with the procedure provided for in paragraph 3, shall adopt, in so far as is necessary, the technical arrangements under which Member States' currencies may provisionally remain legal tender.

3. The measures provided for in paragraphs 1 and 2 shall be adopted by the Council, acting unanimously on a proposal from the Commission and in consultation with the European Central Bank.

Where, pursuant to Article 109g, the Council has decided on a derogation for one or more Member States, such measures shall be adopted unanimously by the Member States participating in the final stage.

4. Where, pursuant to Article 109g, the Council has decided on a derogation for one or more Member States, the Council, acting unanimously on a proposal from the Commission and in consultation with the European Central Bank, shall determine the conditions under which the qualified majority provided for in Article 108 are met.

Chapter 6 ¹

Commercial policy

Articles 110 to 116: Unchanged (subject to amendments to be made to these Articles in the light of the work of the Intergovernmental Conference on political union).

TITLES III TO VII

Unchanged.

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¹ Change in numbering: currently Chapter 4.

PART FOUR

Association of the overseas countries and territories)

Unchanged.

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PART FIVE

Institutions of the Community

TITLE I

Provisions governing the institutions

The provisions under this Title are unchanged *except* for Article 173 on legal review of acts of the institutions, which should read as follows:

Article 173

The Court of Justice shall review the legality of acts [of the European Parliament,]¹ of the Council, the Commission *and the European Central Bank* other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by [the European Parliament]¹ a Member State, the Council or the Commission on grounds of lack of compet-

ence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The European Central Bank may, in order to safeguard its prerogatives, bring an action based on grounds deriving from infringement of such prerogatives against acts of the Council and the Commission.

(Rest of Article unchanged).

TITLE II

Financial provisions

Article 199

All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

The revenue and expenditure shown in the budget shall be in balance.

Article 199a

The proceeds of borrowings contracted to finance the special loans referred to in Article 104(1) shall be shown as revenue in a special section of the budget. They may not be allocated by transfer or in any other way to the financing of the Community's normal operating expenditure.

[For information: The other budgetary provisions of the Treaty will have to be reviewed in the light of the work of the Intergovernmental Conference on political union.]

¹ Article to be completed in the light of the work of the Intergovernmental Conference on political union.

Commentary

Article 1

1. Article 1 of the 1957 Treaty establishing the European Economic Community (EEC) is the provision which created the Community. That designation has become too narrow given the tasks conferred on the Community by the 1986 Single European Act and those which may be assigned to it by the Intergovernmental Conferences on EMU and political union.

Nor does that designation any longer correspond to the public's perception of the Community. It is proposed that current practice should be reflected by replacing the words 'European Economic Community' by 'European Community'.

2. The amendment of the Community's name in Article 1 of the EEC Treaty would not affect the legal scheme of the three European Communities. Thus, the European Atomic Energy Community (Euratom) and the European Coal and Steel Community (ECSC) will still perform the tasks assigned to them by the respective Treaties in accordance with the rules laid down in them even though, since 1967, the institutions responsible for carrying out those tasks have been common to the three legal persons represented by the three Communities.

Article 2 (Objectives)

1. Article 2 defines the objectives of the Community and the means by which they are to be achieved.

This Article, which has remained unchanged since 1957, will have to reflect the new dimension of the Community after the entry into force of the treaties on political union and on economic and monetary union (EMU) following the two Intergovernmental Conferences that have been convened in accordance with Article 236 of the EEC Treaty. It will need, therefore, to summarize the amendments envisaged at the two conferences.

Accordingly, the draft EMU treaty submitted by the Commission proposes a new wording for Article 2 which will have to be finalized in the light of the outcome of the Intergovernmental Conference on political union. The draft EMU treaty contains only those amendments to the EEC Treaty which are necessary to ensure the establishment and the operation of

EMU; it does not affect the other amendments necessary for the parallel development of political union.

2. EMU forms part of the objectives of the Community mapped out in this provision. It becomes the framework within which the Community's economic and social objectives can be achieved more effectively and more rapidly, while providing individuals and economic operators with the advantage of a single currency, the ecu, both inside the Community and in relations with third countries.

3. As emphasized in new Article 2, EMU is to be based on the Community's achievements to date, the *acquis communautaire*. These achievements include everything which has been done to establish the common market (Article 8(7) of the EEC Treaty). More specifically, they include the creation of an internal market comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured (Article 8(a) of the EEC Treaty).

These achievements likewise include the other Community policies as clarified or supplemented by the Single European Act (social policies, structural policies and environmental protection policy, for example).

4. As pointed out in the comments on Article 102b below, EMU is to be seen in the context of the full achievement of the objectives of the Single European Act.

Article 3 (Activities)

1. This Article describes the various activities to be carried on with a view to achieving the objectives set out in Article 2. It should have been supplemented when the Treaty was amended by the Single European Act in 1986 to take account of the new Community policies provided for in that Act. It will have to be updated as part of the work of the Intergovernmental Conference on political union and will have to take account of any extension of the Community's activities and of the description of such new activities as are endorsed by the Conference.

Note to the reader: The numbering used in the sections on the articles does not necessarily correspond to that of the paragraphs or subparagraphs of the articles of the draft treaty that are commented upon.

In the draft EMU treaty, it was deemed sufficient to amend Article 3(g), which has become too narrow to describe the economic aspects of EMU, and to add a new point (ga) dealing with the monetary aspects.

2. Article 3(g) is amended to clarify the foundations of the common economic policy of EMU: the definition of common objectives, close coordination of Member States' policies (an element taken over from present Article 3(g)), and the implementation of the other common policies. These matters are developed in Articles 102b to 104a of the Treaty.

3. Article 3(ga) describes the essential feature of the monetary dimension of EMU, namely the definition and pursuit of a single monetary policy.

It affirms that the primary objective of the policy is price stability, as advocated in the report of the Delors Committee and incorporated into the Statute of the European System of Central Banks drawn up by the Governors (Article 2.1), while at the same time emphasizing that this policy must support the common economic policy. The two aspects are complementary, even though the first one is described as the primary one.

The institution entrusted with administering this policy, the European System of Central Banks, is established by Article 4; its structure and tasks are defined in Article 105 *et seq.* of the draft treaty.

Article 4 (Institutions)

1. Article 4 states that the tasks entrusted to the Community are to be carried out by its institutions, which are specified in paragraph 1.

The task of defining and conducting monetary policy is to be entrusted to a new institution, the European System of Central Banks, to be known as 'Eurofed'. Eurofed will be composed of the existing central banks of the Member States and of the newly established European Central Bank (see Article 106(2)).

There are two important distinctions between Eurofed and the four Community institutions (the European Parliament, the Council, the Commission and the Court of Justice). For this reason, its establishment is envisaged in new paragraph 2 of Article 4, thereby avoiding any confusion between the legal scheme applicable to the four Community institutions and that applicable to Eurofed.

2. Eurofed differs from the Community's existing institutions in two respects.

First, the institutions referred to in paragraph 1 form an integral part of the legal structure imparted by the EEC Treaty to the European Economic Community, the legal person in public international law which it set up (see Articles 1, 210 and 211 of the EEC Treaty); those institutions thus have no legal personality of their own.

Eurofed, on the other hand, comprises the European Central Bank, which will have legal personality under international law (see Article 106(2) below), and the national central banks, which will retain the legal personality conferred on them by their own national law.

Second, Eurofed is to be independent not only politically but also administratively. The rules laid down in the EEC Treaty for the traditional institutions, and particularly the financial rules (Articles 199 to 209), are not adapted to its needs. There is thus a need for specific rules to apply to Eurofed or the European Central Bank.

On these two points, the views of the Commission coincide with those expressed by the Governors of the Central Banks when they drew up their draft statute.

3. In line with the general scheme of Community law, the tasks and main features of the system should be included in the treaty itself, while the operation of the system should be defined in its statute, which will take the legal form of a protocol annexed to, and will constitute an integral part of, the EEC Treaty (Article 239 of the EEC Treaty).

This was the practice followed by the architects of the Treaty of Rome in setting up the European Investment Bank, for example (Articles 129 and 130 of the EEC Treaty).

The Governors' draft statute and the Commission's draft EMU treaty agree on the principles of the scheme for the provisions dealing with Eurofed. But the EMU draft treaty starts from the assumption that more particulars regarding the structure of the system must be included in the treaty in order to give them a more formal status, even though, for reasons of clarity, the statute may include certain provisions of the treaty.

4. The present paragraphs 2 and 3 of Article 4 are renumbered accordingly; they may also be revised as a result of the Intergovernmental Conference on political union.

Article 6 (Coordination of economic policy)

Article 6 is deleted; the coordination of Member States' economic policies and the rules governing the

role that the European Community is to play in this connection have been incorporated into the provisions on the economic policy of EMU (Articles 102b and 104a of the draft treaty).

Part Two: Foundations of the Community

Title III: Free movement of persons, services and capital

Chapter 4: Capital

This chapter has to be reworded to take account of EMU and placed in new Chapter 5 of Title II of Part Three of the EEC Treaty as amended by the EMU Treaty ('Economic and monetary union'), with the exception of the ban on restrictions on the free movement of capital (Article 67), which is one of the foundations of the Community developed in Part Two.

Article 67 (Free movement of capital)

1. As worded at present, Article 67, which deals with the free movement of capital, must be distinguished from the Articles dealing with the other fundamental freedoms (free movement of goods in Article 30; free movement of persons in Articles 47 and 52; freedom to provide services in Article 59). Those provisions have direct effect and confer rights on individuals; Article 67, on the other hand, does not have direct effect, with the result that the free movement of capital is governed entirely by secondary Community legislation adopted under Article 69 to give effect to Article 67 (see the judgment of the Court of Justice in Case 203/80 *Casati* [1981] ECR 2595).
2. The proposed amendment to Article 67 extends its scope beyond what is necessary for the proper operation of the common market. It transforms Article 67 into a prohibition of like nature to those that the other freedoms demand.
3. The wording of Article 67(2) has been tidied up, since the reference to the first stage in the establishment of the common market (Article 8 of the EEC Treaty) has become redundant.

Articles 68 to 73

The change made in Article 67 has repercussions on the other articles in the chapter on the free movement of capital, which have to be adapted or indeed repealed as a result. Some of these provisions will have to be included in an appropriate form in new Chapter 4 of Title II of the amended EEC Treaty.

Part Three: Policy of the Community

Title II: Economic and monetary union

This Title of the EEC Treaty, at present entitled 'Economic policy', is amended to 'Economic and monetary union', in line with what is announced in Article 2 of the draft treaty.

The present Treaty comprises four chapters: Cooperation in economic and monetary policy (Article 102a), Conjunctural policy (Article 103), Balance of payments (Articles 104 to 109) and Commercial policy (Articles 110 to 116).

The draft treaty completely recasts the first three chapters and their constituent articles, with only Article 103 being retained, albeit with some additional provisions.

Two other chapters are added, and this means that Chapter 4 (Commercial policy) becomes Chapter 6 with no amendment as to substance since the provisions of this chapter are liable to be amended in the context of the Intergovernmental Conference on political union. The Treaty provisions on the external economic policy should be adapted and regrouped in order to reinforce the Community's capacity for action within all international forums. This point was emphasized by the Commission in its opinion of 21 October 1990 concerning the Intergovernmental Conference on political union (COM(90) 600), delivered pursuant to Article 236. In this connection, it will be for the Council of Ministers to lay down the guidelines and for the Commission to ensure that they are implemented.

It should be recalled that, in certain areas, the Treaty already confers on the Community an important role that has clear economic implications even if these are

occasionally overlooked. Whether we take competition (Articles 85 to 89), the opening-up of public procurement (Article 130f(2)), research and development (Article 130f *et seq.*), European infrastructures (Article 130r *et seq.*), labour markets (Articles 49 and 118), environment (Article 130r *et seq.*) or taxation (Article 99), the Community's role will have to increase and the policies of the Community will have to be reinforced so as to improve the efficiency of the internal market, which is the foundation of economic union. It will be necessary in those areas to enhance the powers of the Community, essentially within the context of the Intergovernmental Conference on political union, which would go hand in hand with progress towards EMU.

Moreover, specific provisions have already been enacted by the Member States in order to improve economic convergence during Stage I of EMU. Take, for instance, Council Decision 90/141/EEC, which sets up a multilateral surveillance mechanism covering all aspects of economic policies in the short and medium term. This Decision also opens up the possibility of specific surveillance of budgetary policies during that initial stage.

The provisions described below, which will not come into play until Stage II, must therefore be considered as an extension to those applicable during Stage I.

In contrast, the provisions relating to monetary policy cannot be linked, at least not from a legal viewpoint, to anything which exists today. They are a new departure and, as such, deserve a more detailed commentary.

Article 102a (Implementation of EMU)

1. This Article spells out the foundations of EMU, as referred to in Article 2, indicates that it will be brought about in stages, stresses the need for parallelism between the economic and monetary aspects of EMU, and defines the arrangements for moving from one stage to the next. It refers implicitly to the approach proposed by the Delors Committee's report and endorsed at successive European Council meetings.

Stage I began on 1 July 1990 pursuant to the existing Treaty provisions. In contrast, the other two stages require a prior amendment of the EEC Treaty, as the report of the Delors Committee acknowledges.

Stage II is described in legal terms as a transitional period. It will begin on 1 January 1994, in accordance

with the conclusions of the Rome European Council on 28 October 1990, which were adopted by the Heads of State or Government of 11 Member States.

2. The provisions applicable during this transitional period, which, in the Commission's view, must be a short one, are contained in Articles 109b to 109e of the draft treaty, as indicated in the fourth paragraph.

The transition to Stage III of EMU, termed the 'final stage' in new Article 102a, should occur in accordance with the conclusions of the Rome European Council of 28 October 1990. It will not be automatic but will depend on whether the European Council finds that the objective conditions for such a move are met.

These conditions are set out in Article 109f of the transitional provisions of Chapter 5.

Chapter 1: Economic policy

In accordance with Article 3(g), this chapter defines the objectives of the common economic policy and the instruments for close coordination of Member States' economic policies.

Article 102b

1. Paragraph 1 of this Article defines the main economic policy objectives: growth, a high level of employment, and balance-of-payments equilibrium. The objectives are to be achieved without jeopardizing price stability, which is the prime monetary policy objective, or economic and social cohesion. The Article stresses that EMU is based on the full achievement of the objectives laid down in the Single European Act and extends those objectives. In adopting the Single European Act, the Member States confirmed the objective of achieving EMU in stages, as underscored by the European Council at its meeting on 27 and 28 June 1988 in Hanover.

Particular emphasis is placed on the progress achieved during Stage I with regard to convergence: the success of the process as a whole depends on the successful completion of Stage I.

2. Paragraph 2 calls on the Member States to pursue their economic policies in such a way as to contribute to achieving the objectives of EMU.

Article 102c(Multiannual guidelines)

1. This Article creates a new instrument for coordinating economic policies: multiannual economic policy guidelines.

As stated in the Commission paper of 21 August 1990, their purpose is to define general objectives for the Community and the means of achieving those objectives. So as to improve the compatibility of Member States' economic policies, specific reference will be made to the development of Member States' budget balances, the control of the costs of production, the levels of saving and investment, the adaptation of Community policies for achieving economic and social cohesion, and national structural policies.

2. Paragraph 2 lays down the procedure to be followed in formulating the guidelines; they will be proposed by the Commission, approved by the European Council and officially adopted by the Council of Ministers (Economic and Financial Affairs), after consulting the European Parliament, with the Council taking its decision by a qualified majority. The actual period during which the multiannual guidelines will apply is not stipulated in the Treaty, for reasons of flexibility; this will be done in the Commission's proposals (the period will normally last some three to five years).

3. Under paragraph 3, the Council will be able to make annual adjustments to the multiannual guidelines on the basis of a report drawn up by the Commission.

Article 102d(Recommendations)

1. Economic policy recommendations already constitute a coordination instrument in Council Decision 90/141/EEC on the attainment of progressive convergence of economic policies and performance during Stage I of economic and monetary union. This Article underlines the importance of this instrument by enshrining it as a provision in the Treaty. Where necessary, the recommendations may be addressed to each Member State; they would contain general guidelines on Member States' economic and budgetary policies.

2. The procedure to be followed in adopting the recommendations is set out in paragraph 1. The Council¹ will act by a qualified majority on a proposal from the Commission and after consulting the European Parliament. Paragraph 2 provides that the Commission, in association with the relevant Com-

mittee of the European Parliament, will see to it that the recommendations are implemented.

3. Paragraph 3 provides for the possibility of taking action if a Member State does not comply with the recommendations. After making known its view to the Member State concerned, the Commission may confidentially propose the necessary policy adjustments to the Council. If the Council does not take a decision on the Commission's proposal within one month, the Commission may make its proposal public.

Compliance with the recommendations is not a matter for review by the Court of Justice.

Article 103(Multilateral surveillance)

1. The new version of this Article is based very largely on Article 103 of the present Treaty. Paragraphs 2, 3 and 4 remain unchanged.

Two new subparagraphs have been added to paragraph 1 as it currently stands. This paragraph otherwise remains unchanged. First, an overall evaluation of the short and medium-term economic developments in the Community and in each of its Member States will be carried out regularly at Community level.

The multilateral surveillance already provided for in Council Decision 90/141/EEC is incorporated into the Treaty as the principal instrument for assessing the results of the coordination of Member States' economic policies.

This Article could be the legal basis for a subsequent revision of Council Decision 90/141/EEC, so as to reinforce convergence still further by redefining the content and procedures for multilateral surveillance in the light of the experience gained during Stage I.

3. The establishment of Community procedures for defining multiannual guidelines and the exercise of multilateral surveillance have important political consequences. In their deliberations, the national parliaments will have to take account of the guidelines and recommendations deriving from the new procedures. The Member States will have to justify their attitudes not only to the Community institutions but also to public opinion in their countries: hence the need for a large degree of transparency in the procedures.

¹ This task will appropriately fall to the Council of Ministers (Economic and Financial Affairs).

Article 104 (Financial assistance)

1. In an economic and monetary union, it is the general economic problems of the Member States and economic convergence which concern the Community rather than the balance-of-payments difficulties of a particular Member State. Present Articles 104 to 109 thus become superfluous. By contrast, a special financial support mechanism is introduced in place of the mutual assistance provided for in Article 108 of the present Treaty.

This mechanism would be activated in the event of serious economic problems in one or more Member States or if economic convergence required a particular effort on the part of the Community to back up national adjustment strategies, so as to provide positive conditionality. As envisaged in the Commission paper of 21 August, the mechanism will provide support for national efforts.

2. Paragraph 1 stipulates that, should such an eventuality arise, the Commission would examine the situation and could propose to the Council that, subject to certain conditions, financial assistance be granted in the form of aid to be borne by the Community budget or of special loans; the Council will decide by a qualified majority.

3. As stated in paragraph 2, the general conditions for such intervention, including the requirement to inform the European Parliament, will be defined on the basis of secondary Community legislation. The Council will act by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament.

4. Under paragraph 3, the Council may establish a system of borrowing to finance the special loans under the support mechanism and will lay down the maximum volume of such borrowing. The decision-making procedure is in line with that provided for in the preceding paragraph. The borrowings would be entered in the budget and the proceeds shown as revenue in a special section of the budget (see Article 199a of the draft EMU treaty).

Article 104a (Budgetary rules)

1. This Article is concerned with the potential threat to monetary stability posed by budget deficits and their financing. It lays down specific rules (no monetary financing, no unconditional guarantee for Member States' public debt) and embodies the principle that excessive budget deficits must be avoided.

The two rules are in the nature of absolute prohibitions which do not call for any secondary legislation although, to be effective, the principle presupposes that an assessment is made of the budgetary conduct of the Member States. As indicated in the Commission paper of 21 August 1990, any assessment of an excessive deficit is, in practice, linked to the sustainable nature of the budget situation, something which cannot be ascertained in isolation from a general appraisal of the situation and economic developments and should, therefore, form an integral part of multilateral surveillance. However, it seems necessary to have one or more benchmarks for judging whether or not a deficit is excessive. The Commission will put forward proposals in this respect.

2. In order to avoid excessive budget deficits, paragraph 2 provides that the Council may adopt measures. Together with Article 3, to which it may have recourse, the reference here is to the recommendations specified in Article 102d, including the possibility of a Commission proposal which could be made public.

Article 105 (Monetary Committee)

It is proposed that paragraph 1 of Article 105 of the EEC Treaty be repealed. This provision requires Member States to coordinate their economic policies and, for that purpose, to provide for cooperation between their appropriate administrative departments and between their central banks.

The new provisions proposed, particularly the requirement that Member States pursue their economic policies with a view to contributing to achieving the objectives of EMU (Article 102b) and the multilateral surveillance arrangements, mean that paragraph 1 no longer serves any purpose.

Paragraph 2, which sets up the monetary committee, is transferred in an abridged form to Article 109a.

Chapter 2: Monetary policy

Article 105 (new)

1. This Article sets out the definition of monetary union as understood for the purposes of the new treaty. 'Monetary union' can be viewed as a system of irrevocably fixed exchange rates accompanied by

full convertibility of currencies, total freedom of movement of capital, and complete financial integration; or it can be viewed as a system based on a single currency. Since the publication of the Delors Committee's report, it has become clear that only a single currency can secure the full benefits of EMU. The ensuing provisions, dealing with the final stage, thus define EMU as a system based on a single currency.

The chapter on monetary policy naturally involves more institutional changes to the Treaty than does the chapter on economic policy. It lays down the structure and operation of a new monetary authority, Eurofed.

2. In line with the general scheme of Community law, the tasks and the essential structural features of the authority need to be included in the Treaty itself, while its manner of operation needs to be spelt out in its own Statute. This chapter has been drafted with this in mind and account has been taken of the proposals made by the Central Bank Governors in their draft statute of the European System of Central Banks and of the European Central Bank.

Article 106 (Eurofed)

1. This Article defines the new monetary authority: Eurofed is to be made up of the national central banks, which will retain their own legal personality, and of a central institution, the European Central Bank (ECB), which is established by this Article. This two-tier system, combined with the powers accorded to the governors of the national central banks within the managing bodies of the European Central Bank, reflects the federal character of Eurofed. Unlike its constituent bodies, Eurofed itself has no legal personality. The term 'Eurofed' refers to the co-existence of the national central banks and the ECB and to the body of rules governing relations between them.

2. Paragraph 3 states that the Eurofed Statute is to be annexed to the Treaty, conferring on it the same legal status as the Treaty itself (see Article 239 of the EEC Treaty). One particular effect of this is that the Statute could be amended only in the same way as the Treaty unless there was a specific provision to that end. Such a provision is, in fact, set out in paragraph 3, which provides for a simplified procedure, distinguishing between those provisions of the Statute which could be amended by the simplified procedure and those which could be amended only in accordance with Article 236 of the Treaty. Such a distinction can be made either by listing the provisions which

can be amended by the simplified procedure (a positive list) or by listing those which cannot be amended in this way (a negative list).

The method proposed is the positive list, along the lines of Article 188 of the Treaty, which deals with the Statute of the Court of Justice. The list itself will have to be drawn up at a later stage, in close consultation with the Central Bank Governors. As to procedure, it is proposed that the Council should decide on any amendment, acting by a qualified majority at the request of the European Central Bank and after consulting the Commission and the European Parliament.

Article 106a (Independence)

1. This Article lays down the rules providing for the independence of Eurofed and ensures that the principle of independence cannot be called into question by any obligation on Eurofed to finance budget deficits through money creation.

Paragraph 1 states that the European Central Bank is to carry out its tasks on its own responsibility and that it can act only under the conditions laid down in the Treaty and in its Statute.

Independence is vital if Eurofed is to achieve the primary objective assigned to it by Article 3(ga): the maintenance of price stability. Paragraph 2 accordingly provides that, in performing their duties, the European Central Bank, the national central banks and the members of their decision-making bodies may not seek or take any instructions from any Community institution, national authority or other body. This provision and the following one, which obliges the Community and the Member States to respect this independence, are closely modelled on Article 157(2) of the EEC Treaty, which concerns the Members of the Commission. In substance, the definition given of independence is very similar to that proposed by the Central Bank Governors.

The independence of the system has also to be protected against the danger that, under their national law, certain national central banks may not enjoy the requisite degree of autonomy. Paragraph 2 accordingly calls on the Member States to amend the relevant national legislation as necessary. The Central Bank Governors' draft statute contains similar provisions (Article 14.2).

2. The ban on the monetary financing of budget deficits is a necessary accompaniment to independence.

It applies to the public authorities (Article 104a of the draft EMU Treaty) and, as a corollary, to the monetary authority. The provision does not, however, rule out the possibility of Eurofed acquiring public-debt securities on secondary markets in connection with its monetary-policy operations. Nor does paragraph 2 rule out the granting of overdrafts on commercial terms to meet temporary shortages of liquidity.

Article 106b (Tasks and operation of Eurofed)

1. Paragraph 1 sets out the tasks of the system, while paragraph 2 spells out the powers that will enable it to carry out those tasks.

Eurofed's main task is to determine and conduct the monetary policy of the Community. It has sole power to issue notes and coins (denominated in national currency at the start of Stage III and subsequently in ecus), and this gives it control of the monetary base.

2. Eurofed will intervene on foreign-exchange markets in accordance with guidelines laid down by the Council. Article 108(1) of the draft EMU treaty establishes the procedures by which these guidelines are to be laid down (in close cooperation with Eurofed).

As a corollary to its role in exchange policy, Eurofed is to be the definitive holder of the official foreign-exchange reserves and is to manage them.

As stipulated in paragraph 2, it is to act on behalf of the Community, to which the ownership of those reserves will have been transferred.

3. Eurofed is to participate in international monetary cooperation. EMU will enable the Community to play an appropriate part in devising and managing a more stable international monetary system. The Community will therefore be represented on the international scene in the same way as the individual countries, namely, by those responsible for economic policy assisted by their monetary authority, Eurofed. Paragraphs 2 and 3 of Article 108 of the draft EMU treaty lay down the necessary institutional provisions.

4. Eurofed's other tasks are stated in the same terms as those provided for in the Central Bank Governors' draft statute:

(i) It is to monitor the smooth operation of the Community's payments system, which will have to be as efficient for the Community as a whole as is a national payments system at the moment.

(ii) Eurofed is to participate as necessary in the formulation, coordination and execution of policies relating to banking supervision and the stability of the financial system.

(iii) The list of powers in paragraph 2 includes the traditional tools of monetary policy. It also includes a provision setting out Eurofed's power to take decisions, in accordance with Article 4(2) of the Treaty, such power being exercised within the limits of the other powers conferred upon Eurofed by the Treaty itself or, to a wider extent, by the Statute.

Like the traditional institutions, which have power to take decisions (Council: second indent of Article 145; Commission: third indent of Article 155), Eurofed may, in exercising this power of decision, have recourse to the legal instruments provided for in Article 189.

(iv) Paragraph 3 entitles Eurofed to be consulted by both the Commission and the Member States regarding any draft legislation or other official act in the fields within its competence.

Article 107 (Organization)

1. This Article deals with Eurofed's decision-making bodies and the decision-making process. Except where otherwise specified below, it mirrors the draft statute drawn up by the Central Bank Governors.

The decision-making mechanism envisaged has to take account of the novel legal structure of the system. If a single monetary policy is to be formulated and pursued, the national central banks, which retain their own legal personality, must be placed under the authority of the European Central Bank. It is therefore vital that the rules ensuring the primacy of the central institution be laid down without ambiguity.

Paragraph 1 according provides that Eurofed is to be administered by the decision-making bodies of the European Central Bank. To the extent necessary, it establishes a legal basis for the exercise of the power of management by the European Central Bank *vis-à-vis* the national central banks.

2. The European Central Bank's decision-making bodies are to be the Council and the Executive Board (paragraph 2). These bodies therefore form part of the European Central Bank, an institution with legal personality, and are not traditional Community institutions (see comments on Article 4 above). Each of the Central Bank Governors is to have a seat on the Council, reflecting Eurofed's federal structure.

The specific aspects of democratic accountability are spelt out in paragraph 3. The term of office of members of the Executive Board is set at eight years, so as to ensure stability in office. The draft treaty makes no provision for the removal from office of members of the Executive Board. Any such provision will have to be included in the Statute. The members of the Executive Board, like the Governors of the national central banks, are to be appointed by the political authorities.

3. It is proposed that all the members of the Executive Board should be appointed in the same way: after discussion by the European Council and after consultations with the European Parliament, the President of the European Central Bank and the other members of the Executive Board are to be appointed by the Council of the European Community acting unanimously. These procedures depart from those proposed by the Central Bank Governors in their draft statute, which envisages consultation of Parliament only in respect of the appointment of the President and Vice-President, with the Eurofed Council being called upon to give its opinion in the case of the other members (Article 11.2 and 3 of the draft statute).

4. Paragraph 4 emphasizes the primacy of the Eurofed Council, granting it power to take the decisions necessary to ensure performance of the tasks entrusted to Eurofed and to determine the Community's monetary policy.

5. Paragraph 5 provides that the Council is to adopt its decisions by a majority vote of its members. This implies that each member has one vote. This rule reflects Eurofed's federal character while, at the same time, reinforcing the decision-making process and emphasizing that the members of the Council are responsible to the Community as a whole. The Central Bank Governors' draft statute likewise embodies a 'one man, one vote' principle but requires a majority only of the members present (Article 10.2), with the result that an important decision could be taken in the absence of a large number of members. The provision proposed in the draft treaty is based on existing Community law (see, for example, Article 148(1) of the EEC Treaty). The other rules governing voting on the Executive Board will be set out in the Statute.

6. Another aspect of the decision-making process is the division of responsibility between the Council and the Executive Board and between the European Central Bank and the national central banks. In the latter case, the division of responsibility as regards the implementation of monetary policy will have to

be spelt out in the Statute. As for the division of responsibility between the Council and the Executive Board, Article 107(6) empowers the Executive Board to take the necessary administrative decisions, in line with the guidelines and decisions adopted by the Council of the European Central Bank, but it also allows the Council to delegate other powers to the Executive Board. Paragraph 8 states that this division of responsibility will be spelt out in the Statute.

Lastly, the President of the European Central Bank will represent the Bank and will be given authority over a permanent staff (paragraph 7).

Article 108 (Exchange-rate policy and international monetary cooperation)

1. Paragraph 1 of this Article specifies the procedure for adopting guidelines for the Community's exchange-rate policy. Since the exchange rate is an important component of external economic policy, external relations in the monetary field have two aspects: monetary in the narrow sense of the term, and economic. They therefore involve both the centre of economic decision-making (the traditional institutions) and the centre of monetary decision-making (Eurofed). It is important that exchange-rate policy should be determined within a framework of close cooperation and should observe certain fundamental principles. In particular, exchange-rate intervention with regard to foreign currencies should not run counter to the main objective of monetary policy, namely price stability.

2. With this in mind, it is proposed that the Council should lay down these guidelines, acting by a qualified majority on a proposal from the Commission and in close cooperation with the European Central Bank. This mechanism confers ultimate responsibility for exchange-rate policy on the institutions responsible for economic policy, as is the case in all Member States, but it leaves Eurofed some room for manoeuvre in carrying out that policy. It also ensures that the monetary authority is at all times in a position to press home the interests of internal monetary policy.

3. Under paragraph 2, the Community's position in international monetary bodies is to be determined by the same procedures.

Turning to the external representation of the Community, one implication of paragraph 3 is that at G7 meetings, for example, the Community would be represented by the President of the Council, the Presi-

dent of Eurofed and a Member of the Commission. The Community would, therefore, be properly represented in this way both within international monetary bodies and within international economic bodies.

Chapter 3: Institutional provisions

Article 109

1. As emphasized in Article 106a of the draft EMU treaty, the European Central Bank will enjoy complete independence in carrying out the tasks assigned to it. It must, however, give an account of its activities.

Procedures are also needed that will ensure the consistency of economic and monetary policies without impinging on the independence of the European Central Bank. Such mechanisms exist in legislation in those Member States whose central banks are independent *vis-à-vis* the public authorities in the same way as Eurofed in general and the European Central Bank in particular will be.

This is the reason why Article 109(1) provides for the Eurofed President to attend the meetings of the Council of Ministers that deal with the coordination of economic policies. He may address such meetings but will not be entitled to vote (see Article 148 of the EEC Treaty). This provision reflects in the main the wishes of the Central Bank Governors (Article 15.2 of the draft statute). It does not, though, satisfy their request that they be allowed to attend meetings of the European Council; this does not, of course, mean that the President of the European Central Bank could not be invited by the European Council to attend its meetings if the situation so demanded, notably in order to explain an opinion given to the Commission (paragraph 1) or the report he lays before it (paragraph 4).

2. The corollary of attendance by the President of the European Central Bank at Council meetings to discuss economic matters (Article 109(1)) is participation (with no right to vote) by the President of the Council and a Member of the Commission at meetings of the Eurofed Council (Article 109(2)). In this respect, the text corresponds to that proposed by the Central Bank Governors (Article 15.1 of the draft statute).

3. Paragraph 1 states that the President of the European Central Bank may transmit opinions on the economic and monetary situation in the Community

or in certain Member States to the Commission. This will allow the Commission to prepare, in full knowledge of the situation, the proposals it is required to present to the Council in connection with its task of ensuring the consistency of, and monitoring, the general economic policy of the Community.

4. Paragraph 3 provides that the Commission may address observations regarding the consistency between economic policy and monetary policy to Eurofed. This right to submit observations is entailed by the responsibility to be exercised by the Commission in ensuring consistency between economic policy and monetary policy (see Articles 102c and 102d).

The procedure to be followed by the Commission is spelt out in paragraph 3. The observations are confidential and are addressed as such to the President of the Council of Ministers and to the President of the European Central Bank. If the observations are not acted upon within a reasonable period, the Commission may publish them. This provision mirrors Article 102d(3) (proposal for a recommendation concerning measures to rectify the economic situation).

5. In addition, paragraph 4 stipulates that Eurofed is each year to transmit a report giving account of its activities to the European Council and to the European Parliament.

This report, together with a report from the Commission, will serve as the basis for a general debate in the European Parliament (paragraph 5) on the conduct of economic and monetary policy in which the Eurofed President will take part. Lastly, the Eurofed President may, at the request of the European Parliament or on his own initiative, be heard by the competent committee of the European Parliament (paragraph 6).

6. In sum, this Article establishes a set of provisions that give substance to democratic accountability within EMU. Whether we take cross-participation in the decision-making bodies, the Commission's right to make observations, the general debate in Parliament on the conduct of economic and monetary policy, or the explanations, 'hearings' and report of Eurofed to the European Parliament, all these factors contribute to a balance of power within EMU that respects the principle of democratic legitimacy. Of particular note here is the role of the Commission: exercise of its right to make observations must be assessed in the light of its accountability to Parliament in order to gauge its full significance.

Article 109a (former Article 105(2))

Basically, this provision is former Article 105(2), which set up the Monetary Committee and has been included in an abridged version that takes account of the development of EMU. The tasks and composition of the Monetary Committee will need to be adapted to take account of the overall design of EMU as it emerges from the deliberations of the Intergovernmental Conference.

Chapter 4

This Chapter is to include the other provisions relating to EMU. It will need to pay special attention to the free movement of capital, and especially capital flows from (and to) third countries. Article 72 of the Treaty, which currently deals with this matter, needs to be extensively reworded, as has already been emphasized in the comments on the chapter concerning the free movement of capital (Articles 67 to 73).

Chapter 5: Transitional provisions

Section 1: Transitional period

Article 109b

This Article lays down the date on which the transitional period, corresponding to Stage II in the Delors Committee report, is to begin and sets out what must be done beforehand. It mirrors the conclusions reached by the Heads of State or Government of 11 Member States at the European Council meeting in Rome on 27 and 28 October 1990.

The transitional period, then, is to begin on 1 January 1994. Before that date the free movement of capital must have taken effect, the largest possible number of currencies must have joined the exchange-rate mechanism of the EMS (thereby leaving a measure of discretion to the Community and the Member States), and monetary financing of budget deficits and automatic bail-outs must be prohibited. The process for ensuring the independence of the members of Eurofed must also have been initiated in every Member State.

Article 109c

1. This Article deals with the measures to be taken to reinforce convergence during the transitional period so that the single monetary policy can be pursued without difficulty as soon as the final stage begins. The achievements of Stage I of EMU will have to be built on, and the instruments and methods of multilateral surveillance will have to be improved in the light of the experience acquired.

2. Paragraph 2 establishes a procedure for anticipating all or some of the economic policy provisions of the final stage (Articles 102d to 104). A decision of this kind will need a unanimous vote of the Council.

In the absence of any such decision, the mechanisms for coordination and financial support for Member States in difficulty which have been developed for Stage I of EMU under the Treaty of Rome, as amended by the Single European Act, will continue to apply.

Article 109d (Establishment of Eurofed)

1. Paragraph 1 sets the date on which Eurofed is to be established as a legal person in public international law and requires the Community and the Member States to take the necessary measures to allow Eurofed to operate.

For example, they will have to appoint the members of the Executive Board of the European Central Bank and to take the measures guaranteeing the independence of its Council (Article 106a (2)).

The establishment of an institution and its decision-making bodies some time before it assumes all its powers is normal practice; it enables those bodies to adopt the procedural and administrative arrangements necessary if they are to function properly and if their members are to establish a climate of mutual confidence beforehand.

2. Paragraph 1 sets objectives for Eurofed which are to apply from the time it is set up, preparing the way for the exercise of the tasks to be assigned to it during the final stage under Article 106b of the draft treaty. These objectives were spelt out in the conclusions of the Rome European Council.

Paragraph 3 imposes an obligation on the Community institutions to adopt, during the transitional period, Community legislation that will enable Eurofed to perform its functions. This will include,

for example, the framework legislation requiring credit institutions to establish compulsory reserves or to provide statistics on their operations.

Along the lines of Article 87(2)(a) of the present EEC Treaty, which concerns competition matters, such legislation will have to empower the European Central Bank or the national central banks to impose fines or penalty payments to ensure compliance with the requirements it lays down.

3. The last paragraph states that the institutional provisions provided for in Article 109 are to apply to the decision-making bodies of the European Central Bank and of Eurofed as soon as those bodies are set up. As a result, the dialogue between the Community institutions responsible for general economic policy and the institution which is to be responsible for monetary policy in the final stage will get under way during the transitional period. The European Central Bank will also have to report to the European Parliament on its activities as from the time it is set up (see Article 109e below).

Article 109e

1. This Article sets out the tasks to be assigned to the European Central Bank so that Eurofed is able to perform its duties during the transitional period:

(i) it replaces the European Monetary Cooperation Fund (EMCF) and the Committee of Central Bank Governors; it therefore performs the functions assigned to them under current legislation, including that of ensuring smooth operation of the EMS;

(ii) it is empowered, where necessary, to make recommendations to the Member States' central banks, if only to ensure that the EMS operates smoothly; it may publish those recommendations;

(iii) it may hold foreign-exchange reserves over and above those it is responsible for administering under the EMCF; it can, therefore, assist in the formulation of Community exchange-rate policy by the Council of the European Communities (see Article 145 of the EEC Treaty) and, where appropriate, intervene on foreign-exchange markets in accordance with the guidelines laid down by the Council;

(iv) its responsibility for carrying out surveillance of the ecu market arises from the conclusions of the European Council meeting in Rome on 28 October 1990: this includes in particular responsibility for the clearing mechanism (currently administered by the BIS in Basle);

(v) finally, it is entrusted with more technical tasks in preparation for its role in the final stage: participation in the harmonization of monetary statistics and in the approximation of monetary policy instruments, preparations for linking up money and financial markets and payments systems; and the design and technical preparation of notes and coins denominated in ecus.

2. Paragraph 3 contains the legal provisions necessary for the European Central Bank to carry out the above functions, and in particular for the transfer of the EMCF's assets and liabilities.

Paragraph 4 introduces a procedure to enable the Council to entrust to the European Central Bank functions other than those listed in paragraph 1, in the light of the progress made towards convergence of economic and monetary policies. Such a decision requires unanimity in the Council. The procedure is similar to that provided for in Article 109e(3) referred to above.

Section 2: Transition to the final stage

This Section contains the necessary provisions for moving from the transitional stage to the final stage in line with the guidelines laid down by 11 of the Heads of State or Government at the Rome European Council.

Article 109f

According to this Article, it is for the European Council itself to establish that the conditions for moving to the final stage have been met. This stems from the conclusions of the European Council meeting in Rome on 28 October 1990.

The use of the term 'establish' reflects the fact that this involves a political assessment of a number of objective factors — progress towards market integration and towards convergence of economic and monetary developments.

Article 109g

1. This Article enables the Council to take the necessary measures once the European Council has established that the above conditions have been met.

These measures include in particular a temporary derogation for a Member State in economic difficul-

ties. The arrangements for such derogations are set out in the second and third paragraphs.

Other measures may involve monetary cooperation with third countries that might be associated, in one way or another, with the EMS (with the ecu) at the time of transition to the final stage of EMU.

2. This Article also introduces an innovation in Community law: temporary derogations may be decided on by the Council on a majority vote as provided for in the second indent of Article 148(2). Such a majority is obtained where 54 votes are cast in favour of a decision (weighted according to Article 148(2)) by at least eight Member States.

Article 148(2) provides for this special qualified majority in cases where the Council acts other than on a proposal from the Commission (for example, where the Council revokes, pursuant to Article 108(3), a decision taken by the Commission).

In this particular case, the Council acts on a proposal from the Commission. The exception to the rule in the second indent of Article 148(2) is justified by the special situation in which provision has to be made for a derogation to be granted. Special protection for small countries in such cases should be granted in the same way as when the Council acts, not on the basis of a Commission proposal, by a qualified majority.

Article 109h

1. This Article empowers the Council to decide, immediately after the European Council has established that the conditions for moving to the final stage of EMU have been met, on the transition to that final stage, on the irrevocable fixing of exchange rates and on the measures necessary for introducing the ecu as the Community's sole currency.

This decision marks entry into the final stage of EMU. In practice, it must be taken at the time of the European Council meeting at which the fact referred to in Article 109f is established.

The decision fixing exchange rates should, if anything, be in the nature of a formal acknowledgement of the actual situation, since exchange-rate fluctuations between Member States' currencies should by then have been eliminated. It is for this reason that, as regards exchange rates, the term 'adopt' has been used instead of 'fix'.

It is provided that the Council and the Commission should confer with the European Central Bank with a

view to reaching agreement on the rates to be adopted, it being understood that the Council will have the last word.

Eurofed will normally exercise all the functions assigned to it by Articles 3(ga) and 106 *et seq.* of the draft treaty as soon as the fixed exchange rates are adopted.

2. Since adoption of the ecu as the Community's single currency is an essential element of the transition to the final stage of EMU, it will be decided on at the same time as the irrevocable fixing of parities.

Paragraph 2 stipulates how the arrangements for introducing the ecu should be adopted. While the ecu would be legal tender, it is accepted that Member States' currencies may provisionally remain legal tender.

3. Paragraph 3 deals with the consequences, in terms of decision-making, of the temporary derogations provided for in Article 109g. No Member State which has been granted such a derogation may impede the fixing of exchange rates or the introduction of the ecu and must not therefore stand in the way of unanimity being reached among the other Member States.

With regard to the decisions provided for in Article 108 in matters of exchange-rate and monetary policy, some flexibility should be allowed and it should be left to the Council, acting on a proposal from the Commission and unanimously, i.e. including the Member State to which a derogation has been granted, to determine in the light of circumstances the conditions under which the qualified majority provided for in Article 108 is met, i.e. to stipulate whether the votes of the Member State to which the derogation has been granted are or are not taken into consideration.

Article 173 (Actions brought before the Court of Justice of the European Communities)

1. Since Eurofed is authorized to take decisions which are binding on third parties, e.g. to require credit institutions to lodge reserves (third indent of Article 106b(2)), it is only proper that such decisions should be subject to review by the Court of Justice, in accordance with its responsibility under Article 164 for ensuring that, in the interpretation and application of the entire EEC Treaty, the law is observed.

Accordingly, Article 173 expressly provides for review of the legality of the acts of Eurofed.

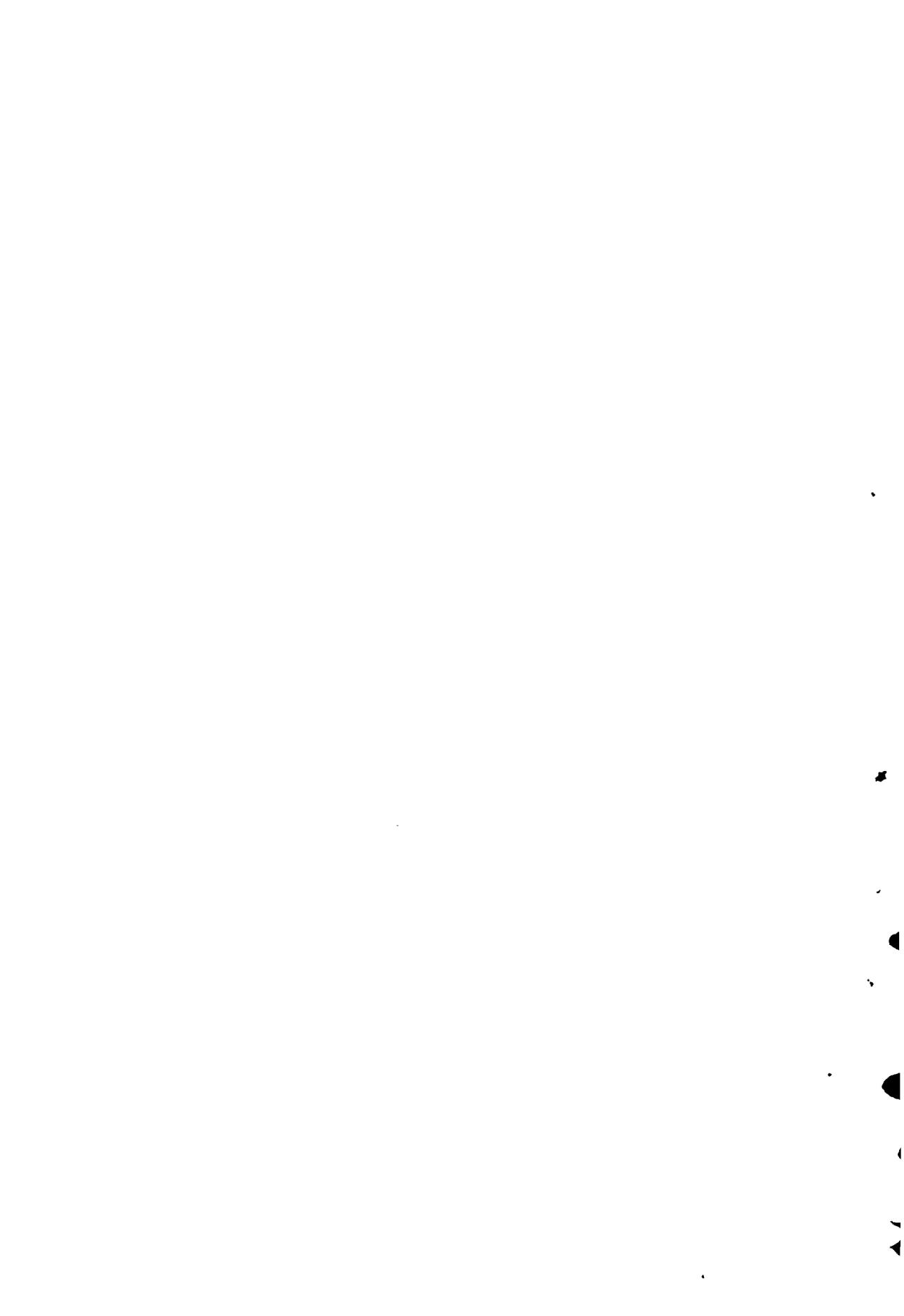
This is a reference to Eurofed acts that are subject to public law; its interventions of a commercial nature on the money markets are subject to commercial law and the jurisdiction of the competent court, under the relevant law applicable.

2. Provision is also made to give the European Central Bank express power to submit for review by the Court of Justice any act of the Council or the Commission which affects the powers and guarantees granted to Eurofed by the Treaty relating to EMU. This clarification takes account of developments in the case-law of the Court of Justice regarding the European Parliament's power to act in its own right. It will have to be supplemented in the draft treaty on political union by a similar clarification regarding the prerogatives of the European Parliament.

3. As regards the nature of the acts subject to review by the Court of Justice, present Article 173 stipulates that recommendations and opinions are not to be reviewed by the Court. This category of acts includes the specific Council recommendations provided for in Article 102d of the draft EMU treaty and the Commission's observations provided for in Article 109(3) of that draft treaty.

Article 199a (Entry of borrowings in the budget)

This provision anticipates a more general provision on the inclusion of the Community's borrowing and lending operations in the budget, this still at present being limited to a budgetary guarantee in respect of the repayment of funds borrowed.



Political union

Commission opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union

Contributions by the Commission to the Intergovernmental Conference

Document drawn up on the basis of COM(90) 600 and SEC(91) 500



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Preface

The European Council, meeting in Dublin on 28 April 1990, decided that an examination should be put in hand of the need to make changes to the Treaty with the aim of strengthening the democratic legitimacy and efficiency of the union and of ensuring unity and coherence in the Community's international action.

In resolutions adopted in July and October, Parliament stated the changes it wished to have made, mainly on the basis of the Martin report, following on from the Spinelli draft.

The Commission delivered an opinion on 21 October setting out the following objectives: a single Community, a common foreign and security policy based on Member States' sharing their essential common interests, strengthening democratic legitimacy by developing the concept of European citizenship and reinforcing the role of Parliament, increasing the Community's effectiveness by broadening its powers and writing the principle of subsidiarity into the Treaty.

At its Rome meeting on 14 and 15 December the European Council asked the Intergovernmental Conference to look into the possibilities of extending Parliament's powers and of framing a common foreign and security policy 'in accordance with a sustained evolutive process', including defence matters.

The European Council also said that substance should be given to the concept of European citizenship and recognized the need to extend or redefine the powers of the Community as regards social matters, health, the environment, research, energy, infrastructures, culture and education. The question of bringing into the ambit of the union such areas as immigration, asylum, and the fight against drug abuse and organized crime should also be considered by the Conference; and the importance of the principle of subsidiarity should be borne in mind.

Following the Rome European Council, the two Intergovernmental Conferences on EMU and political union convened on 15 December, and the Commission then presented to the Conference on political union a number of contributions which are reproduced here.

The paper on union citizenship takes up the idea suggested by the Spanish Prime Minister, Mr González, of a European citizenship to supplement national citizenship, and incorporates in the Treaty rights deriving specifically from European citizenship, together with civic, economic and social rights and obligations to be determined at a later stage.

In its contribution on the external policy of the union, the Commission adds to the Treaty a new title including provisions on common foreign and security policy, external economic policy, development cooperation policy and the conclusion of international agreements. The purpose of these proposals is to ensure

unity and consistency in the Community's action on the world scene by including among the powers of the union aspects of external relations absent from the present Treaty.

In a paper on the hierarchy of norms, executive powers and legislative procedure, the Commission takes the view that the co-decision procedure would enhance the democratic nature of the decision-making process and guarantee its effectiveness through a hierarchy of norms.

The Commission also produced a paper on the social dimension and the development of human resources. Here, the Commission points out that social policy is inseparable from economic policy. The establishment of a single economic and social area in which economic and social advances are made in step calls for an extension of qualified majority voting to most of the areas covered by the Social Charter, with due regard for the principle of subsidiarity and for the diversity of national systems.

The Member States have also made many contributions to the Conference on political union. These relate mainly to democratic legitimacy, aiming to strengthen the role of Parliament; European citizenship; the establishment of a common foreign and security policy; the extension and reinforcement of the Community's activities in areas such as health, social policy and research; and the effectiveness of the institutions.

On 15 April 1991 the Presidency presented a first draft treaty on political union. This contained three distinct sections. The first proposed amendments to the EEC Treaty covering, among other things, union citizenship, the policies of the Community and the powers of Parliament. The other two sections concerned common foreign and security policy and cooperation on home affairs and legal matters.

The Commission, supported by Parliament and some of the Member States, voiced its real concern at the risk of the Community breaking up and presented the IGC with a paper on the structure of the Treaty in which it reaffirmed the principle of a unitary Community.

On 18 June the Presidency produced a revised version of its draft treaty maintaining the three-pillar structure, affirming the federal goal of the union and providing that 'the union shall have a single institutional framework to ensure the consistency and continuity of activities carried out in order to achieve its objectives while respecting . . . the *acquis communautaire*'.

The European Council took note of this revised draft at its Luxembourg meeting on 28 and 29 June. After confirming that the final decision on the Treaty on political union and EMU would be taken when it met in Maastricht, the European Council underlined the importance of these principles: the maintenance in full of this *acquis communautaire* and its development, a single institutional framework with procedures appropriate to the requirements of the different areas of action, the evolving nature of the integration process, the principle of subsidiarity and that of economic and social cohesion, and the establishment of a union citizenship. The common foreign and security policy would extend to all

matters relating to the security of the union. A decision on the union's defence identity would be deferred to the final stage of the Conference. Consensus on co-decision would be an important political part of the final agreement. The European Council also emphasized the need to strengthen the social dimension, with due regard for the principle of subsidiarity, and economic and social cohesion — 'an integral part of the general development of the union'. Lastly, it agreed on the objectives underlying the proposals made by the German delegation on home affairs and judicial cooperation.

**Commission opinion of 21 October 1990 on the
proposal for amendment of the Treaty establishing
the European Economic Community
with a view to political union**

At its meeting of 28 April 1990, the European Council confirmed its commitment to political union and took the following decision:

'A detailed examination will be put in hand forthwith on the need for possible Treaty changes with the aim of strengthening the democratic legitimacy of the union, enabling the Community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community's international action.'

It went on to issue the following instructions:

'Foreign Ministers will undertake this examination and analysis, and prepare proposals to be discussed at the European Council in June with a view to a decision on the holding of a second Intergovernmental Conference to work in parallel with the Conference on economic and monetary union with a view to ratification by Member States in the same time-frame.'

Following a further in-depth discussion on the basis of an examination conducted by the Foreign Ministers, the President of the European Council, at its meeting in Dublin on 25 and 26 June,

'noted the agreement to convene such a conference under Article 236 of the Treaty. The conference will open on 14 December 1990. It will adopt its own agenda and conclude its work rapidly with the objective of ratification by Member States before the end of 1992.'

The European Council also agreed that:

'Foreign Ministers will prepare the conference. Preparatory work will be based on the results of the deliberations of Foreign Ministers (Annex I) and on contributions from national governments and the Commission, and will be conducted in such a way as to permit negotiations on a concrete basis to begin from the start of the conference.'

Close dialogue will be maintained with the European Parliament both in the preparatory phase and in the conference phase on political union as well as on economic and monetary union.

The European Council considered that the necessary coherence in the work of the two conferences should be ensured by the General Affairs Council.'

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* *

Before defining the main lines of the approach that the Commission will be defending at the Intergovernmental Conference on political union, it is appropriate to review the factors behind the growing awareness of the need to give the Community a genuine political dimension in the light of experience from the recent past. These factors are closely linked to recent or ongoing developments in Europe and the world.

(1) The 12 Member States have gradually come to accept the need for a higher profile on the international scene to enable them to give a collective response to a clear demand for Europe, to work together to defend their interests, and to contribute to the creation of a fairer, more efficient world order which respects the values they share, in particular human rights.

(2) The successes achieved through the impetus given by the 1992 deadline, the implementation of the common policies enshrined in the Single Act and the February 1988 agreement, raise the question of how the people of Europe can be genuinely involved in the shared adventure of European integration or, to put it another way, how the challenge of democratic legitimacy can be met.

(3) Despite general recognition and sometimes even envy of these successes there is still room for legitimate disappointment at the Community's overall progress, which falls short of the expectations for European integration over the last 40 years. Furthermore, the Community's decision-making process needs improvement given the rapidly changing world.

The convening of the Intergovernmental Conference on Political Union provides a golden opportunity to (a) broaden the Community's powers and (b) improve decision-making.

The basic conclusion lies at the heart of the Commission's reflections and its contribution to the proceedings of the Intergovernmental Conference. The Italian Presidency has asked it for its opinion on the basis of a proposal for amendment of the Treaty pursuant to Article 236 EEC.

The Commission clearly welcomes the convening of the Conference.

I — A single Community

In the first place the Commission will strenuously defend the thesis — as it did when the Single Act was

being negotiated — that both the historic legacy of the founding fathers and the cumulative commitment to European integration argue in favour of concentrating the revision of the Treaty on the integration of new objectives into a single Community.

The osmosis between economic, social, financial and monetary policy on the one hand and foreign policy on the other is and should continue to be the underlying philosophy of a European Union, as affirmed in the preamble to the Single Act.

Only a single Community with a single institutional structure can bridge the gap that has opened up between progress on common policies on the one hand and advances on political cooperation on the other. Indeed, the challenges that the quickening pace of history has presented to the Community have highlighted the existence of a 'grey area' where the role of the institutions is less than clear. For the Community this points to the need for consistency between the positions it adopts on the world stage and the conclusions it draws in the areas of external economic policy and relations with developing countries.

A single Community implies a single institutional structure flexible enough to take account of:

(a) the state of public opinion on the future of European integration, which varies considerably from country to country, and the way Member States perceive the joint exercise of pooled sovereignty;

(b) the need for caution, which militates against defining the final shape of European union at this early stage in favour of keeping to the course charted by the Treaty of Rome, leading eventually to a federal-type organization;

(c) the likelihood of further institutional change to accommodate enlargement of the Community. Common sense dictates that in a much larger Community the institutions will have to be radically reformed to prevent Europe degenerating into a mere free trade area with loose arrangements for foreign policy consultation.

II — Ensuring unity and coherence in the Community's international action

The Commission is optimistic about the Community's ability to meet the historic challenge of

ensuring unity and coherence in the Community's international action.

Three fundamental questions have to be answered in this context:

(1) Do the Member States consider that they share vital common interests and do they wish to act together to pursue them?

(2) What are the ambitions of the Community and its Member States and are they prepared to accept all the economic and financial consequences of their decisions?

(3) Should a common foreign policy also cover security matters, given that defence is an essential element of security?

The Commission's answer to all three questions is in the affirmative. And although it feels that the establishment of a common foreign and security policy will require a flexible and pragmatic approach, it nevertheless believes that the Treaty should outline the procedures and methods for a common policy leading towards European union.

The term 'common policy' has been chosen deliberately. In these matters it would be unrealistic to speak of political union when it is quite clear that, traditionally, Member States have special relations with certain parts of the world and geopolitical positions which are firmly anchored in their history. More importantly, the Twelve do not yet share the same assessment of their responsibilities or of their general and specific commitments in various parts of the world.

The same considerations have led the Commission to recommend a specific approach to security matters. The Treaty should include a reference to this subject and might incorporate the undertaking contained in Article 5 of the 1948 Brussels Treaty on the WEU which specifies that, in the event of an armed attack against one of the contracting parties, the others are obliged to provide aid and assistance.

More than that, the new Treaty should, in general terms, point the way towards a common security policy, including defence.

It is also in the common interest to bring defence equipment production and trade fully under the discipline of the common market, which would involve *inter alia* the removal of Article 223.

However, security is more than just a matter of military defence. It now covers all means of guaranteeing

cohesion at national and Community level, from the preservation of a common model of society to the protection of citizens against terrorism, serious crime and the other scourges of the modern world.

The definition and implementation of a common foreign policy raises four questions:

- (1) Who will prepare the decisions?
- (2) Who will take the decisions?
- (3) Who will implement the decisions?
- (4) How can the expression of popular sovereignty, first and foremost the European Parliament, be involved in this process?

1. Preparation of decisions

The preparation of decisions should be based on the experience of the existing Community system whereby an *ad hoc* institution would act simultaneously as a focus for Community action and as the guarantor of consistency between the common foreign policy and the other common policies.

This observation, drawn from experience, does not mean that the Commission intends to lay claim to a monopoly of the right of initiative in this area. In fact, the very specific nature of foreign and security policy implies that the right of initiative must be shared between the Council Presidency, the Member States and the Commission, if only because of the close links between foreign policy on the one hand and external economic policy and development cooperation policy on the other.

For this reason, the body responsible for preparing decisions should include the present political secretariat — which will be strengthened — and representatives of the Commission, so that they can work together, with the necessary discretion, to draw up decisions on this new common policy. It would be attached to the General Secretariat of the Council.

At the same time, Coreper would be reorganized so that it could be apprised of foreign policy matters before the Council takes a decision.

2. The method of decision-making

The method of decision-making depends on the scope of foreign policy. This must be broadened

gradually but it also needs to be consolidated quickly by joint action.

Should the scope of foreign policy be clearly defined in the Treaty? The Commission feels that this would not be the right approach. Any attempt to compile a list of areas considered to be of vital common interest would come up against insurmountable difficulties of interpretation. This being so, it would be preferable to leave it to the European Council to decide on the areas to be transferred from the scope of political cooperation to that of a common or Community policy.

Once these areas had been defined by the European Council, the Foreign Ministers, meeting within the Council, would take decisions by a qualified majority — except on matters directly related to security. However, this would be an augmented qualified majority requiring the votes of eight Member States.

In other areas, the consensus rule would apply as it already does for political cooperation.

3. Implementation

As regards implementation of the most important decisions, it would be for the Council to choose from a number of formulas depending on the circumstances, all of them involving Commission participation, as in the past.

The essential requirement is that once a common position has been decided on, the Community must speak with one voice.

4. Involvement of the European Parliament

Involvement of the European Parliament in foreign and security policy is less a matter of strict institutional rules than of general working practice. It would be up to those responsible for the common policy to consult Parliament on a regular basis and to keep it informed of the implications for the Community of the most important foreign policy developments either at a plenary session or in the relevant committees.

The revision of the Treaty should clarify the scope for application of the assent procedure to the most important agreements — in particular, association and cooperation agreements — whose purpose would be to define, within an overall framework, the political, economic, financial and cultural dimensions of the Community's relations with its main partners.

On the other hand, this procedure would not apply to ordinary trade agreements which involve implementation in strict compliance with Treaty provisions, notably Article 113, of broad principles of external economic policy defined by the Community's institutions.

III — Strengthening democratic legitimacy: Relations between the institutions and the people of Europe

Further democratization of the running of the Community must be seen from the twin standpoint of its institutions and its citizens.

1. The institutions

Without losing sight of the paramount need to reconcile democracy and efficiency, the objective as far as the institutions are concerned must be twofold:

(a) to strengthen the powers of the European Parliament;

(b) to increase the involvement of national parliaments.

(a) Aside from its involvement in foreign policy and joint security, the powers of the European Parliament must be strengthened *vis-à-vis* the Council and the Commission.

Notwithstanding the fears expressed in certain quarters, the cooperation procedure introduced by the Single Act has not led to disputes between Parliament and the Council or made decision-making more

cumbersome. Parliament has shown that it is willing and able to play its full part as joint legislator. The Commission considers that a radical reform of the Treaty, such as that now under way, should involve an increase in Parliament's legislative powers. It therefore proposes:

(i) increasing the part played by Parliament in the cooperation procedure; one formula which would guarantee that a decision was taken would be a provision to the effect that, following Parliament's second reading, the Commission proposal incorporating Parliament's amendments would be deemed adopted unless the Council rejected it by a simple majority;

(ii) extending the cooperation procedure to all the new areas where qualified majority voting would apply;

(iii) strengthening the role of Parliament in the budget procedure and giving it joint responsibility for Community revenue.¹

With regard to the appointment of the Commission, the only political body genuinely accountable to it, Parliament has consistently demanded the power to appoint, or at least to be involved in the appointment of, Members of the Commission. The formula which seems to have the most support would be a two-tier investiture: the first stage would involve investiture of the President of the Commission, who would be appointed by Parliament on a proposal from the European Council; and the second stage, following the appointment of the Members by agreement between the Member States after consultation of the President, would involve investiture of the Commission as a whole on the basis of its programme. In this way Parliament would be able to confirm the appointment of the entire Commission.

(b) A great deal of confusion still surrounds the request for more involvement of national parliaments in Community affairs. This needs to be dispelled.

In the case of decisions to transfer sovereignty by amending the Treaty, national parliaments are completely sovereign and, when a vote is taken on whether to ratify amendments to the Treaty, approve the principle and extent of such transfers in full knowledge of the facts. The use of mechanisms involving association in decision-making would conflict with the solemn, conclusive nature of ratification.

¹ See the section on public finances (page 81).

In the case of assessing the use made of powers transferred to the Community, it should not be forgotten that in the Community system it is national governments, sitting in the Council, that take the major decisions. Since national governments are accountable to national parliaments, it is for them to involve elected representatives in Community affairs in a manner which respects national traditions.

Having said this, the Commission nevertheless recognizes that a number of proposals have been made for improving relations between the European Parliament and national parliaments.

Should new arrangements prove to be essential, the Commission would favour the introduction of an information procedure, whereby a delegation from national parliaments would be given an opportunity to hear an explanation from the Council presidency and the Commission before major decisions are taken.

But the Commission believes that it is first and foremost for the European Parliament, in consultation with national parliaments, to consider what is the best way to improve relations between the elected representatives of the people.

Lastly, the Commission notes that on the evidence of experience over the last few years, Parliament is still dissatisfied with the quality of its bilateral relations with the Council of Ministers.

2. Citizens' involvement

In the Commission's view, strengthening the institutions will not be enough of itself to ensure that citizens are genuinely involved in the Community's activities at every stage of the definition of policies in fields directly affecting them. That is why the Commission endorses the proposal put forward by the Spanish Prime Minister, Felipe González, for the introduction of the notion of European citizenship. This would take shape gradually, without encroaching in any way on national citizenship, which it would supplement rather than replace. In short, the object would be to encourage a feeling of involvement in European integration.

The basis for European citizenship along these lines could be a statement of rights and obligations focusing on:

- (i) basic human rights, with a reference to the Strasbourg Convention;
- (ii) the rights of European citizens to be written into the Treaty, including:
 - (a) the right of residence and movement, whether the individual is economically active or not,
 - (b) voting rights in European and local elections;
- (iii) the setting of targets for the definition of the individual's civic, economic and social rights and obligations at a later stage.

It must not be forgotten that citizens are also involved in economic and social development. That is why, as far back as 1985, the Commission took the step of encouraging social dialogue at Community level between representatives of employers' organizations and trade unions. That process is now enshrined in the Single Act. But it should be given greater emphasis and its organization improved. This presupposes, *inter alia*, enhancing the status of the Economic and Social Committee and of its members.

Lastly, the Commission considers that the Intergovernmental Conference must take account of the demand for the creation of a body to represent the Community's regions. This is an important parameter of subsidiarity. The wide variety of regional structures in the Member States precludes — and will probably continue to do so — the involvement of such a body in the decision-making process. The Commission's suggestion therefore is that, pending fresh developments, it should hold regular consultations with a body representing all the regions of Europe.

IV — Improving the effectiveness of the institutions

Four questions arise when considering ways of improving the effectiveness of the institutions:

- (1) the question of broadening the Community's powers;
- (2) the question of subsidiarity;
- (3) the question of improving the way the institutions operate while maintaining a general balance;
- (4) the question of the status of the Community's public finances.

1. Powers

As in the case of the Single Act, the question of powers must not be seen in general terms but rather in terms of selecting the means of action the Community needs to ensure the balanced development of common policies.

As part of this selective approach, the Commission proposes that any increase in the Community's powers should concentrate on social affairs, major infrastructure networks and the free movement of persons, all three having a bearing on the optimum development of the single market. As far as the environment, research and taxation are concerned, it feels that the question is one of improving decision-making, in other words the use made of qualified majority voting, rather than redefining powers.

(a) For social affairs, the Commission's proposal is that the provisions of the Treaty be expanded and clarified, in the light of the principles laid down in the Community Charter of Fundamental Social Rights, to allow the Council to adopt directives by a qualified majority in areas such as:

(i) improvement of living and working conditions, in particular the duration and organization of working time, forms of employment other than open-ended contracts and other aspects of employment regulations which have a bearing on the protection of workers' fundamental rights, particularly in the case of cross-frontier operations;

(ii) basic and further vocational training;¹

(iii) information and consultation for workers.

Finally, a legal basis should be provided to allow the Community to develop programmes to prevent and combat major threats to health such as cancer and AIDS, as it has already done at the request of the European Council.

(b) The development of major infrastructure networks to facilitate the movement of goods, services, persons, capital and information should be encouraged by making it possible for the Council to take appropriate action and adopt programmes.

(c) Although the Single Act introduced the concept of a frontier-free area, the Community's powers in relation to the free movement of persons raise difficulties which need to be resolved. The principle that freedom of movement, and the equality of treatment needed to exercise it, are rights enjoyed by Community nationals should be enshrined in the Treaty

once and for all, as should the possibility of adopting the necessary measures by a qualified majority. This does not mean that all the rules would need to be standardized. Coordination or approximation should suffice.

Experience has shown that the provisions of the Single Act are less than satisfactory as far as non-Community nationals entering or residing in the Community are concerned. The Commission also notes that the intergovernmental method, which it supported, has failed to produce any meaningful results. The Commission suggests that this delicate issue, which undermines relations with non-Community countries, notably in the areas of immigration and the fight against drug abuse and serious crime, should be resolved by one or other of the following solutions:

(i) an explicit reference in the Treaty to a Community competence, which would require unanimity, at least initially, in relation to non-Community nationals to the extent needed for the free movement of persons and the creation of a frontier-free area;

(ii) recognition of the problems raised by the status of non-Community nationals, again to the extent to which these involve the free movement of persons, as one of the questions of vital common interest in foreign and common security policy.

(d) In the case of the environment and research and technology, the Treaty will have to be rewritten to increase the effectiveness of operations conducted at Community level and make it possible to create new financial instruments where appropriate. These could also be used for developing major infrastructure networks (see (b) above).

(e) In the area of taxation the aim must be to facilitate the adoption of measures linked to the completion and effective functioning of the single market.

(f) As far as energy is concerned, the treaties could be consolidated into a single chapter making it possible to implement a common energy policy or at least a common energy market.

(g) In line with the principle of subsidiarity, cultural affairs should continue to be a matter for the Member States and the regions. It would be a good idea,

¹ Among other things, this would make it possible to develop programmes similar to Erasmus, Comett and Yes for Europe.

however, to include an article on the cultural dimension of Community activities.¹

2. Subsidiarity

The question of subsidiarity is closely linked to the redefinition of certain powers. The Commission considers that this common-sense principle should be written into the Treaty, as suggested by Parliament in its draft treaty on European Union. It should serve as a guideline for the institutions when, under a new Article 235 freed from its purely economic purpose, they have to take a unanimous decision of principle on new Community action in pursuit of general Treaty objectives. Compliance with the principle could be checked by a retrospective control of the institutions' activities to ensure that there is no abuse of powers.

3. Effectiveness

In the Commission's view, improving the effectiveness of the institutions largely depends on extending the use of qualified majority voting. In theory, this should apply to all areas of Community competence except 'constitutional' questions, and with possible restrictions in the areas of taxation, social security and the status of non-Community nationals.

Assuming that the cooperation procedure would be extended in line with the wider use of qualified majority voting, it would be important to define the time-limits within which the Council and the European Parliament would be required to act. This is a precondition for improving the way our democratic procedures operate.

In general terms, with a view to simplifying and clarifying Community legislation the Commission believes that the common policies can only develop satisfactorily if a clear distinction is made between legislative and regulatory measures.

As far as the delegation of power to the Commission is concerned, efficiency demands that both the letter and the spirit of the Single Act be fully applied in practice. Here a distinction has to be made between the implementation of decisions and the decisions themselves, whether they are legislative or regulatory.

The Commission takes the view that only two formulas should be allowed under the Treaty: the advisory committee and the management committee.

One disturbing fact remains: in the absence of sanctions, Court of Justice rulings are not always implemented. The Commission may consider proposing a system of sanctions to deal with this type of situation.

4. Status of the Community's public finances

This subject has to be considered in the light of the progress made since the adoption of the interinstitutional agreement proposed by the Commission in 1986, which has brought home a number of lessons:

- (a) the need to reconsider the distinction between compulsory and non-compulsory expenditure, so as to combine the retention of certain guarantees with greater flexibility in budget management;
- (b) the need to restore the institutional balance to allow the Commission to play its full part in the budgetary process;
- (c) the possibility of Parliament being given some influence on a limited portion of revenue to increase not only its powers but also its responsibility towards electors;
- (d) incorporation of the principles of budgetary discipline into the Treaty.

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* *

The improvements put forward by the Commission are designed to maintain the current balance of the institutional triangle, since the most sensible course in making any substantial changes is to build on the existing model. In other words, we should base ourselves on the existing institutional structure, since its dynamic power is already proven.

¹ In particular, this would highlight the importance of the action taken to ensure the free movement of audiovisual works, to encourage creative artists in Europe, to promote high-definition television, and to expand the Media programme, to quote just a few examples.

The main advantage of the present system lies in its success in maintaining a balance between the institutions. It should therefore be preserved, but adapted to meet the needs of ever closer Community integration. And with the possibility of Parliament being given new legislative powers and the Council having wider decision-making powers in foreign and security policy,¹ it will be important to safeguard the Commission's right of initiative, which has proved to be one of the key factors in the Community's dynamism.²

At all events, the accountability of the executive to Parliament is a vital element in the equation, even if the executive does not have the right to dissolve it.

Alongside the traditional institutional triangle, the Community's new ambitions in terms of economic and monetary union as well as foreign and security policy highlight the need to formalize the 'motor' role of the European Council, which has proved so invaluable in revitalizing the process of European integration over the past six years.

Building and expanding on the Treaty of Rome, political union would have the task of gradually creating the foundations of a future European union through the process of economic and monetary integration, the furthering of social development, the implementation of economic and social cohesion and the pursuit of a common foreign and security policy.

Besides the amendments to Articles 2 and 3 on the principles underlying the Treaty, the introduction of a title on economic and monetary union, the extension of certain powers and the strengthening of democratic legitimacy and efficiency, the revision of the Treaty will involve the inclusion of a new title on a common foreign and security policy — quite clearly the primary driving force behind the new revitalization.

This common policy will have to comprise three sets of provisions:

- (i) a framework for decisions and action in the foreign policy field and provisions on security;
- (ii) a new grouping of modified Treaty articles on the common commercial policy;
- (iii) provisions strengthening the objectives and instruments of cooperation and development aid to make it more effective.

In this way the Community, given genuine political will, will be able to face up to its worldwide responsibilities, however varied the circumstances.

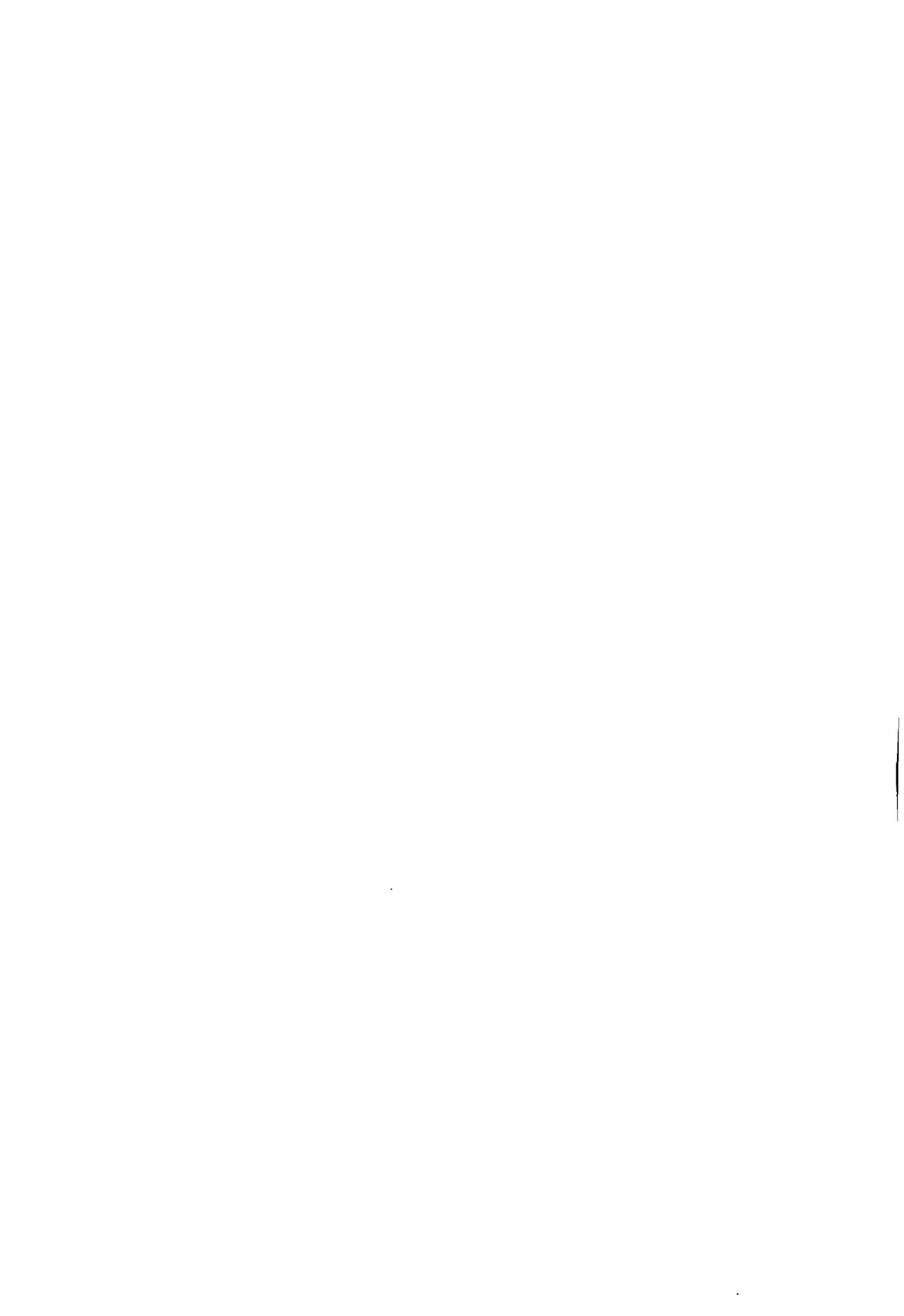
Set firmly on the foundations of economic, social and monetary union, its success and impact will be all the more assured, enabling it to satisfy the expectations placed in it.

Political union and economic, social and monetary union are thus inextricably linked.

¹ As in the area of economic and monetary union, which is discussed in SEC(90) 1659 final (21 August 1990).

² The same should apply to economic and monetary union (see reference above).

Contributions by the Commission to the Intergovernmental Conference



Union citizenship

Draft text

TITLE 0

Union citizenship

Article X1

1. Every person holding the nationality of a Member State¹ shall be a citizen of the Union.
2. Union citizens shall enjoy the rights conferred by this Treaty and be subject to the obligations imposed by it, which shall supplement the rights and obligations attaching to their status as citizens of a Member State.

Article X2

Every Union citizen shall be entitled to invoke the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which the Union accepts.

Article X3

In the application of this Treaty, any discrimination on the basis of nationality, whether by a public authority or a private person, shall be prohibited. The Union and the Member States shall enforce this prohibition.

Article X4

1. Every Union citizen shall have the right to move and reside freely within Union territory, without limit as to duration, whether or not he pursues a gainful occupation.
2. Every Union citizen shall have the obligation to comply with the legislation of the Member State in which he resides.

He may not exercise his right to move and reside freely as a means of evading obligations incumbent upon him in relation to his State of origin or any other Member State.

Article X5

Every Union citizen shall have the right to be a member of a political association or group and shall have the right to vote and stand as a candidate at municipal and European elections held in the place in which he has habitually resided for at least [...] year(s) without prejudice to the option of exercising those rights, if he so wishes, in the Member State of which he is a national, providing he enjoys them under national law.

Article X6

Every Union citizen shall have the right to cultural expression and the obligation to respect cultural expression by others.

Article X7

Every Union citizen shall have the right to enjoy a healthy environment and the obligation to contribute to protecting it. To this end, he shall have the right to information and the right to consultation where appropriate.

Article X8

Every Union citizen shall, in the territory of a non-member country, be entitled to Union protection and to the protection of any Member State, on the same conditions as its nationals.

¹ Each Member State should make a declaration defining its concept of nationality.

Article X9

Each Member State shall establish at least one national authority, possibly in the form of an office of ombudsman to which Union citizens may have recourse in defending the rights conferred upon them by this Treaty, to assist them in dealings with the administrative authorities of the Union and the Member States and to defend those rights before courts and tribunals on behalf of those upon whom they are conferred.

These authorities shall also be responsible for giving Union citizens full and clear information on their rights and on the means available for the purpose of defending them.

Article X10

Measures to secure compliance with the prohibition laid down in Article X3, to facilitate the exercise of the rights conferred by Articles X4 and X8, to determine the conditions in which the rights conferred by Article X5 are to be exercised and to give effect to Articles X7 and X9, shall be adopted [...], acting on a proposal from the Commission after obtaining the opinion of the Economic and Social Committee.

Article X11

The objective of the Union shall be to ensure, by gradual stages, that acts adopted for the purpose of applying this Treaty:

- (i) guarantee every Union citizen's right to equal treatment and equal opportunities and the enjoyment of social rights;
- (ii) reflect every Union citizen's obligation to display solidarity with other Union citizens and with nationals of non-member countries resident in the Union; this obligation entails respect for each person's dignity and the rejection of any form of social marginalization;
- (iii) guarantee every Union citizen's right to protection of his health and his obligation to safeguard the health of others, especially in his working environment.

Article X12

The Council, acting unanimously on a proposal from the Commission after receiving the assent of the

European Parliament, may add rights to those conferred by this Title.

*
* *

Explanatory memorandum

1.1. In its opinion of 21 October 1990 the Commission endorsed the proposal put forward by the Spanish Prime Minister, Mr González, for the introduction of the concept of European citizenship, which 'would take shape gradually, without encroaching in any way on national citizenship, which it would supplement rather than replace'. The object was that this 'would encourage a feeling of involvement in European integration'.

The Commission was also in favour of making a specific reference to the Convention for the Protection of Human Rights and Fundamental Freedoms and of writing into the Treaty rights linked specifically to the status of European citizens, including freedom of movement, freedom of residence, voting rights, and civic, economic and social rights and obligations to be decided at a later stage.

1.2. In its resolution of 22 November 1990 on the Intergovernmental Conferences, Parliament called for the inclusion in the new Treaty of a declaration of fundamental rights and freedoms designed for the protection of every individual who is subject to Community law. To some extent the catalogue of rights covered in the declaration is much the same as those dealt with in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the constitutions of the Member States. However, it also incorporates some rights specific to Union citizens, such as the right to move and reside freely within Union territory. Furthermore, it emphasizes the emergence of rights in connection with the exercise of certain Community powers: the promotion of health and safety at the workplace, for instance, or the protection and improvement of the environment.

2. The European Council meeting in Rome on 14 and 15 December 1990 also expressed support for the concept of European citizenship and made a specific reference to civic rights, social and economic rights based on the principle of equal treatment and opportunity for all Community citizens, and the protection

of Community citizens outside the Community's borders. It also envisaged the possibility of setting up some form of ombudsman-type machinery for the defence of citizens' rights.

3.1. The attached draft Treaty Articles incorporate the ideas set out at 1 and 2 above.

3.2. The subject-matter involved is good reason for inserting the Articles on citizens' rights and obligations early on in the Treaty, and in any event before the Titles devoted to the four freedoms.

It is therefore proposed that the attached Articles be included as Title I of Part Two ('Foundations of the Union'), rather than in the preamble or in the introductory Articles setting out the objectives of the Union, thereby stressing that these are implementing measures and not just declaratory clauses.

3.3. Nevertheless, a distinction is made in those provisions between:

(i) rights which citizens derive directly from the Treaty (such as non-discrimination on grounds of nationality or freedom of movement), where it is simply a question of guaranteeing or facilitating the exercise of such rights, as the case may be, on the basis of the Court's case-law, and, possibly, by improving existing legal provisions;

(ii) rights which require to be put into effect by legislation, together with the necessary detailed rules and conditions (for example, the right to vote, which has already been the subject of a Commission proposal, or rights related to the environment, taken from existing or proposed texts);

(iii) the laying down of objectives for the granting of rights in the future and for defining obligations, especially in the social field.

4.1. In general terms, the concept of Union citizenship is based on two principles:

(i) it is a component factor in the move to strengthen democratic legitimacy in the Community, both supplementing and transcending national citizenship;

(ii) it reflects the aims of the Union, involving as it does an indivisible body of rights and obligations stemming from the gradual and coherent development of the Union's political, economic and social dimension.

4.2. The proposal includes:

(a) a definition of the concept of citizenship of the Union (Article X1);

(b) a reference, in the context of the protection of fundamental rights, to the European Convention on Human Rights, to which the Commission has now proposed the Community should accede (Article X2);

(c) a statement of the general principle prohibiting discrimination on the grounds of nationality, modelled on Article 7 (deleted) but extended to cover private persons (Article X3);¹

(d) a list and definition of the rights and corresponding obligations of Union citizens in terms of:

(i) civic rights and obligations: freedom of movement and residence for all citizens, whether or not they pursue a gainful occupation, freedom of political association, right to vote and right to stand for election (Articles X4 and X5), along the lines of the Commission's proposal of June 1982;²

(ii) wider social rights and obligations: in the social field proper, as defined in the social provisions of the Treaty in the light of the Community Charter of the Fundamental Social Rights of Workers (Article X11), as well as in the fields of culture (Article X6) and the environment (Article X7); these rights and obligations are based in particular on the principles of equal treatment and opportunity, social solidarity and respect for the dignity and diversity of all individuals;

(e) the principle of equal protection for Union citizens in non-member countries (Article X8).

4.3. This list of rights and obligations is accompanied by a number of implementing provisions.

Firstly, an ombudsman-type function is created in the Member States, with the task of advising citizens of their rights and the courses of action open to them and of promoting the defence of those rights in dealings with the authorities and the courts (Article X9).

Secondly, provision is made for the adoption of measures to facilitate or, as appropriate, give effect to the rights and obligations of citizens (Article X10). This would cover measures designed solely to guarantee or facilitate the exercise of rights directly conferred by

¹ This does not affect the exception provided for in Article 48(4), as interpreted by the Court, regarding posts involving the exercise of public authority.

² Detailed arrangements for the exercise of these rights will have to be laid down in an implementing regulation.

the Treaty (non-discrimination on the grounds of nationality or freedom of movement, for instance) or measures laying down detailed arrangements for giving effect to rights such as the right to vote and stand for election, possibly by gradual stages (Article X10). Obviously this in no way precludes the possibility of specific provisions in the Treaty laying down and

guaranteeing the exercise of particular rights, as proposed in the case of social rights (Article X11).

Lastly, any subsequent extension of the rights of citizens of the Union would involve exacting procedural requirements similar or identical to those provided for in the new Article 235.

Common external policy

Draft text

TITLE Y

Common external policy

Article Y0

The common external policy shall cover common foreign and security policy, external economic policy and development cooperation policy as well as external relations in the other areas falling under Union responsibility. In the conduct of this policy, the Union shall seek to promote democracy, the rule of law and respect for human rights.

Chapter I

Common foreign and security policy

Article Y1

The Union shall pursue a common foreign and security policy aimed at maintaining peace and international stability, and developing friendly relations with all countries, without prejudice to the special relations of individual Member States.

This policy shall be governed both by general provisions and by specific provisions on security and defence.

SECTION 1

General provisions

Article Y2

Implementation of the common foreign and security policy shall rest on a distinction between matters that

are deemed to be of vital interest for the Union and other matters in this sphere.

Article Y3

1. To ensure that common principles and objectives are formulated and that effective common action is taken by the Union under the common foreign policy, the European Council shall, without prejudice to powers conferred under the other provisions of the Treaties, decide what matters are of vital common interest, acting on the initiative of the Presidency, or of the Commission or of a simple majority of the Member States, after hearing the views of the European Parliament.

When deciding what matters are of vital common interest, the European Council shall specify the conditions under which a Member State may, at its request, be given dispensation from the obligations which common action entails. The Member State concerned shall refrain from taking any measures that may affect the implementation of Union decisions.

2. Except where this Treaty provides otherwise, in matters that have been declared to be of vital common interest, the Council, acting by the majority specified in the second indent of Article 148(2)¹ on the initiative of the Presidency or of the Commission or of a simple majority of the Member States, shall:

- (i) formulate the principles of the common policy;
- (ii) decide on action to be taken, whether it is to be implemented by the Union or by the Member States.

Article 149(1) shall not apply to Council Decisions under this Article.

¹ Where the Treaty does not provide for a Commission proposal, this involves an augmented qualified majority, which requires at least eight Member States to vote in favour.

Article Y4

1. In matters that have not been declared to be of vital common interest the Member States and the Commission shall coordinate their positions on any external policy issue of general interest within the Council to ensure that their combined influence is exercised as effectively as possible through concerted deliberation, convergence of positions, and the pursuit of common action. To this end the Member States shall consult each other and the Commission on all national foreign policy measures they intend to take.

2. To enhance their capacity for joint action, the Member States shall work to secure the formulation and progressive development of common principles and objectives.

3. The Member States shall refrain from hindering consensus and joint action that may flow from it.

4. In adopting positions and pursuing national action, each Member State shall take full account of the positions of its partners, shall give due consideration to the importance of adopting and implementing common positions and shall avoid any action that may impair the Union's effectiveness as a cohesive force in international relations and in international organizations. Decisions on common positions shall constitute a point of reference for national policies.

5. If a Member State deems it necessary to act in response to a particularly serious situation or exceptional circumstances, it shall, before taking action, refer the matter to the Council, which shall decide without delay under Article Y3(2) on whether action by the Union is called for.

Article Y5

The European Parliament shall be closely involved in the formulation and conduct of the common foreign and security policy. To this end the Council and the Commission shall keep the European Parliament regularly informed of the matters dealt with under the policy and shall make sure that the European Parliament's views are taken into consideration.

Each year the European Parliament shall hold a debate on the common foreign and security policy, during which statements shall be made to it by the Council and the Commission. The Council and the Commission may also appear before European Par-

liament committees, either at the European Parliament's request or on their own initiative.

Article Y6

The Council's deliberations and decisions shall be prepared and their implementation monitored by the General Secretariat of the Council in structured cooperation with the Commission.

The Permanent Representatives Committee shall be responsible for preparing the deliberations of the Council under the common foreign and security policy and for carrying out the tasks assigned to it by the Council to this end.

Article Y7

1. In areas that come under the common foreign and security policy the Union shall be represented in relations with non-member countries and in international organizations and conferences by the Council Presidency and by the Commission, assisted where appropriate by the previous and next Member States to hold the Presidency.¹

The Council, acting by the majority specified in the second indent of Article 148(2) on a proposal from the Commission or from one of the Member States, may entrust one or more Member States with the task of presenting the Union's position in specific instances, for example, before the United Nations Security Council or the organs of the Atlantic Alliance or Western European Union.

2. To ensure that the Union is represented as effectively as possible the Member States and the Commission shall furnish each other with assistance and information to strengthen cooperation between their missions accredited in non-member countries and to international organizations.

Article Y8

The foreign policies of the Member States and action by the Union under the other provisions of this

¹ Following the formula used for the troika, which here becomes a 'quadriga', as the Commission is involved as well.

Treaty shall be consistent with the common foreign and security policy.

Should the danger of inconsistency arise, the Commission or any Member State may call for the Council to be convened with a view to taking a decision in accordance with the procedure specified in Article Y3(2).

Article Y9

Wherever it considers it appropriate, the Union shall organize a political dialogue with non-member countries and regional groupings.

Article Y10

Articles 164 to 188 of the Treaty shall not apply to this Chapter. ¹

SECTION 2

Common security policy

Article Y11

The common security policy shall constitute an integral part of the Union's foreign policy. Its purpose shall be to strengthen security in Europe and to maintain peace in the world in accordance with the United Nations Charter. It shall rest on cooperation within the WEU. Its long-term objective shall be to establish a common European defence in full compliance with commitments entered into in the Atlantic Alliance.

Article Y12

If any of the Member States is the object of an armed attack in Europe, the other Member States shall, in accordance with Article 51 of the United Nations Charter, afford it all the military and other aid and assistance in their power.

Article Y13

1. Without prejudice to powers conferred under other provisions of this Treaty, in the areas of security and

defence the Union shall treat as matters of vital common interest within the meaning of Article Y3 the control of armaments, disarmament and related questions, security questions related to the CSCE or debated in the United Nations, including peacekeeping operations, economic and technological cooperation in the field of armaments, and coordination of policy on arms exports and non-proliferation. ²

Under the common security policy, the Union shall establish an arms research and production policy.

2. The European Council may identify other questions as being of vital common interest.

3. Where other provisions of the Treaty do not apply to questions declared to be of vital common interest, the Council shall:

(i) formulate unanimously³ the principles of common policy and the procedures to be followed when deciding on action to be taken;

(ii) decide on action to be taken, whether it is to be implemented by the Union or by the Member States.

4. A Member State may be given dispensation under the decisions provided for in paragraphs 2 and 3 from some of the obligations flowing from them, if it so requests for compelling reasons. The Member State concerned shall nevertheless refrain from taking any measures that may affect the implementation of Union decisions.

The Council shall review such dispensations regularly in the light of common policy developments to assess whether they are still compatible with the common interest.

A Member State that has been given dispensation shall not participate in Council deliberations on the matter in question or on the formulation, extension or application of the obligations from which it has been dispensed.

Article Y14

The Ministers for Foreign Affairs and for Defence and the Commission shall hold a joint meeting at

¹ This provision is designed to place the policy beyond the jurisdiction of the Court of Justice.

² As enumerated by the second Rome European Council.

³ Abstentions shall not prevent the adoption of decisions.

least twice each year to develop cooperation between the Member States in the field of defence. If necessary, they shall meet immediately, should a Member State so request.

Article Y15

1. When deciding on action to be taken pursuant to Article Y13(3), the Council shall also decide whether to refer implementation of the guidelines it has established to the WEU Council.
2. For the application of paragraph 1 the Union shall establish with the WEU such arrangements as may be necessary to enable Member States which are not members of the WEU and the Commission to attend meetings of the WEU bodies.
3. Member States which are members of the Atlantic Alliance shall express the Union position there when questions declared to be of vital common interest or questions dealt with by the WEU are discussed.
4. The Union shall endeavour to make use of the provisions of Article XII of the Treaty of Brussels of 17 March 1948 to promote the gradual integration of the WEU into the Union.

Chapter II

External economic policy

Article Y16

External economic action by the Union shall contribute, in the common interest:

- (i) to the harmonious development of the world economy and of world trade;
- (ii) to the progressive strengthening of economic relations in Europe and in the world, notably by abolishing barriers to the liberalization of trade;
- (iii) to the establishment of fair economic and social conditions in the world.

Article Y16a

External relations in the areas covered by economic and monetary union shall be governed by the specific

provisions of Articles 106b(1) and (3), 108(2) and (3), and 105e(2), and by Article Y17.

Article Y17

1. The Union shall pursue a common policy on external economic relations covering:
 - (i) trade, including export credit and credit insurance schemes,
 - (ii) economic and commercial measures involving services, capital, intellectual property, investment, establishment and competition.
2. The Union shall have sole power to take measures, autonomous and conventional, in the field of economic and commercial policy as referred to in paragraph 1.
3. The Union may authorize the Member States to take some of the measures referred to in paragraph 2, within limits and subject to conditions which it shall lay down.
4. The autonomous measures referred to in paragraph 2 shall be adopted and the authorizations referred to in paragraph 3 shall be granted by the Commission on the basis of laws enacted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission.
5. The conventional commitments referred to in paragraph 2 shall be entered into in accordance with Article Y27.

6. In exercising the powers conferred upon it by this Article the Union shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

Article Y18

Where immediate action is needed to preserve Union interests, the Commission shall adopt the necessary measures. It shall inform the Council and the European Parliament accordingly without delay.

Article Y19

1. The Union shall have the power to take any economic measures in areas other than those referred to in Article Y17(1) with a view to achieving the objectives

listed in Article Y16, notably in the context of financial and technical cooperation with one or more non-member countries not covered by Chapter III.

2. On any issues of general interest involving external economic relations the Union shall coordinate the positions of the Member States in relations with non-member countries and in international forums.

Chapter III

Development cooperation policy¹

Article Y20

The aim of common policy on development cooperation shall be to promote the economic and social development of developing countries and their peoples and to help resolve the problems of structural poverty in those countries.

This policy shall seek to achieve a lasting balance between economic objectives, rational management of the environment, and optimum use of natural and human resources.

Article Y21

The common policy on development cooperation shall cover:

- (i) action by the Union and joint action by the Union and the Member States;
- (ii) coordination of other action by the Member States.

Article Y22

1. Action by the Union shall include:

- (i) the introduction of special arrangements and measures in the field of commercial policy, without prejudice to the action provided for in Chapter II;
- (ii) measures designed to improve the operation of the international markets in commodities of export interest to developing countries² by increasing transparency and efficiency, taking market trends into account,³ and secondly to contribute to the stabilization of export earnings from commodities originating in developing countries, in particular in the least-developed countries.

2. Action by the Union and joint action by the Union and the Member States shall cover:

- (i) financial and technical cooperation;
- (ii) food aid and humanitarian aid;
- (iii) any other instrument likely to encourage development, notably involving establishment and services, movement of capital and movement of persons, and measures designed to encourage the promotion and protection of investments.

3. The instances in which joint action is to be taken by the Union and the Member States in the areas referred to in paragraph 2 shall be determined by the Council acting unanimously on a proposal from the Commission after receiving the assent of the European Parliament.

4. The European Investment Bank shall contribute through its operations to action by the Union and to joint action by the Union and the Member States.

Article Y23

1. The general guidelines and multiannual programmes specifying the action to be taken by the Union and the joint action by the Union and the Member States as determined in accordance with Article Y22(3) shall be adopted in the form of laws enacted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission. Such guidelines and programmes shall specify those implementing measures which are the responsibility of the Member States.

2. The Union, acting in accordance with Article Y27, shall have sole power to enter into any conventional commitments in the areas subject to action by the Union and to joint action by the Union and the Member States.

In such areas, the Union shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

¹ Possibly insert an Article on what is to happen to the current arrangements for overseas countries and territories (Part Four of the EEC Treaty), which must in any event be aligned on — or incorporated in — the Chapter on development cooperation policy. One possibility would be a (sole) Article combining Articles 131 (principles) and 136 (procedures), redrafted accordingly.

² Terminology used for the Unctad integrated programme, which covers 18 products (bananas, bauxite, cocoa, coffee, copper, cotton, hard fibres, jute, tea, etc.), oil and gold being, therefore, excluded.

³ As in Article 74 of the fourth Lomé Convention.

Article Y24

1. In areas not subject to action by the Union or to joint action by the Union and the Member States as referred to in Article Y22, the Member States and the Commission shall liaise on all issues of general interest in the field of development cooperation policy.

2. To this end the Member States shall inform each other and the Commission in advance of all measures envisaged within the framework of national development cooperation, and in particular of national programmes and draft agreements to be concluded with non-member countries or international organizations.

3. The Member States shall refrain from any initiative likely to impair the consistency and effectiveness of action by the Union or joint action by the Union and the Member States as referred to in Article Y22. They shall, on the other hand, encourage such action as may usefully complement the above and enable the objectives defined in Article Y20 to be achieved.

4. In the areas referred to in paragraph 1, the Commission shall coordinate the positions of the Member States in relations with non-member countries and in international forums.

5. For the purposes set out in paragraphs 1 to 4 the Commission shall forward recommendations to the Member States. Where necessary, coordinating measures shall be adopted on the basis of laws enacted in accordance with the procedure specified in Article Y23(1).

Chapter IV

General provisions

SECTION 1

Agreements within the area of common foreign and security policy

Article Y25

1. Where an agreement with one or more States or with an international organization needs to be nego-

tiated in areas in which Chapter I confers powers on the Union, the Council Presidency and the Commission shall jointly make recommendations to the Council, which, acting by the majority specified in Article Y3(2) or in accordance with Article Y13(3), as the case may be, shall authorize them to open the necessary negotiations.

The Presidency and the Commission¹ shall conduct these negotiations within the framework of such directives as the Council may issue to them, in consultation with a special committee appointed by the Council.

2. Agreements of the kind referred to in paragraph 1 shall be concluded by the Council, acting in accordance with the procedures referred to in that paragraph on the initiative of the Presidency or of the Commission, after consulting the European Parliament, whose opinion shall be given within the time-limit determined by the Council.

SECTION 2

Agreements falling within other areas of Union powers

Article Y26

1. In areas not covered by the common foreign and security policy² and in areas where the Union has exclusive powers in external relations expressly conferred on it by this Treaty,³ the Union shall enjoy sole power to conclude, under Article Y27, agreements with one or more States or with international organizations provided it has already exercised those powers internally.

In areas where the Union has the sole power to conclude international agreements, it shall be represented by the Commission in relations with non-

¹ Duopoly.

² Article Y25 regulates the conclusion of agreements in the field of common foreign and security policy; all other specific provisions governing that area are to be found in Chapter I.

³ This means external economic relations for areas covered by Article Y17(1), development cooperation policy for those covered by Article Y22(1) and EMU provisions where the Union has sole power.

member countries and in international organizations and conferences.

2. The Union may also conclude international agreements in accordance with Article Y27 in areas where powers are conferred on it by Article 3 or by virtue of Article 235 but where it has not yet exercised them.

Where it has not made use of the option provided for in the first subparagraph, the Union shall coordinate the position of the Member States in relations with non-member countries and in international forums.

3. When concluding a multilateral international agreement the performance of which entails administrative and operating expenditure, the Union shall act with the same status and by the same procedure as the signatory States.

Article Y27

1. Where an agreement with one or more States or with an international organization needs to be negotiated, the Commission shall make recommendations to the Council, which, acting by a qualified majority, shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations within the framework of such directives as the Council may issue to it, after consulting a special committee appointed by the Council.

2. The Council, acting by a qualified majority on a proposal from the Commission after receiving the assent of the European Parliament, which shall act by an absolute majority of its members, shall conclude, on behalf of the Union, agreements the content of which:

- (i) involves amendment of a Union law;
- (ii) involves amendment of the financial perspective;
- (iii) establishes the basis for the Community's multilateral external relations in matters of trade or economic cooperation or the basis for development cooperation;
- (iv) establishes an association between the Union and one or more non-member countries or a regional international organization involving durable links, reciprocal rights and obligations, common action and special procedures;¹

(v) organizes, within a multilateral framework, the protection of human rights and the fundamental rights of workers, or global protection of the atmosphere, water or natural resources,² or defines, within a multilateral framework, the fundamental principles of international law;

(vi) makes provision for accession by the Union to a universal or regional international organization other than an organization set up to administer a multilateral convention;

(vii) makes provision for participation by non-member countries or international organizations in bodies set up by Community law.³

However, the Council shall act unanimously where the agreement covers matters for which unanimity is required at internal level.

3. Other agreements shall be concluded by the Council acting by a qualified majority on a proposal from the Commission after consulting the European Parliament.

4. The Commission shall approve modifications to any agreement which provides for them to be adopted by a simplified procedure or by a body set up by the agreement.

In accordance with the procedure specified in the first subparagraph the Council may authorize the Commission to conclude, on behalf of the Union, certain other agreements or categories of agreement.

5. The provisions set out in paragraphs 1 and 3 shall apply subject to the powers conferred on the Commission by Article Y30.

6. The Commission shall administer the agreements concluded by the Union.

¹ Criteria set out in Article 238 (which may possibly be modified).

² This may be expanded if the areas of Community competence are increased (health, culture, etc.) on condition obviously that the agreements in question are 'very important'; those not falling within this category will, irrespective of subject-matter, be covered by the procedure in paragraph 3.

³ Agencies.

Agreements in the field of foreign policy and other areas

Article Y28

1. Where agreements are to be negotiated which would lay durable and structured foundations for political relationships of cooperation or association between the Union and one or more States and which would also have an economic, financial and cultural dimension the procedure specified in Article Y25(1) shall apply; ¹ however, the Commission shall conduct the negotiations in conjunction with the Council Presidency, after consulting a special committee appointed by the Council.

2. These agreements shall be concluded in accordance with the procedure specified in Article Y27(2). ² However, the Presidency shall also have the right to take the initiative in requesting the Council to conclude an agreement.

3. the Commission shall administer these agreements in the areas referred to in Article Y26(1).

SECTION 4

Common provisions

Article Y29³

1. The European Parliament, the Council, the Commission or a Member State may seek the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.

2. Agreements concluded under these conditions shall be binding on the institutions of the Union and on the Member States.

Article Y30

The Commission shall maintain all appropriate forms of cooperation with international organizations.

It shall, *inter alia*, contribute to the development of regional integration organizations.

Article Y31

Articles 110 to 116, 130n, 130r(5), 223, 224, ⁴ 228 to 231 and 238 are repealed.

Article Y32

Title III of the Single Act is repealed.

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Explanatory memorandum

One of the foremost prerequisites for the European Union identified by the Commission in its opinion of 21 October 1990 was the emergence of a common foreign policy that would serve, through the osmosis between it and economic, social, and financial and monetary policy, to ensure unity and consistency in the Community's international action.

It concluded that such a policy would have to rest on a firm consensus among the Member States as to the extent of their common ambitions in broadening the international responsibilities of the Union, and should embrace their vital common interests and include security and defence.

The European Parliament, in its Resolution of 22 November 1990 on intergovernmental conferences in the framework of its strategy for European union, took a stand in favour of a common foreign and security policy.

On 14 and 15 December 1990 the European Council spoke of 'the vocation of the Union to deal with aspects of foreign and security policy, in accordance with a sustained evolutive process and in a unitary manner...'. It instructed the Intergovernmental Conference to 'address the Union's objectives, the

¹ Duopoly.

² Prior assent of Parliament.

³ Text based on the second subparagraph of Article 228 (1) and on Article 228 (2).

⁴ The question of 'serious internal disturbances' referred to in Article 224 is out of place in the Title on common foreign policy.

scope of its policies and the means of... ensuring their... implementation within an institutional framework'.

The Commission, the European Council and the European Parliament agreed on the need for, *inter alia*, a single decision-making centre (namely the Council), the harmonization of preparatory work, a non-exclusive right of initiative for the Commission, procedures for informing and, as a rule, consulting Parliament — and obtaining its prior approval (in other words, assent) for the conclusion of major agreements — and procedures to ensure that the Union speaks with one voice in international organizations and *vis-à-vis* non-member countries.

Revision of the Treaty with a view to the creation of the European Union thus involves not only amendments to Articles 2 and 3 on the tasks and scope of the Treaty, the establishment of economic and monetary union, the extension of powers in specific areas and the strengthening of democratic legitimacy and the institutions' effectiveness, but also the incorporation of a new title on a common external policy.

A — The common external policy — general

The rules governing the common external policy comprise substantive provisions in three broad areas:

common foreign and security policy (section B);

external economic policy (section C);

development cooperation (section D).

They also include procedural provisions for the conclusion by the Union of international agreements (section E) both in these areas and in any field where it already has powers internally (transport, environment and research, for instance), or might acquire them following revision of the Treaty, and within the limits of those powers. The new arrangements formally state that for every power conferred on the Union internally there is a corollary external power and that for any given area this power becomes exclusive once the Union exercises it internally. This constitutes the expression in the Treaty of the principle established by the Court in the AETR case, which is now an established part of the Community legal order.

The overall balance of the external policy provisions thus rests on an approach involving two indissociable elements.

In the areas of new powers (i.e. common foreign and security policy) specific decision-making procedures will apply, giving recognition to the European Council's fundamental role in setting the limits of the Union's powers and to the role of the Council (General Affairs) as the decision-maker on implementation.

Elsewhere, on the other hand, especially in the area of economic integration, the powers of the Union will be confirmed, resting on clear legal bases spelled out in the Treaty. The general use of qualified majority voting for decisions will also serve to secure efficiency and effectiveness.

B — Common foreign and security policy

1. Basic principles

The incorporation of rules on a common foreign and security policy serves a fundamental objective, namely to ensure unity and consistency in the Union's international action by giving it new powers in areas of foreign relations not covered by the present Treaty.

This common policy will centre on the idea of an evolutive process: it would be for the European Council to lay down and extend the Union's powers as the need arises. This approach amounts to application of the principle of subsidiarity, leaving the Member States with full power to act in areas where there is felt to be no need for the Union to take responsibility, subject to intergovernmental cooperation on matters of general interest.

It is clear, then, that a common policy does not mean a single policy. Where Member States enjoy special relationships with certain parts of the world or hold positions rooted in their past history, the aim would be to coordinate national action inside a common framework rather than to replace it by a unitary approach. Here, too, subsidiarity would have to play a part. The essential point is that the Member States fulfil their obligation to act.

The policy would be implemented using the existing institutional framework so as to avoid the emergence of dual structures in the Union that is to take the place of the present Community, while making allowance for adjustments in the role of the institutions where warranted by the subject areas in question and the stage now reached in the process of European integration.

Unlike European political cooperation, which is no more than a form of intergovernmental cooperation, the new common foreign and security policy would involve the adoption and implementation of decisions that are binding on the Member States, taken unanimously or by augmented qualified majority, as the case may be, and with some scope for opting out.

2. Rules

Chapter 1 (Common foreign and security policy) encompasses general provisions covering both foreign and security policy (Section 1) as well as specific provisions relating to security, including defence (Section 2).

(a) The implementation of foreign policy, the objectives of which are defined in Article Y1, rests on a distinction between:

(i) matters identified as being of 'vital common interest' by the European Council, where the Council would decide what common action should be pursued and how it should be implemented, acting by a qualified majority augmented by the requirement that at least eight Member States must vote in favour; the European Council would lay down conditions under which a Member State may, at its request, be granted dispensation from the obligations flowing from common action;

(ii) other matters, where joint action is a matter for intergovernmental cooperation as at present, but with stricter provisions than Article 30 of the Single Act so that abstention by a Member State would not prevent joint action and consistency would be guaranteed between national action and action by the Union.

A provision is also included whereby, in particularly serious or exceptional circumstances, any Member State must refer a matter to the Council to seek a swift decision on possible common action.

(b) In matters of vital common interest, in other words those falling within the scope of the common foreign and security policy, the right of initiative for Council decisions would be shared between the Member States and the Commission, while responsibility for preparatory work and follow-up would rest on structured cooperation, via Coreper, between the Council's General Secretariat and the Commission. Democratic control would be ensured by the close involvement of the European Parliament in formulating and implementing the common policy. Acts adopted would not be subject to the jurisdiction of the Court of Justice.

In dealings with the outside world, especially in international organizations, the Union would be represented jointly by the Council Presidency and the Commission, the essential aim being that the Union should speak with a single voice.

(c) Common security policy, the objectives of which are laid down in Article Y11, involves a number of specific provisions (Section 2).

The scope of the policy would be defined in the Treaty itself and would comprise:

(i) a guarantee of automatic assistance through the incorporation of Article V of the Brussels Treaty establishing the Western European Union, which would give substantive expression to the will of the Member States to link their destinies in the field of security and defence; in the event of an armed attack on one of the Member States of the Union, the others would provide all the military and other aid and assistance in their power;

(ii) a list of matters of vital common interest in the field of security and defence, as defined by the Rome European Council in December 1990, which the European Council could subsequently expand:

arms control and disarmament;

security matters covered by the CSCE and the UN;

cooperation on the production, export and non-proliferation of arms;

the Commission also proposes the establishment of an arms research and production policy, since the present Treaty makes no provision for this although aspects falling under the competition rules, for example, or the common commercial policy are already covered;

(iii) a mechanism for regular meetings of Foreign and Defence Ministers with a view to developing cooperation and making it possible to convene an immediate meeting if necessary, i.e. in the presence of a threat or danger to the Union.

In contrast to decision-making on matters falling under the common foreign policy, responsibility for defining the principles and deciding what action should be pursued under the common security policy would lie with the Council acting unanimously. However, the Council might be able to use other forms of decision-making for implementing certain measures.

A Member State may, if it so requests, be granted dispensation from some of the obligations flowing from

such decisions where there are compelling reasons — i.e. because of its own constitutional provisions or because of international commitments entered into previously; such dispensations would be re-examined periodically by the Council.

Some of these decisions, in particular those relating to defence cooperation, could be implemented, in compliance with NATO commitments, by means of specific arrangements with the WEU, which might act on behalf of the Union with a view to its gradual integration into the Union.

The introduction of a common security policy requires Articles 223 and 224 to be repealed, since their field of application now comes under the new policy.

The general provisions discussed in point (b) above would apply to both security and foreign policy, as would the possibility of dispensation for a Member State from certain obligations.

C — External economic policy

1. Chapter II on external economic policy, which will replace Articles 110 to 116 of the EEC Treaty, reiterates the Community's current objectives and powers under the common commercial policy, incorporates the external aspects of economic and monetary union, and maintains the applicability of the provisions specific to this area.

Setting as objectives the development of the economy and trade at world and European level means conferring a central role on the Union not only in promoting the prosperity of its Member States, businesses and citizens but also in contributing towards shaping the world economy and in generating momentum for the economic integration of Europe as a whole.

These objectives define the areas in which the Union can act explicitly and comprehensively enough to put an end to the constant controversy surrounding the scope of Article 113 and formally determine the position in accordance with the rulings of the Court of Justice. It should become possible for the Union, among other things, to work towards economic objectives such as reciprocal investment protection, access to production, and the reduction of disparities and imbalances between national legislation relating to capital.

The exclusive competence of the Union in such areas is confirmed, making the Commission, and the Com-

mission alone, responsible for representing the Union on the external scene, notably in dealings with international organizations.

The Union should also be given power, though not necessarily sole power, to take the action needed to attain the objectives of external economic policy, in particular through bilateral and multilateral economic cooperation with non-developing countries: structural intervention (for example, in the G-24 context), participation in regional development banks (such as the EBRD), and debt relief.

2. The machinery for implementing this policy will be covered, in the case of measures other than international agreements,¹ by the general legislative pattern (law/regulation) to be incorporated in the new Treaty; with the law as the instrument providing the general framework enabling the Commission to adopt the regulations and decisions needed for the day-to-day management of the common policy, the Commission must also be in a position to adopt urgent measures if necessary.

The specific possibility of authorizing Member States to act in this area, by *inter alia* concluding international agreements, should help reconcile exclusive Union competence — capable of encompassing national action if necessary — with the desire to leave a certain role for the Member States.

D — Development cooperation policy

1. Chapter III will at long last enshrine development cooperation policy in the Treaty; up until now, except in the case of certain forms of association, all action under this policy has had to be based on Article 235 given the absence of any other provision in the Treaty.

It will consequently be possible to state clearly the objectives of development cooperation, and in particular the importance and indeed the priority attached to the concept of poverty and the attention paid to the idea of balanced and durable development, taking account of environmental constraints. These are part of the general objectives of the common external policy, which explicitly refer to the promotion of democracy, the rule of law and respect for human rights.

¹ The procedure governing the conclusion of international agreements is set out in Chapter IV of Title Y.

Moreover, development cooperation policy can be made more consistent and effective, notably by stressing the fact that the powers of the Union complement rather than compete with those retained by the Member States in this area. For this reason both action specific to the Union and joint action by the Union and its Member States will be an integral part of common policy provided that the principle of such joint action has been approved by special procedure, with the Council acting unanimously after receiving the assent of Parliament.

2. The machinery for implementing the common policy will include all the instruments normally used in this area (financial and technical cooperation, humanitarian aid, commercial provisions, and so on) as well as action designed to encourage investment and debt relief measures for the developing countries.

In areas covered by the common policy the action to be undertaken by the Union and the joint action to be implemented by the Union and the Member States will be defined in general guidelines and multiannual programmes adopted in the form of laws enacted under the co-decision procedure by Parliament and the Council, acting on a proposal from the Commission.

The Union, which will have the sole power to conclude international agreements in areas where it acts either alone or jointly with the Member States, would also be so represented as to speak with a single voice in all international forums.

3. In areas not covered by Union action or by joint action by the Union and the Member States, provision will be made for close coordination, under the aegis of the Commission, in order to encourage potential complementarity, to avoid the risk of inconsistency and to demonstrate the specifically European nature of the action in question at international level.

E — General provisions

1. The general provisions in Chapter IV of the Treaty (common foreign policy) lay down rules applicable to international agreements concluded by the Union with non-member countries or international organizations.

2. As regards the common foreign and security policy, in accordance with the general scheme of things set out under A above, the Member State holding the Council Presidency and the Commission will

have a joint right of initiative — the duopoly — at the various stages — requesting authorization to open negotiations, conducting negotiations and proposing conclusion of the agreement at the end of the negotiations.

Agreements would be concluded by the Council, acting by augmented qualified majority, or unanimously in security matters.

3. Outside the areas covered by the common foreign and security policy, in other words in external economic relations, development cooperation and all other areas where the Treaty confers powers on the Union, the principle of the single procedure would be confirmed and the broad outlines of the current Treaty would be preserved. Thus there would no longer be any need for specific provisions governing the conclusion of international agreements in those parts of the Treaty dealing with specific policies.

The Commission would have a monopoly of the right of initiative regarding the opening and conduct of negotiations and the conclusion of the agreement (after consulting a committee composed of representatives of the Member States); as a rule the Council would conclude the agreement by qualified majority after consulting the European Parliament.

However, the conclusion of important agreements, defined as such exhaustively by the Treaty itself, would require the assent of Parliament, currently required only for association agreements (Article 238 EEC).¹

Lastly, in order to put an end to a situation which provokes controversy and hampers decision-making, it would be provided that the Commission could conclude certain agreements specified in the Treaty (adjustments to existing agreements) or covered by a Council decision empowering it to do so;² it would also be provided that the Commission would administer agreements.

4. A clear indication is also given that where accession to a multilateral convention has a financial impact, the Union will sign the convention on an equal footing with the signatory States.

¹ Most agreements currently concluded under Article 113, for example, would not be within this category, but association agreements under Article 238 and general agreements resulting from GATT rounds would inevitably be within it.

² The Commission's powers under Article 229 EEC are unchanged.

F — Overall consistency

1. The fundamental question of ensuring consistency between the Union's common foreign and security policy and its other external policies is dealt with in a general fashion by a clause imposing an obligation to ensure such consistency and providing for a decision to be taken, on the initiative of the Commission or of a Member State, by the Council acting by the same procedure as applies generally to foreign policy questions.

The same procedure will be used to avert the risk of inconsistency between common foreign and security policy and national foreign policies, in addition to the rules governing the coordination of national policies.

There are also specific provisions relating to external economic relations and development policy to ensure that the Member States take a coordinated line on the international scene in matters which are not directly within the Union powers.

2. Provision is made for the case of international agreements with a content covered partly by foreign policy and partly by other external policies.

The procedure is a combination of those applicable to the two categories. Among other things, there is a diluted form of the duopoly of Commission and Council Presidency in the conduct of negotiations.

These agreements, which provide a general framework for relations with non-member countries in all their aspects, are of such a nature that the assent of Parliament should be required in the same way as for important agreements outside the foreign policy context.

The Commission would administer agreements in all areas other than foreign policy.

G — Conclusion

The changes that would flow from the guidelines set out above would make it possible to remedy the current difficult situation:

(i) first, the original Treaty was sketchy in its treatment of the external aspect of Community activities (being confined to commercial policy and association agreements); the gaps have had to be filled in by the Court of Justice and controversy and disagreement have always been the order of the day;

(ii) secondly, the Single Act went only part of the way towards solving this by adding specific references to external relations in a few areas (environment, research) while mixing up the two political contexts of intergovernmental political cooperation and decisions by the Community institutions.

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Commentary

Title Y: Common external policy

Article Y0

Reflecting the importance which the Union attaches to playing an active part in its own right on the international scene, this Article begins by stating that the Union shall formulate and implement a common external policy. The wording bears witness to the recognition that in every task assigned to the Union by the Treaty, the internal aspect of Union action is necessarily mirrored by a corresponding external aspect. While encompassing the entire range of policies which the Union has to conduct in its relations with non-member countries and their peoples and with international organizations, the common external policy nevertheless has to make allowance for the particular nature of the various fields in which it will have to act. Separate arrangements therefore have to be laid down for:

(i) foreign and security policy, the conduct of which constitutes one of the principal new tasks assigned to the Union by the Treaty;

(ii) external economic policy, development cooperation policy, and the Union's other areas of external responsibility, including those under EMU: this thus covers every external aspect of Union action. These external policies, though viewed in more global and evolutive terms, correspond more closely to the traditional aspects of action pursued hitherto by the Community; consequently it seems more appropriate to implement common arrangements more in the traditional mould. As regards these policies, then, the new Treaty — besides encompassing the external aspects of the Union's tasks, broadening their perspective and modifying procedures to enhance their effectiveness — serves primarily to confirm and rationalize current practice and the principles hitherto spelled out by the Court of Justice.

As the Article indicates, the common foreign and security policy on the one hand, and external economic policy and development cooperation policy on the other are each governed by a separate chapter.

Chapter I: Common foreign and security policy

Article Y1

The seeds of a common foreign and security policy were already contained in Title III of the Single European Act relating to European cooperation in the sphere of foreign policy. But there the policy was intended to develop alongside Community activity proper — in the wings, so to speak. Here it is fully incorporated as one of the tasks of the Union as such. The inclusion of foreign and security policy in the sphere of Union action through this Article represents one of the major innovations of the new Treaty on the path towards European Union. The provisions of this Article thus form a bedrock and occupy a place of cardinal importance.

Article Y1, the wording of which is largely based on the fifth point of the preamble to the Single Act, states that the Union shall conduct a common foreign and security policy and defines the aims and principles it is to pursue. These aims and principles are those to which the Member States of the Union — and every civilized nation — have long subscribed in their relations with other countries and peoples. They are an expression of their fundamental beliefs as to the essential foundations for improved international relations: the preservation of peace and international stability, the development of friendly relations with all countries and the furtherance of democracy, the rule of law and respect for human rights.

Nevertheless, the fact that the Union intends to take its place on the international stage by pursuing a common foreign and security policy does not mean that the Member States themselves cease to have any role in international relations. Due heed must be paid to the legacy of the past so that the fabric of links that each Member State has woven with other nations may be knit together in a rich new tapestry. Article Y1 therefore makes explicit reference to the need for the Union to take account of the special relations of individual Member States.

Equally a common foreign and security policy does not necessarily mean a single policy. Its implementa-

tion would involve both action by the Union and individual action by the Member States.

A common foreign and security policy involves two aspects:

- (i) the first concerns the general question of the Union's attitude towards the outside world;
- (ii) the second more specifically concerns defence and security and involves the implementation of specific provisions.

This is laid down in the second paragraph of Article Y1.

Section 1: General provisions

Article Y2

Reflecting the gradual process through which the common foreign and security policy is intended to develop and be conducted, this Article defines the components which go to make up that policy:

- (i) common action on matters that have been declared to be of vital common interest in accordance with the procedure laid down in Article Y3;
- (ii) foreign policy action which remains in the national domain in principle, but where the Member States are bound to act in close cooperation.

Article Y3

This Article deals with common action by the Union. It is one of the key provisions of this Chapter. It lays down the procedure by which foreign policy matters are defined as falling within the common domain.

A special decision-making procedure is instituted for this purpose, without prejudice to the exercise of the Union's external powers under the other Treaty provisions (Article Y11 *et seq.* as regards common security policy; Article Y16 *et seq.* as regards external economic policy and Article Y20 *et seq.* as regards development cooperation policy; Article 108(2) and (3) as regards monetary policy; Article Y26 as regards agreements falling under the other fields of Union responsibility referred to in Article 3 of the Treaty).

This mechanism operates in two stages, as proposed by the Commission in its opinion.

- (a) Paragraph 1 deals with the method for deciding what matters are to be the subject of common action

by the Union. These will be matters that have been declared to be of vital common interest.

To promote the gradual emergence of fields of common action, the Treaty does not specify what matters are of vital common interest. It assigns the task of deciding what these should be to the European Council after hearing the views of the European Parliament. This confirms the role of the European Council in providing impetus and general political guidelines, in line with the Solemn Declaration of Stuttgart of 19 June 1983. When giving political approval for the Treaty, the European Council would be expected to decide on an initial list of such matters, so as to give effect to the provisions of this Chapter. The right of initiative for such decisions is shared between:

- (i) the Presidency;
- (ii) the Commission: here, unlike in other areas of Union action, the Commission does not enjoy sole right of initiative;
- (iii) a simple majority of the Member States.

In deciding what matters are of vital common interest, the Union must take account of the special relations of the Member States and of the specific aspects of their external action. It could happen that some of the obligations entailed by common action might pose a difficulty for a particular Member State. This has to be avoided. The second subparagraph of paragraph 1 therefore provides that the European Council is to lay down the conditions under which one or more Member States may be granted dispensation from some of the obligations involved in common action at their request. The European Council would, of course, have to make sure that any such dispensation is compatible with the principle of the common action in question and that the Member State(s) concerned come back into line as soon as possible.

Any such dispensation would also involve certain constraints for the Member States to which it is granted. They may not do anything that is likely to affect the implementation of Union decisions.

(b) Once the European Council has decided that a matter is of vital common interest, responsibility for defining the necessary principles for the common policy and the type of action to be pursued in implementation of the policy passes to the Council. Such action may be taken by the Union itself or by the Member States. Paragraph 2 confers the necessary powers on the Council; here too, special procedures apply:

(i) as under paragraph 1, the initiative for decisions may come from the Member State holding the Presidency or the Commission or a simple majority of the Member States;

(ii) on the procedural side, it is proposed that the Council should act by a qualified majority, but that this should be the augmented majority specified by the second indent of Article 148(2) for Council decisions where there is no proposal from the Commission. This requires 54 votes in favour from at least eight Member States. For the sake of realism, where the initiative for a decision comes from the Commission, the last sentence of Article Y3(2) stipulates that Article 149(1) shall not apply; this is the provision whereby, if the Council acts on a proposal from the Commission, unanimity is required for an act constituting an amendment to that proposal. Clearly there is little point in retaining the rule where the Commission does not have the sole right of initiative. The augmented qualified majority specified in the second indent of Article 148(2) would always be sufficient to ensure that the Council reaches a decision.

Article Y4

In contrast with Article Y3, which deals with matters that have been declared to be of vital common interest and therefore involve common action by the Union, Article Y4 concerns the other areas of foreign policy — including security — which have not been declared to be of vital common interest and so remain within the sphere of the individual Member States' foreign policy.

Nevertheless it is important for the Member States to cooperate and endeavour to act in concert even in these matters. The Single Act made provision for such cooperation, most notably in Article 30(2). Article Y4, while largely based on that paragraph, seeks to tighten and make more explicit the Member States' obligation to coordinate their action.

Paragraph 1 broadly follows the wording of Article 30(2)(a) on the obligation to coordinate action on foreign policy matters of general interest. However, it also includes the Commission, alongside the Member States, among those on whom this obligation rests. As specified in Article 30(2), one of the foremost requirements for coordination is prior mutual information regarding planned action. The second subparagraph therefore requires the Member States to inform their partners in the Union and the Commission of any foreign policy measures they intend to take beforehand.

Beyond this, paragraphs 2, 3 and 4 aim to encourage the Member States to pursue common action. Paragraph 2 requires them to ensure the formulation and progressive development of common principles and objectives. However, in matters that remain within the national sphere for the time being at least, the Treaty must allow for the possibility that a Member State might feel unable to abide by the common position and should not force it to do so. In this event, however, the Member State concerned would still have to comply with the obligations entailed by membership of the Union.

A Member State that felt unable to go along with the general position would not be able to make use of its prerogatives in the form of a veto. Under paragraph 3 Member States must refrain from hindering the emergence of consensus and any action that may flow from it.

Paragraph 4 spells out the discipline which the Member States must observe in adopting positions and pursuing national action. They must always bear in mind the need for coordination and cohesion by taking account of the positions of their other partners, by endeavouring to arrive at common positions and treating those agreed as a point of reference for national policies, and by showing loyalty to the Union through compliance with the obligation not to take action which impairs the effectiveness and cohesion of positions taken by the Union in international relations.

Lastly, paragraph 5 makes provision for an eventuality that may arise with the gradual introduction of the common foreign and security policy, especially in the initial stages. A very serious situation may occur in an area that has not yet been declared to be of vital common interest where a particular Member State feels bound by earlier commitments to act or react. The prime requirement is that before taking individual action, the Member State in question should leave room for common action by the Union. Paragraph 5 requires a Member State to refer the matter to the Council before taking action in such an event; the Council would then have to act without delay in accordance with Article Y3(2). This would afford it the opportunity to decide whether action by the Union was called for.

Article Y5

In line with the desire to strengthen the democratic legitimacy of the Union which underlies the entire Treaty, this Article lays down the manner in which

the European Parliament, like its national counterparts, is to be closely involved in the definition and conduct of the common foreign and security policy. Besides the right to make its views known before the European Council takes a decision identifying vital common interests, as provided by Article Y3(2), Parliament should enjoy certain specified prerogatives.

The Council and the Commission will be required to keep Parliament regularly informed of the subjects dealt with under the common foreign and security policy and must make sure that its views are duly taken into consideration. The first paragraph is largely based on Article 30(4) of the Single Act, which deals with European foreign policy cooperation.

Going beyond this, the second paragraph enumerates more explicitly the rights needed to ensure the close involvement of the European Parliament. At least once a year Parliament is to hold a debate on the common foreign and security policy, during which the Council and the Commission will have to give explanatory statements. Moreover, in view of the fact that Parliament's committees offer the most appropriate framework for cooperation between Parliament and the executive, especially in foreign policy matters, this Article explicitly recognizes the right of the appropriate Parliament committees to hear the Council or the Commission, either at the initiative of the Council or the Commission or at Parliament's own request.

Article Y6

The Single Act dealt with European foreign policy cooperation separately from other Community activities, and the preparation and implementation of such cooperation rested with separate administrative structures from those of the Community institutions. In particular, the Political Committee and the Secretariat provided for in Article 30(10) of the Single Act operated alongside the Permanent Representatives Committee and the Council's General Secretariat.

With foreign and security policy now coming within the sphere of the Union, it is logical to unify the structures involved in preparing and implementing it.

It is therefore laid down that the General Secretariat of the Council, strengthened if necessary and incorporating the Political Secretariat, will be responsible for preparing the Council's decisions and monitoring their implementation. It will work in close cooperation with the Commission, liaising closely with the

Presidency, and exercising full diplomatic discretion initiatives where the traditional preparatory procedures might be inappropriate.

In addition, the Permanent Representatives Committee is given responsibility for preparing the ground for the Council's deliberations under the common foreign and security policy, as it does in other areas of Community activity under Article 4 of the Treaty establishing a Single Council and a Single Commission of the European Communities.

Article Y7

The existence of a common policy — for both foreign policy and security issues — implies that the Union must be represented as such on the international scene. Article Y7 makes provision for such representation. Unlike in the other areas of Community responsibility, where the main role is generally played by the Commission, special rules apply here which reflect the particularly sensitive nature of foreign policy and security issues.

In relations with non-member countries and in international organizations and conferences the first subparagraph of paragraph 1 provides for the Union to be represented by a 'duopoly' (this also applies for the negotiation and conclusion of agreements coming under the common foreign and security policy — Article Y25), comprising the Council Presidency and the Commission. In order to involve the Member States as closely as possible alongside the institutions, especially in the eyes of the outside world, provision is also made for the duopoly to be assisted, where necessary, by two Member States — the next and previous holders of the Presidency, following the 'troika' formula — thus forming what now becomes (with the involvement of the Commission) a 'quadriga'.

The second subparagraph of paragraph 1 is designed to deal with a difficulty that might arise with certain international organizations or certain organs of such organizations where not all of the Member States are members or have seats (UN Security Council, bodies of the Atlantic Alliance or WEU). It may prove impossible for the Union to be represented in these organizations or bodies under the rules of the first subparagraph. To cover this eventuality, procedural provision is made to enable the Council, acting by an augmented qualified majority on a proposal from the Commission or a Member State, to entrust the task of presenting the Union's position to one or more Member States in those organizations or their organs.

Here, too, the essential requirement is for the Community to speak with a single voice.

Paragraph 2 deals with the question of diplomatic representation in non-member countries and at international organizations. The incorporation of foreign and security policy, in so far as matters of vital common interest are concerned, within the sphere of Union responsibility under the Treaty does not mean that the aim is to replace overnight the diplomatic links that the Member States have built up over many years. Far from it. The Member States' missions accredited in non-member countries and to international organizations are not affected. However, they should act in close cooperation and might, where appropriate, pool their resources together with the offices established by the Commission. The Member States and the Commission are required to intensify their cooperation and to furnish each other with all the assistance and information needed to ensure that the Union is represented as effectively as possible.

Article Y8

Article 30(5) of the Single Act was already concerned with the need for consistency between the external policies of the Community and the policies agreed in European political cooperation. It conferred special responsibility on the presidency and the Commission, each within its own sphere of competence, for ensuring that such consistency was sought and maintained.

This requirement is even more imperative once there is a common foreign and security policy. It applies not only to Union action under the other provisions of the Treaty but also to foreign policy action by the individual Member States, especially in areas outside those covered by matters that have been declared to be of vital common interest.

The second paragraph is designed to deal with the potential danger of inconsistency with the common foreign and security policy from two quarters: from action by the Union under other policies, and from intended action by a Member State. It allows the Commission or any Member State, if it considers such a danger exists, to request a meeting of the Council to be convened to discuss the problem and, if necessary, take a decision in accordance with the procedure laid down in Article Y3(2).

Article Y9

Essentially taken over from Article 30(8) of the Single Act, this provision on political dialogue between the

Union and non-member countries and regional groupings emphasizes the spirit of openness to the world which should guide the Union's action in foreign and security policy.

Article Y10

Article Y10 places the field covered by this Chapter outside the jurisdiction of the Court of Justice under Articles 164 to 188 of the Treaty, since action taken in pursuance of foreign or security policy is pre-eminently a matter of political decisions and not, generally speaking, a matter for the judiciary.

Section 2: Common security policy

Article Y11

The Union's foreign policy must also embrace security in the broad sense, including defence. The objectives spelled out are dissociable and the Union has to be given all the necessary powers.

This Article sets out the general purpose of the common security policy, which is to strengthen security in Europe and to maintain peace in the world in accordance with the Charter of the United Nations, which has a recognized security function.

It also defines the relationship between the common policy and the WEU, reflecting the WEU's pivotal role in European integration in security matters.

The Article goes on to describe the long-term objective as being to establish a common European defence in full compliance with commitments entered into in the Atlantic Alliance and NATO.

Europe's specific defence interests were set out in the WEU Platform adopted in The Hague on 27 October 1987, in which nine of the Union's Member States expressed the conviction that security and defence are of central concern to the Union.

Article Y12

This Article determines the general commitment to solidarity which gives practical expression to the will of the Member States to pool their destiny as regards security and defence. It reproduces the commitment made in Article V of the revised 1948 Treaty of Brussels, which established the WEU: if a Member State

is the object of an armed attack in Europe, the other Member States must afford it all the military and other aid and assistance in their power.

Reproducing this fundamental WEU Article in the Treaty, without prejudicing the maintenance of the Member States' existing commitments, expresses the identity of Europe in security matters. The assurance of mutual assistance is the least that the Union Treaty can do in the way of a political commitment and gives substance to the Member States' will to link their destinies in the field of security and defence.

Article Y13

This Article introduces an 'evolutive' process to enable the common security and defence policy to be established in stages.

Where matters to be dealt with are not covered by other Treaty machinery, this Article takes a specific approach to security questions by providing them with their own decision-making machinery which to some extent derogates from that established by Article Y3. The differences lie, first, in the decision-making procedure, sensitivity and specific importance attached to security and, second, in the fact that vital common interests in this area will have to be determined as soon as the Treaty enters into force.

Paragraph 1 proceeds on the basis of the conclusions of the December 1990 Rome European Council to give the Union an identified security role, specifying forthwith that certain matters are of vital common interest and will fall to be dealt with in the Union context. These are arms control, disarmament and related questions (meaning confidence-building and security measures which are not necessarily considered exclusively in the CSCE), security questions dealt with in the CSCE or the United Nations, the latter to include UN peacekeeping operations and the possibility of joint intervention forces, cooperation in the field of armaments and policy on arms production and exports, inspired by the non-proliferation concept.

As part of its security policy the Union ought also to establish a research policy, especially for arms technology, and pool efforts in the field of arms production with a view to achieving savings, agreeing standards and avoiding duplication.

This could be implemented under paragraph 3 (generally requiring unanimity) and — bearing in mind, in particular, that it is proposed to delete

Article 223 — should be developed so as to complement any action the Union may take in the area of the internal market (opening up government procurement), the common commercial policy (customs tariff) and competition.

Paragraph 2 of this Article, like the general provision in Article Y3, gives the European Council responsibility for progressively identifying other areas of vital common interest.

Paragraph 3, like Article Y3(2), establishes decision-making machinery for the second stage. Within areas declared to be of vital common interest, the guidelines and principles of the common policy have to be formulated and action to implement the policy has to be decided. Given the specific character of security policy, it is provided that guidelines and principles will be adopted unanimously by the Council, though abstentions will not prevent the adoption of decisions. There is no specific provision as to who will have the right of initiative, for it is felt that the greatest latitude should be left here.

While basic decisions are to be taken unanimously, there should be a degree of flexibility as to the procedure for deciding on action to be taken. The Council, therefore, will have to decide unanimously whether to keep the unanimity rule or opt for a less cumbersome procedure.

As under Article Y3, action under the common policy may be implemented either by the Union or by its Member States so as to preserve the possibility of responding to different types of situation.

Paragraph 4 allows the European Council and the Council to dispense Member States who so request from the obligations which flow from common action if they can show cogent reasons based either on their own constitutional requirements or on pre-existing international commitments.

There are three riders on this proviso. First, to ensure that decisions can be effective and that joint action is consistent, the Member State concerned must refrain from taking any measures that may affect the implementation of Union decisions.

The second rider seeks to ensure balance in the exercise of such dispensations. The Council will periodically review them to assess whether the relevant States should continue to enjoy them. The review will have regard to common policy developments and should enable a Member State to join in subsequently.

Lastly, a Member State that has been given dispensation will not be allowed to participate in Council deliberations on the scope or application of its partners' obligations.

Article Y14

This Article was drafted in the same spirit as Article Y12 and seeks to give the Union the benefit of progress towards integration of foreign policy and security policy achieved by the WEU, without actually shifting the centre of gravity of the construction of the European identity.

The principle of joint meetings of Foreign and Defence Ministers has already been tested since the WEU Council's Rome Declaration of October 1984; the aim is to provide the Union with a cooperation and decision-making forum combining foreign policy and defence elements and involving the Commission. The scheduling of these meetings — twice yearly and when requested — is the same as for WEU Council meetings and reflects both the permanence of the functions exercised by the relevant ministers and the need to meet quickly in an emergency.

Article Y15

This Article aims to ensure that possibilities of cooperation available in the WEU can be used for the benefit of the common policy. The idea is that the various European security structures should reinforce each other, without prejudice to the differing security commitments of the various Member States.

Paragraph 1 gives the Council the possibility of deciding unanimously, under the procedure of Article Y13(3), to refer a matter to the WEU Council where WEU resources might valuably be used to implement Council guidelines. The WEU then acts on behalf of the Union. This provision adds to the machinery already available under the WEU Treaty and to the specific cooperation facilities available there.

Paragraph 2 reflects the need to ensure consistent action while bearing in mind that there are different forms of security partnership among the Member States; at the same time it follows from the general scheme of the Treaty and from the spirit of the Single Act that the Commission must be given a role. This paragraph consequently provides for Union Member States which are not WEU members and the Com-

mission to be represented where WEU meetings proceed on the basis of a Union initiative. Arrangements will have to be agreed between the Union and the WEU to establish the relationships that are needed if action is to be undertaken on behalf of the Union with a view to gradual integration. The requisite arrangements could be made by means of a Protocol comparable to those governing relations between the WEU and the Atlantic Alliance.

This Article aims to prepare for the gradual formulation of a European common security policy. Paragraph 4 illustrates this option in favour of a gradual approach. The rules set out in paragraphs 1 and 2 preserve the specific character of the Union and of the WEU while highlighting the convergence of their objectives.

Paragraph 3 applies to those Union Member States which are also members of the Atlantic Alliance. The idea is that the Member States will speak with one voice in the Alliance and NATO when questions declared to be of vital common interest by the Union or questions dealt with by the WEU are discussed. This will help strengthen the Atlantic Alliance's European pillar.

Paragraph 4 confirms the long-term objective of integrating the WEU into the Union and for this purpose uses Article XII of the revised 1948 Treaty of Brussels. At the end of the 50-year time-limit set in that Article, the contracting parties each have the right to withdraw, subject to one year's notice. This will give a chance to take stock of security cooperation with a view to the eventual integration of the WEU into the Union. The exercise will begin in 1998.

Chapter II: External economic policy

Article Y16

1. Article Y16 lays down the principles governing external economic action by the Union, which — combining the Community's current competences, primarily economic, with the wider powers conferred upon it by the new Treaty — will play an increased international role commensurate with its responsibilities and mission.

2. The conduct of such action pursuant to the legislation and policies which it is designed to implement is geared essentially to the common interest of the

Union, in other words to the economic prosperity of its Member States, its businesses and its citizens.

Within this framework it will be for the Union to affirm its presence and to play a key role in the drive to improve the world economy.

3. The aim of such action will basically be threefold:

(i) the general improvement of macroeconomic structures and the liberalization of world trade; the Union's role here will not only be to represent a powerful factor for economic growth through implementation of its policies in general and completion of the internal market in particular but also, by extension, to contribute towards shaping the world economy, notably through participation in the Western Economic Summit and the OECD and through the increased role it will be called upon to play in the IFM as and when economic and monetary union progresses;

(ii) the progressive strengthening of the links and relations between the different — and increasingly interdependent — countries and economies; this particular aim highlights the Union's key role in generating momentum for European economic integration;

(iii) the establishment of fair economic and social conditions throughout the world through the pursuit of these economic objectives; this concern is clearly reflected not only in development cooperation as such but also in measures to assist the countries of Central and Eastern Europe and in the preferential treatment given to the developing countries in multi-lateral negotiations (see Part IV of GATT).¹

Articles Y16a and 17

1. Article Y17, like Article 113, which preceded it, becomes the nucleus of the external economic policy, the basis for the Union's exclusive competence in the area of external economic relations.

2. The proposed amendments have three main aims:

(i) the consolidation of the present position by confirming the Union's exclusive competence and the Commission's negotiating role in the areas in question;

¹ International action in the interests of solidarity not related to development cooperation (e.g. disaster relief) would also be covered by this general aim.

(ii) the codification of the interpretation of the concept of commercial policy in line with the rulings of the Court of Justice and with Community practice and legislation;

(iii) the introduction of the concept of 'common policy on external economic relations' encompassing the exclusive powers conferred on the Union (Article Y17(1), the powers conferred on it in the areas covered by economic and monetary union (Article Y16a), and the powers to take any other external measure needed to achieve the Union's economic objectives (Article Y19).

Paragraph 1

3. The new external economic relations policy is primarily a common policy based on experience of the Community's commercial policy and on the way in which it has developed.

4. This is followed by a list of the areas in which exclusive competence is conferred on the Union, providing what is in effect a legislative codification of the principles established by the rulings of the Court of Justice already applied in practice on numerous occasions. Most of the areas in question are covered by the current Uruguay Round of the GATT negotiations.

5. Even if powers in the field of commercial policy have evolved in a process which will doubtless continue (Court rulings, implicit powers, application of Article 235 EEC), the need for a proper statement of the respective positions of the Union and its Member States brings with it, in particular in the interests of legal clarity, the need to specify in constitutional terms the areas in which exclusive competence is conferred on the Union.

6. The areas covered by the external economic policy include:

(i) trade, including export credit and credit insurance schemes: this basically covers the current commercial policy as defined by Article 113(1) and successive Court rulings;

(ii) economic and commercial measures involving services, capital investment, establishment, intellectual property and competition.

The aim here is to grant the Union jurisdiction not only in areas directly linked to trade¹ but also in respect of other economic objectives, whose insertion in the common commercial policy has resulted in divergent interpretations; these include reciprocal invest-

ment protection, access to production, the reduction of disparities and imbalances between national legislation relating to capital.

It is essential for the Union to be given sole jurisdiction in such areas in the interests of maximum effectiveness and coherence.

As far as intellectual property is concerned, the absence of harmonized protection for intellectual property on an international scale has highlighted the problems facing the industrialized countries in particular as a result of the increase in industrial piracy and counterfeiting.

On the basis of the GATT experience (TRIP negotiations) the idea is to consolidate and extend Union powers in an area which, given the proliferation of the new technologies (computer software, etc.), is likely to undergo much more dramatic developments than the more 'traditional' problem areas (protection of geographical names). That said, the legal complexities involved, notably the existence of rights and obligations which cannot be fully integrated into the economic dimension (cultural aspects, protection of individual rights, intellectual rights, etc.), militate in favour of restricting exclusive competence in this particular area.

Paragraph 2

7. States quite clearly that the Union is to have sole power to take measures, autonomous and conventional, in the areas referred to in paragraph 1. It is totally consistent with the Court rulings on Article 113 and complies with the same operational requirements.

Paragraph 3

8. Keeps open the current option of delegating power to the Member States to adopt specific measures in accordance with the objectives of the Union and subject to its authorization.²

As we are talking here about implementing measures for which the Member States would receive a specific

¹ Already covered by the GATT negotiations: TRIMs, services, etc.

² This clause could also be used for dealing with outstanding aspects of commercial policy (e.g. coordination of national export credit schemes), as well as for the application of measures — to be specified — adopted in line with the principle of subsidiarity.

mandate from the Union, this clause in no way prejudices the exclusive competence conferred on the Union, which will grant the necessary authorizations and lay down the requisite limits and conditions. Such measures consequently fall fully within the common policy.

Paragraph 4

9. Provides the legislative framework for the adoption of *ad hoc* autonomous measures (anti-dumping, safeguards, management of tariff quotas, etc.) and for the granting of the authorizations referred to in paragraph 3. It will be for the Union acting under the co-decision procedure to lay down the criteria and general conditions for applying such measures, which will subsequently be administered by means of regulations and decisions adopted by the Commission.

Paragraph 5

10. Refers to the procedures laid down in Article Y27 governing conventional commitments entered into in areas other than common foreign and security policy.

Paragraph 6

11. Establishes the principle of Union representation by the Commission on the external scene in areas covered by the common policy. The aim is to enhance the Union's effectiveness by ensuring that it speaks with a single voice in international organizations on all issues that come under the common policy.

12. It is in fact essential to establish quite clearly the principle of single representation wherever the Union has sole power to act, not only in relations with the typically 'economic' organizations (GATT, OECD, etc.) but also in dealings with non-economic or 'mixed' organizations (United Nations, CSCE, etc.).

Article Y18

1. This Article introduces a procedure for dealing with unforeseeable circumstances demanding urgent action in the economic and commercial field. The most likely scenarios would be the need to defend the Union's economic interests or to deal with other threats (e.g. to public health) by adopting trade measures similar to those taken at the time of the Chernobyl disaster.

2. Responsibility for assessing whether the circumstances warrant such action will lie with the Commission, which is given the power to adopt the necessary measures. But it has to inform the Council and Parliament of what has been done without delay.

3. Urgent protective measures (e.g. provisional imposition of anti-dumping duties) will be governed by the *ad hoc* procedures laid down pursuant to Article Y17(4).

Article Y19

1. Article Y19 is designed to meet two basic needs in areas where the Union does not have exclusive competence:

(i) the need to confer on the Union concurrent competence to take economic measures in areas other than those referred to in Article Y17;

(ii) the need to make provision for general coordination on any issues of general interest involving external economic relations.

Paragraph 1

2. Geopolitical changes and the development of international economic relations, notably within Europe, have already forced the Community to face up to increased responsibilities within a rigid legal and institutional framework ill-suited to the new challenges.

3. The Union must therefore be given wider powers commensurate with its international responsibilities and geared to a broader range of operations.

4. The clause in question enables the Union to take 'atypical' measures with a view to achieving the objectives listed in Article Y16, in particular through bilateral and multilateral economic cooperation with non-developing countries: structural intervention (for example, in the G-24 context), participation in regional development banks (such as the EBRD), and debt relief.

Paragraph 2

5. Meets the need to coordinate action by the Member States, particularly in respect of the positions they adopt as members of international organizations (IMF, World Bank, etc.) or as participants at informal international conferences (economic summits, meetings of the Paris Club, etc.).

6. In view of the growing importance for world economic relations of the guidelines produced by all these bodies provision is made for permanent coordination between the Member States and the Commission on economic issues of general interest; this will mean among other things that the position of Union members not represented in all the international organizations will be duly taken into account.

Chapter III: Development cooperation policy

The importance attached by the European Council to development cooperation policy in the wider context of international action is reflected in the decision to devote a separate chapter to it (Articles Y20 to Y24). This also serves to stress that development cooperation policy, albeit a significant component of the common external policy, has specific objectives and characteristics of its own.

The European Council also established the need for a stronger Community identity and more coherent Community action commensurate with the new challenges and responsibilities facing the Community on the international stage.

In the face of the major challenge represented by the need to promote development and to fight poverty, the responsibilities taken on by the Community and its Member States are impressive, both in commercial terms (leading outlet for exports from the developing countries) and in financial terms (European public aid granted on concessionary terms — EEC + Member States — accounts for 42% of world aid, as against 15% in the case of the USA and 17% in the case of Japan) and must not be overlooked.

The main aim of this particular chapter is to provide the common cooperation policy and its objectives, component elements, decision-making procedures and machinery with the legal and political basis which they deserve.

A further aim is to strengthen — through Union action, joint action by the Union and its Member States, and coordination of other action by the Member States — the identity and coherence of Union efforts in this area.

Article Y20 (Objectives of the common policy on development cooperation)

This Article defines — of necessity in general terms — the main objectives of the common policy. Three points deserve special attention:

- (i) the importance and priority attached to the concept of poverty, whether it be the poverty suffered by the most disadvantaged sections of the population in the countries concerned or the general economic and social poverty suffered by what the international community terms the least-developed countries;
- (ii) the attention paid to the idea of balanced and durable development, taking account notably of environmental constraints;
- (iii) the place given to respect for human rights and dignity and the promotion of democracy as part of the general objectives of the common external policy.

Article Y21 (Components of the common policy on development cooperation)

The aim of this Article is to differentiate between the two components of the new common policy: action by the Union and joint action by the Union and the Member States; and coordination of other action by the Member States. The substance and implementing procedures for the former are spelled out in Articles Y22 and Y23 and for the latter in Article Y24.

Article Y22 (Areas, instruments and scope of action by the Union and of joint action by the Union and the Member States)

Paragraph 1

The action falling within the sole jurisdiction of the Union obviously includes measures covered by the common commercial policy. It also includes management of the instruments for the stabilization of export earnings from commodities of export interest to developing countries (Stabex, Compex, Sysmin) as well as measures (at the planning, negotiation or implementation stage) designed to improve the operation of the markets in such products. This particular clause largely enshrines existing competences and takes over the wording already approved by the Community in the fourth Lomé Convention and in the positions adopted at Unctad.

Paragraphs 2 and 3

The list of action by the Union and of joint action by the Union and its Member States is not comprehensive but includes the instruments generally used to back up the development policies undertaken by the developing countries. EIB operations are also included.

Paragraph 3

The aim of this paragraph is to introduce a procedure for defining the nature and scope of joint action by the Union and the Member States in the areas referred to in paragraph 2. Such joint action is essential to provide the common cooperation policy with the minimum critical mass needed to ensure its credibility and to give it a specific identity in the eyes of its beneficiaries as well as in the eyes of the other donors.

There are two points worth making as things stand at present: first, action by the Community as such (Lomé Convention and other operations funded by the budget) accounts for only just over 10% of the total aid granted by the Member States; and secondly, despite efforts already made to produce overall guidelines in certain areas, bilateral action by the Member States is still virtually uncoordinated.

Hence the procedure introduced by paragraph 3 (decision by the Council acting unanimously on a proposal from the Commission after receiving the assent of Parliament), which should make it possible to identify general objectives and to define joint action for implementation by the Union and the Member States on a significant scale and in an effective and coherent manner. For example, the Council could decide to launch a plan to combat poverty or desertification; or, should the Union and the Member States so wish, it could decide to take action aimed at relieving indebtedness. It would then select which of the instruments listed in paragraph 2 should be used for the purpose.

Article Y23 (Definition of general guidelines and multiannual programmes specifying action to be taken by the Union and joint action to be taken by the Union and the Member States; conventional commitments; Union representation)

Article Y22(3) lays down the procedure for defining joint action in the field of development cooperation.

The next stage is to translate these relatively broad outlines into specific operations by:

- (i) defining general guidelines to ensure that the action taken by the Commission and the Member States is consistent;
- (ii) establishing multiannual programmes specifying what action is to be taken, how, on what scale, and by whom (Commission or the Member States).

Paragraph 1

This defines the procedure for taking the above decisions: qualified majority, co-decision by Parliament and the Council, proposal from the Commission.

The effectiveness of the cooperation policy is ensured by combining the various operations in a single programme and by constant coordination.

Paragraph 2

The general provisions governing conventional commitments are set out in Article Y27. The Union will have sole power to enter into such commitments in areas subject to action by the Union or to joint action by the Union and the Member States as defined in accordance with Article Y22(3). Given the thinking behind the new Treaty, the Lomé Convention would be covered by this paragraph.

The Commission will represent the Union when these areas come up for discussion by international organizations or at international conferences. This would apply for instance in the case of Unctad or FAO discussions, or meetings of the Conference on the Special Action Programme on behalf of the Least-Developed Countries).

Article Y24 (Coordination)

Paragraphs 1, 2 and 3

As the Member States will continue to take national action in broad areas of development cooperation not covered by Union action or by joint action, provision has to be made for machinery which will ensure consistency and improve effectiveness as a result. This machinery is duly provided for in Article Y24:

- (i) mutual information on all plans for action at national or Union level in the field of development cooperation policy;

(ii) liaison necessary as a result of such information or in the interests of general consistency.

Paragraph 3 stresses the need for overall consistency between Union cooperation policy as a whole and action by the Member States in a national framework. The action taken by the Union and national action must complement each other. In any event national action must avoid impairing Union cooperation policy.

Paragraph 5

It will be for the Commission to take any action needed to ensure that the system operates properly, including the sending of recommendations to the Member States.

This does not preclude the adoption of specific and more binding measures by the Council in accordance with the procedures set out in Article Y23(1) in areas not subject to Union action or joint action but deemed to be of special importance. This could apply for instance in the case of discussions organized at periodic meetings of IMF or World Bank bodies (general assemblies, Development Committee, BIRD/IMF, etc.).

Paragraph 4

Similarly, the Commission will be responsible for coordinating the positions of the Member States in international forums in areas not specifically covered by the common cooperation policy.

Chapter IV: General provisions

Section 1

Article Y25

Paragraph 1

This paragraph transposes the traditional Community mechanism into the new common foreign and security policy but adds a role for the Council Presidency.

Where the Commission already has powers in areas of Community concern, the right of initiative is conferred jointly on the Council Presidency and the Commission as regards requests for authorization to

open negotiations and the conduct of negotiations (the 'duopoly').

The Council, which decides to open negotiations by augmented qualified majority, or in certain cases¹ unanimously if the agreement relates to security matters, may always issue a negotiating brief to the negotiators, who will be assisted by a special committee appointed by the Council.

Paragraph 2

The initiative in proposing that the agreement be concluded lies with the Council Presidency or the Commission; either of them may make the proposal to the Council.

It is the Council which, after consulting Parliament, concludes the agreements by an augmented qualified majority, or in certain cases¹ unanimously if the agreement relates to security matters.

Section 2

Article Y26

Paragraphs 1 and 2

These provisions, which amplify the specific provisions in the chapters on external economic policy and development cooperation policy, specify that the procedure of Article Y27 will apply to all agreements other than those covered in whole or in part by the common foreign and security policy, which are dealt with by Articles Y25 and Y28 respectively. Paragraphs 1 and 2, which expressly refer to those Articles, confer power on the Union to conclude international agreements with non-member countries and international organizations.

Paragraph 1

This paragraph, relating to the exclusive power of the Union, incorporates into the Treaty the principles of the judgment given by the Court of Justice in the AETR case,² which is part of the established body of

¹ Where the Council has not exercised its possibility of deciding on a different decision-making procedure as provided in Article Y13(3).

² Judgment of 31 March 1971 in Case 22/70 *Commission v Council* [1971] ECR 263.

Community law. The Union, then, is given the sole power to conclude international agreements in cases other than those expressly provided for by the Treaty, meaning part of the EMU agreements, agreements under Article Y17(1) relating to external economic policy and agreements under Article Y22(1) relating to certain development cooperation activities. Following the AETR rule, the Union acquires sole power to act externally as soon as it has exercised its power internally. In other words, if there are internal rules in whatever form in some particular area, the Member States lose their right to enter into commitments *vis-à-vis* non-member countries or international organizations since, as the Court has held, these commitments could have an impact on Community provisions or affect their scope.

As a corollary of this exclusive treaty-making power, it is provided that the Union, in areas where it has already exercised its powers internally, is substituted for the Member States in relations with non-member countries and in international organizations and conferences. This will put an end to the development of grey areas which have been a source of confusion and have reduced both the Community's influence on the international scene and the international dimension of its common policies.

Paragraph 2

Paragraph 2 deals with what are known as shared powers and complements paragraph 1. In areas where the Union has not yet exercised its powers internally it may, since it enjoys full status as a subject of international law, conclude international agreements in all areas covered by the Treaty — which means those listed in Article 3 and those added to the Union's area of power by decision under Article 235 because they are necessary for the attainment of a Treaty objective.

This principle was stated clearly by the Court in Opinion No 1/76.¹ The concept here is the concept of potential or latent powers actually exercised by the Union only when the time is felt to be ripe; the exercise of concurrent powers by the Member States is not excluded, provided the Member States do not enter into commitments which conflict with Union objectives.

Where it has not yet exercised its exclusive external power the Union, acting under express provisions of the Treaty or under the AETR rule enshrined in paragraph 1, will coordinate the positions of the Member States in relations with non-member countries and in international forums. This means that the Union can

speak with one voice on the international scene in all areas covered by the Treaty and that the Commission can assess on a case-by-case basis whether it should present a recommendation to the Council seeking authorization to open negotiations for an agreement in a given area.

Paragraph 3

The purpose of this paragraph is to make it clear that the Union must have the financial resources needed to meet the obligations flowing from the agreement on an equal footing with signatory States under multilateral agreements. The treaty-making power conferred on the Union must not be restricted by financial constraints.

Article Y27²

Paragraph 1

This paragraph broadly takes over Articles 228 and 113(3), applied in practice to all types of agreement concluded by the Community.

It is now, however, provided that the Commission will be the sole negotiator; it will regularly consult the special committee, but the committee will not have to be involved in the actual negotiations.

Paragraph 2

The important novelty is to be found in this paragraph, for certain agreements will require the authorization (assent) of Parliament before they can be concluded by the Council.

This provision relates to the most important agreements, exhaustively defined as such in this paragraph. The categories listed here could be reviewed following the Intergovernmental Conference in order to add the more important classes of agreement relating to new powers conferred on the Union.

This expansion of Parliament's role in the conclusion of certain international agreements by no means

¹ 26 April 1977 [1977] ECR 741.

² This Article was already transmitted to the Intergovernmental Conference by letter dated 14 February 1991 (SG(91) D/255) entitled 'Provisions extending Parliament's powers in respect of international agreements'.

implies that existing practices should be abandoned, particularly as regards the transmission of information to Parliament during negotiations; there is no actual provision for this in the text of the Treaty, but the Commission has given Parliament a commitment, particularly in the February 1990 Code of Conduct.

Paragraph 3

Agreements not falling within the categories set out in paragraph 2 will be concluded by the Council, acting by qualified majority after consulting Parliament.

Paragraph 4

This paragraph provides that the Commission may be authorized to conclude certain agreements, automatically where they modify early agreements, or otherwise by powers delegated case by case by the Council.

This would cover, for instance, standards issued by international organizations such as the ILO or the FAO Codex Alimentarius.

Paragraph 5

This paragraph preserves the Commission's powers under Article 229 of the EEC Treaty, which is substantially repeated in Article Y30 and covers agreements such as liaison or administrative cooperation agreements with international organizations.

Paragraph 6

This paragraph confirms that the Commission will administer agreements, representing the Union for that purpose. The concept is broader than management in the strict sense and extends to representing the Union in bodies such as joint committees set up by agreements.

Section 3

Article Y28

This Article deals specifically with 'multidimensional' agreements covered partly by common foreign policy and partly by Union external powers under other policies (such as agriculture, transport or the environment). There is a particularly sensitive problem here. The proposed solution is extensively inspired at pre-

conclusion stages by the procedure for foreign policy agreements (Article Y25), conclusion being subject to the procedure for important agreements in other areas of Union power.

The procedure thus combines elements of the procedure applying to the two categories of agreement.

Paragraph 1

The Council Presidency and the Commission will jointly take the initiative in proposing that negotiations be opened, as is the case in the foreign policy area. Negotiations will be conducted by the Commission in conjunction with the Presidency after consultation with a special committee: the formula partly follows the traditional Community set-up but seeks to reflect the dual nature of these agreements. As in the case of foreign policy, conclusion will be proposed jointly by the Presidency and the Commission.

This, then, is a diluted form of the duopoly.

Paragraph 2

These agreements are by definition important agreements establishing general relations with certain of the Union's partners, which means that Parliament's assent will be necessary for their conclusion.

Paragraph 3

The Commission will be responsible for administering these agreements, except those in the foreign policy area, and this will include representing the Union in bodies set up by them.

Section 4

Article Y29

This reproduces the part of Article 228 which provides for the Court of Justice to be consulted where there is doubt as to whether an agreement is compatible with the Treaty.

Parliament's external relations role has been substantially expanded and the Court has recognized its capacity to bring actions where its prerogatives are at stake; Parliament is consequently added to the institutions which may seek the Court's opinion. This Article is otherwise unchanged.

Article Y30

Articles 229 to 231 are updated here without changes of substance beyond removing the reference to specific organizations.

The emphasis is placed on support for regional integration organizations as the Union has a family relationship with them.

Articles Y31 and Y32

These Articles repeal a series of provisions which are replaced by the new Title on common external policy. This means specific EEC Treaty provisions relating to the common commercial policy (Article 113), to security matters (Articles 223 and 224),¹ to research agreements (Article 130n), to the environment (Article 130r(5)) and to association agreements (Article 238) as well as the Articles on political cooperation in the Single Act.

¹ This is without prejudice to the question of internal disturbances, which are out of place in the foreign policy context.

Democratic legitimacy: ¹ Hierarchy of norms, executive powers, legislative procedure (co-decision)

Draft text

Hierarchy of norms — Executive powers

Deletion of Article 145, third indent. ²

Deletion of Article 149. ³

Article 155

In order to ensure the proper functioning and development of the union, the Commission shall:

- (i) ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;
- (ii) formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
- (iii) have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
- (iv) adopt, in the manner provided for in Article 189b, the regulations and take the decisions necessary to implement laws, without prejudice to the provisions of Article 189b(1) conferring a power of substitution on the European Parliament and the Council. It shall also adopt the administrative provisions necessary to implement the regulations.

Article 189

In order to carry out their task the institutions of the Union shall, in accordance with the provisions of this Treaty, adopt laws and regulations, take decisions, make recommendations or deliver opinions.

A law shall have general application. It shall be binding in its entirety; any provisions which do not call for implementing measures shall be directly applicable in all Member States.

Action to be taken to apply the provisions of this Treaty shall be defined by laws. Laws shall determine the fundamental principles, general guidelines and basic elements of the measures to be taken for their implementation. Laws shall determine *inter alia* the rights and obligations of individuals and firms and the nature of the guarantees they should enjoy in every Member State. Implementation may be entrusted in whole or in part to the Member States, acting in accordance with their own constitutional requirements.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

Article 189a (new)

(Legislative (co-decision) procedure as set out hereafter).

Article 189b (new)

1. Where a regulation implements a law, a power of substitution shall be reserved to the European Parliament and the Council in all cases where no provision

¹ Parliamentary assent to international agreements is covered in the Chapter on common external policy.

² The delegation of executive powers to the Commission is determined in a general fashion; exceptions cannot be made to it by a law.

³ Since the co-decision procedure takes over from the cooperation procedure this no longer appears in Article 149 (included in a second section, entitled 'The Council' in Chapter 1 'The institutions') but in Chapter 2 'Provisions common to several institutions' of Title I of Part Five of the Treaty, Article 189a.

is made for recourse to one of the procedures referred to in paragraph 2.

The following procedure shall apply:

(i) the Commission shall adopt the regulation in question and forward it to the European Parliament and the Council;

(ii) the Commission regulation shall enter into force on expiry of a period of two months reckoned from the date of transmission unless the European Parliament, by a majority of its members, or the Council, acting by a qualified majority, rejects the measure within that period;

(iii) in that event the Commission may either adopt a new regulation, which shall be subject to the substitution procedure, or submit a proposal for a regulation; in the latter case the procedure laid down in Article 189a shall apply.

2. A law may provide that, in the exercise of the powers referred to in the fourth indent of Article 155, the Commission shall be assisted by an advisory committee composed of representatives of the Member States, whose role shall be to deliver an opinion on the draft of the measures to be taken; where the measure to be taken is a regulation, a law may provide that the Commission shall be assisted by a management committee and that in the event of the Committee delivering a negative opinion by the majority provided for in the first indent of the second subparagraph of Article 148(2), the Council, acting by a qualified majority, may take a different decision within a given period.

For the record

NB: Consequential amendments (addition of 'laws' and deletion of 'directives') must be made to Articles 190 and 191.

Legislative procedure (Co-decision)

Article 189a

Where a law is enacted in pursuance of this Treaty, the following procedure shall apply:

1. (a) The Council, acting by a qualified majority under the conditions set out in paragraph 5, on a proposal from the Commission and after obtaining the

opinion of the European Parliament, shall adopt a common position; the European Parliament shall have a period of four months from transmission of the proposal to give its opinion; if the European Parliament does not react within this period, it shall be deemed to have given a favourable opinion.

(b) If its common position is compatible with the European Parliament's opinion, the Council shall definitively enact the law. If not, the Council's common position shall be transmitted to the European Parliament within a period of four months following delivery of the European Parliament's opinion or, in the absence of an opinion, expiry of the period referred to in point (a). The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

(c) If the Council fails to adopt a common position within the time allowed and if the European Parliament fails to deliver an express opinion, the procedure shall be closed.

If the Council fails to adopt a common position within the time allowed although the European Parliament has delivered an express opinion, the procedure laid down in paragraph 2 shall apply.

2. Within one month of transmission as provided for in paragraph 1(b), the proposal shall be subject to a conciliation procedure within a committee composed of representatives of the European Parliament, the Council and the Commission.

If the conciliation procedure leads to agreement within two months on the drafting of a joint text, this text shall be deemed to be approved on expiry of a period of one month reckoned from the declaration that agreement has been reached unless the European Parliament, acting by an absolute majority of its members, or the Council, acting by a qualified majority, rejects it within that period.

3. If the conciliation procedure does not lead to agreement within a period of two months, the Commission shall re-examine its proposal within one month. The re-examined proposal shall be transmitted to the European Parliament, except where it incorporates Parliament's amendments, and to the Council.

If the European Parliament rejects a re-examined proposal within a period of two months by an absolute majority of its members, the procedure shall be closed.

If the European Parliament approves the re-examined proposal or fails to react within the time allowed, or if there is no need to refer it to the European Parliament pursuant to the first subparagraph, the Council may adopt the re-examined proposal by a qualified majority, amend it unanimously or reject it by a simple majority. If the Council has not acted on expiry of a period of two months reckoned from transmission of the European Parliament's approval or of the re-examined proposal incorporating the European Parliament's amendments, the re-examined proposal as approved by the European Parliament shall be deemed adopted. The declaration to that effect shall be made by the President of the European Parliament.

Where the Council amends the re-examined proposal, it shall be deemed adopted if, within a period of one month from transmission of the amended proposal to the European Parliament, the European Parliament has not rejected it by an absolute majority of its members. The declaration to that effect shall be made by the President of the Council.

4.¹ Unanimity shall be required for the Council to amend a proposal when adopting a common position or definitively enacting a law.

As long as a law has not been enacted, the Commission may alter its proposal at any time during the procedures provided for in paragraphs 1 to 3.

5. The periods referred to in this Article may be reduced by common accord between the European Parliament, the Council and the Commission. They shall be reduced by half where the European Parliament or the Council exercise their power of substitution in respect of an act adopted by the Commission, pursuant to Article 189b(1).

Present text of the cooperation procedure

Article 149(2)

2. Where, in pursuance of this Treaty, the Council acts in cooperation with the European Parliament, the following procedure shall apply:

(a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

(c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

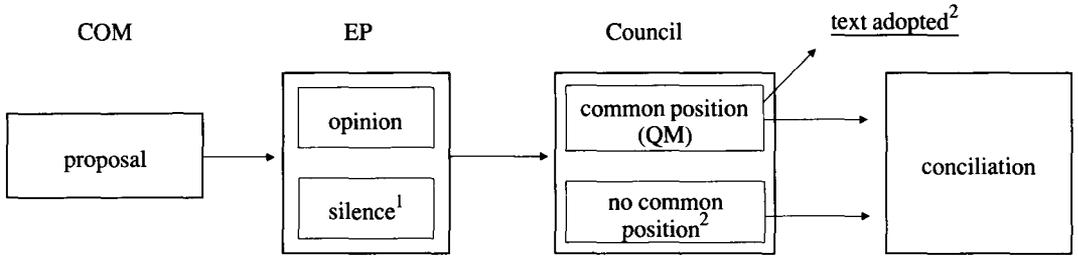
Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

¹ This paragraph takes over the substance of paragraphs 1 and 3 of Article 149, which is replaced in its entirety by the new Article 189a.

Co-decision procedure: first reading



¹ Silence from EP and no common position = end of procedure.

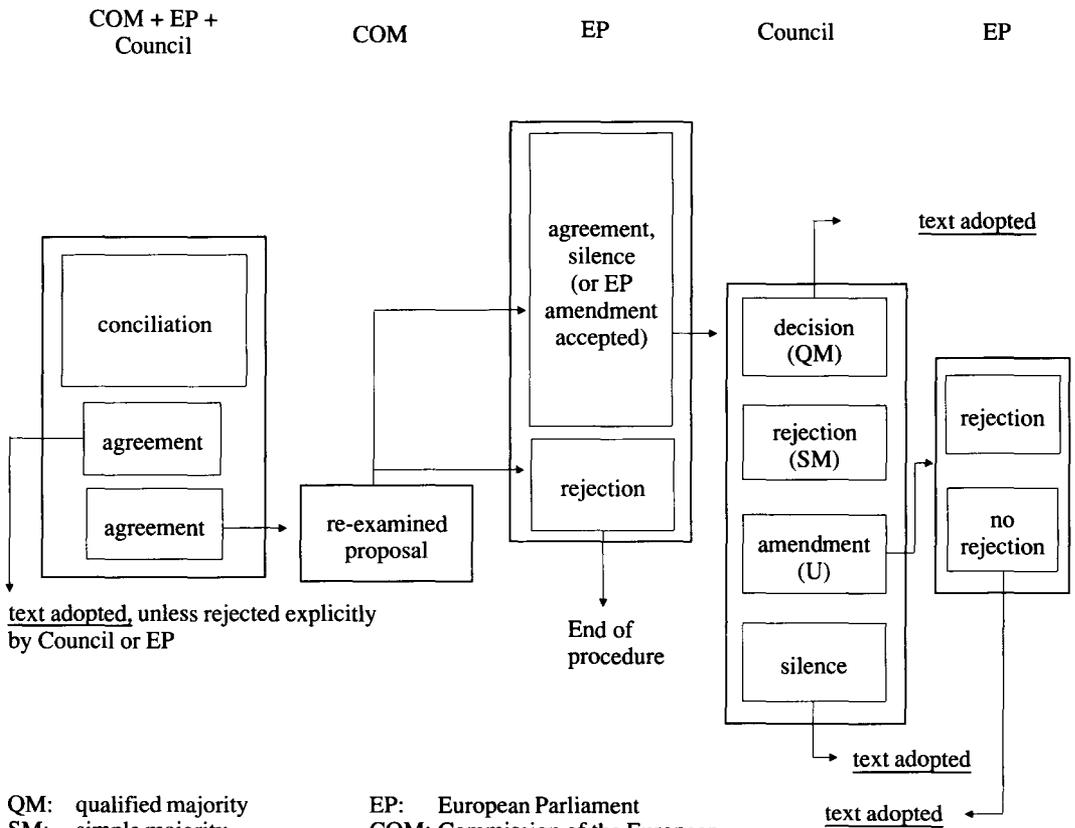
² EP opinion if there is a common position.

QM: qualified majority

EP: European Parliament

COM: Commission of the European Communities

Co-decision procedure: second reading



text adopted, unless rejected explicitly by Council or EP

QM: qualified majority
SM: simple majority
U: unanimity

EP: European Parliament
COM: Commission of the European Communities

Explanatory memorandum

Democratic legitimacy: Hierarchy of norms, executive powers, legislative procedure (co-decision)

1. In its opinion of 21 October 1990 the Commission spoke in favour of strengthening democratic legitimacy, particularly by giving the European Parliament greater powers:

(i) in the legislative process, by making changes to the cooperation procedure to introduce powers of co-decision, albeit confined to legislative acts; deadlines would be added to guarantee effectiveness and the scope of the procedure would be widened;

(ii) by requiring Parliament's assent to the conclusion of major international agreements, with provision for informing and consulting Parliament in the new area of foreign and security policy;

(iii) in the budget procedure and in relation to own resources;

(iv) in relation to the investiture of the President and Members of the Commission.

2. Parliament's resolution of 22 November 1990 on the Intergovernmental Conferences and the conclusions of the Rome European Council of 15 December 1990 adopted what is essentially the same line, adding that Parliament should play a greater part in monitoring the application of Community policies and that the rights of petition and inquiry should be consolidated. The European Council advocated, *inter alia*, the development of a co-decision procedure for legislative acts in the hierarchy of Community acts, and Parliament is currently considering this question.

This paper deals solely with Parliament's powers in relation to the adoption of legislative acts.

The same approach has been adopted for internal legislation and international acts, namely increasing Parliament's role in relation to legislative acts in the strict sense and major international agreements. This increased involvement in the adoption of essential Community acts presupposes less cumbersome procedures for secondary or implementing legislation.

3.1. As far as legislation is concerned, it is clear that, if democratic legitimacy is to be strengthened while enhancing the effectiveness of Community decision-making, the following conditions must be met:

(i) the Parliament/Council co-decision procedure must be confined to the adoption of primary legislation, the laws of the union; implementation of these laws would be a matter for national governments or the Commission; however, as the Commission indicated in its 21 October 1990 opinion, the Council would continue to be central to the institutional system in the context of the overall balance of the revised Treaty, which would provide for a significant increase in its powers in relation to economic and monetary union and a common foreign policy;

(ii) the co-decision procedure must facilitate decisions and promote dialogue between the three institutions involved in decision-making.

3.2.1. Hierarchy of norms

A hierarchy of norms, already existing in the legal systems of most Member States, must be introduced: Treaty, law, national implementing measures or Community regulations, and administrative implementing provisions.

3.2.2. The revised version of Article 189 defines a law as an act covered by the co-decision procedure, meaning that the procedure can be applied in every field of Community activity, but only in relation to the basic elements of the matter to be dealt with. It therefore introduces the principle of a hierarchy of norms.

This distinction should make it easier to adapt to the foreseeable pattern of Community legislative activity. This is expected to decline somewhat from 1993 onwards and the nature of Community legislation will change, basic regulations gradually becoming as permanent and fundamental as national legislation. It should also make it possible:

(i) to give Parliament a greater part to play in the exercise of what is one of its natural functions, the legislative function in the proper sense, by removing technical questions and matters of detail from its agenda;

(ii) to ensure that the principle of subsidiarity is adhered to, by providing an opportunity, as a general rule, for the adoption of national implementing measures, to be laid down in each law on a case-by-case basis;

(iii) to place relations between the institutions on a rational, balanced footing and thereby increase the overall effectiveness of the Community's decision-making process;

(iv) to simplify and clarify the system of Community acts, thereby making it easier for national parliaments and authorities to take them into consideration; in particular, it should make it possible to do away with the directive, currently a hybrid instrument of ambiguous status.

As a new category of Community act, the law would be at the pinnacle of the hierarchy of secondary legislation:

(i) from the formal, organic point of view, a law would be an act of the Community's legislature, i.e. Parliament and the Council acting in accordance with the co-decision procedure; its intervention would be confined to the adoption of laws;

(ii) a law would be defined first and foremost by reference to its content; in the words used by the Court of Justice in its judgment in the *Köster* case, the sole purpose of a law would be to determine principles and general guidelines and 'the basic elements of the matter to be dealt with'; this means that the basic principles would have to be determined by a law in all sectors; furthermore, certain rules would have to be enshrined in a law because of their intrinsic legal value; the rule could be, for instance, that provisions creating new obligations and liabilities to be borne by private individuals or businesses and determining the guarantees the latter should enjoy in any Member State should be laid down in a law; there would therefore be a double (cumulative) criterion for defining matters to be dealt with by a law: the 'basic elements' in all cases plus sufficiently detailed rules in the case of provisions affecting the rights and obligations of those subject to the law; by contrast, all measures, even those of general and permanent effect, covered by the notion of implementation would not be covered by a law;

(iii) as for its effects, a law should be of the same kind and scope in the Community's legal order (it should be binding, enjoy primacy and be directly applicable), irrespective of whether it is implemented by the Member States or by the institutions.

3.2.3. Another key feature of the proposed reform is that a law could be implemented in whole or in part by Member States.

In this way the essence of the directive would be retained, and the instrument restored to its initial status. Since a law would deal with the basic elements rather than with the detail of an issue, Member States would have considerable discretion in the choice of the method to be used to achieve the objective set out in the law. It goes without saying that these objectives would retain all their significance and that the

Commission would continue, as at present, to ensure that Member States complied with the provisions of Community law.

Similarly, the principle of subsidiarity would be respected in full since each law would specify, on a case-by-case basis, the division of tasks between the Member States on the one hand and the Community's institutions on the other (see 3.2.4 below). The subsidiarity principle states that what cannot be done better at Community level at the implementation stage should be left to the national authorities. It would therefore be for the Commission in its proposals, and for Parliament and the Council in their amendments to them, to bear this in mind.

The main criteria applicable to this division of tasks will be the extent of the need for uniformity given the objective to be achieved to comply with a law — that is to say the requirements of non-discrimination and legal certainty — and the relative complexity of the matter being dealt with.

3.2.4. In the absence of a specific reference to implementation at national level, implementation would be a matter for the Community's institutions, an approach which is close to the arrangement for regulations at present.

Executive powers would be vested in the Commission by the Treaty, in the case of both regulatory measures and administrative provisions. A law could not depart from this general rule. This confirms¹ the principle already recognized in Article 145, third indent, of the EEC Treaty, doing away with the option now open to the Council of reserving the right to exercise implementing powers itself in 'specific cases', in other words, with no clear or verifiable limit, or using committee procedures which are either too cumbersome or provide no guarantee that a decision will be taken.

One consequence is that a law could only stipulate that the Commission be assisted by an advisory committee or a management committee, the latter being possible only in the case of regulations (see (new) Article 189b(2)).

3.2.5.1. However, in all cases where no provision is made for a committee procedure, a substitution mechanism would be introduced for secondary legislation (regulations) adopted by the Commission pursuant to primary legislation (laws).

¹ See Article 155, fourth indent.

Parliament and the Council could avail themselves of the substitution mechanism at the stage preceding entry into force of a Commission regulation. If the legislature considered that the Commission was exceeding its powers or straying from the guidelines laid down in a law, or indeed for reasons of expediency, this mechanism would allow it to act in place of the Commission. The relevant procedure is defined in Article 189b(1). It stipulates that, following adoption of a regulation, the Commission would forward the text to Parliament and the Council. Entry into force would be suspended for two months. During this interval both Parliament (by a majority of its members) and the Council (by a qualified majority) could challenge the measures adopted by the Commission. If either institution exercised this option the Commission, depending on individual circumstances, could either adopt a new regulation (which would again be subject to the substitution mechanism) or present a proposal for a regulation. As an exception to the general rule that only a law is subject to the co-decision procedure, this proposal would be subject to the full legislative process. This solution would come into play above all in cases of a wide divergence of opinion between Parliament and the Council, or between one of these institutions and the Commission.

This would not exclude the possibility, in certain areas, of the Commission informing Parliament and the Council of its rules and regulations either in advance (in the case of agriculture for instance) or after the event (in the case of research for instance).

3.2.5.2. The substitution mechanism would be in addition to the possibility already open to each of the institutions (Parliament, Council and Commission) of asking the Court to annul an act of another institution on grounds of illegality, particularly where that institution has acted *ultra vires* (Article 173, first paragraph).

3.2.5.3. The right to challenge regulatory acts could also be made more widely, indeed generally, available to private individuals, provided they could invoke a sufficiently flagrant infringement of a higher legal provision designed to protect them.¹ This would not only safeguard the principle of legality, which is the basis of any democratic legal order, but also guarantee the effectiveness of the Community's decision-making process.

3.3.1. The co-decision procedure

The object here is to move on from the cooperation procedure introduced by the Single Act to genuine

joint decision-making by the two branches of the legislature, Parliament and the Council.

3.3.2. The co-decision procedure described in Article 189a (new), applicable to the enactment of a law, is therefore based on the existing cooperation procedure, a device which has proved its worth.² Two key elements of interinstitutional dialogue are retained, namely the Commission's right to amend its proposal at any time and the rule stipulating that the Council may only amend a Commission proposal by unanimous vote (paragraph 4).

But this legislative procedure would involve genuine joint decision-making, that is to say, express power of rejection by both Parliament and the Council at the final stage of the procedure, which would prevent an act being adopted (see Article 189a(3), second, third and fourth paragraphs).

This means that Parliament could exercise its power of amendment (or an equivalent power) at two points: on first reading — as is now the case under the cooperation procedure — and in the context of the conciliation procedure (see 3.3.3(b) below), where it could influence the content of the text on equal terms with the Council and the Commission. In certain circumstances, therefore, Parliament would 'have the last word', whereas under the present system the final say always rests with the Council.³

However, the entire procedure has been designed to facilitate agreement and avoid rejection. The danger of deadlock has been reduced to a minimum and effectiveness increased. In the first place, binding time-limits have been fixed for each stage of the procedure. These will be adhered to because failure to do so will have precise consequences, making it impossible for the offending institution to make its views known at that stage of the procedure. Time-limits could be reduced by agreement between the institutions: an interinstitutional agreement will be needed to settle the problem of emergencies and cases where minor amendments have to be made to a law. Time-limits would be automatically reduced by half in the event of substitution (paragraph 5).

¹ This solution would entail amending Article 173, under which private individuals may institute proceedings for annulment only in respect of acts which are 'of direct and individual concern' to them, in other words usually measures applicable solely to an individual.

² The text of Article 149(2), which codifies the cooperation procedure, is reproduced after the (new) Article 189a.

³ In Member States with bicameral parliaments, the final say does not always rest with one of the two chambers.

In addition, there is provision at the second stage for a conciliation procedure in the event of Parliament and the Council failing to reach complete agreement (Article 189a(2)). This if successful will lead to tacit approval of the act (rejection by contrast would have to be explicit) (see 3.3.3(b) below).

It follows that, even with the introduction of a conciliation procedure, there would be no danger of making the procedure longer than it is at present. The existing cooperation procedure imposes no time-limits for the successive stages. Even assuming the worst scenario — i.e. conciliation fails and the Council amends a re-examined proposal at the end of that stage — the co-decision procedure would be shorter on average than the cooperation procedure.¹ Thus the decision-making process becomes more effective and gains increased legitimacy at one stroke.

3.3.3. The co-decision procedure would operate as follows:

(a) In essence the first reading would be the same as under the cooperation procedure, except that the Council would be entitled to enact a law immediately by qualified majority, or by unanimous vote if it amends a Commission proposal, provided it is entirely in conformity with Parliament's opinion (paragraph 1(b)).

However, the fixing of binding time-limits as early as the first reading stage (paragraph 1(a) and (b)) means that arrangements need to be made for dealing with the consequences of any failure to adhere to time-limits.

If neither Parliament nor the Council acts before the time-limit expires, the procedure will be regarded as closed (paragraph 1(c), first subparagraph).

If only Parliament fails to act, it will be deemed to have delivered a favourable opinion (paragraph 1(a)), whereupon the Council can adopt its common position and proceed to the next stage of the interinstitutional dialogue, the conciliation procedure.²

If only the Council fails to meet the deadline, the same applies (paragraph 1(c), second paragraph).

(b) At this stage a conciliation process will be initiated in a tripartite committee (representing Parliament, the Council and the Commission).³ A time-limit will apply to this procedure (paragraph 2).

Contrary to the recommendations of the Martin report, the Commission would be represented at the

conciliation stage and could therefore exercise its right of initiative, including the right to amend its proposal, throughout the procedure to facilitate a consensus. In the Commission's view the conciliation procedure should minimize the danger of deadlock or outright rejection. It provides a better guarantee than a bipolar Parliament/Council relationship of protecting the interests of all the Member States.

Within the conciliation committee the Council would be able to take immediate account of Parliament's amendments, it being understood that the Commission would retain the right to withdraw its proposal.

It should be noted that there is no provision for a decision or a vote by the conciliation committee. The aim here is to promote the emergence of a consensus between the three institutions and do away with any problem of the representativeness of members.

If conciliation succeeded within the tripartite committee the only course left open to Parliament and the Council would be to reject the resulting text by a given deadline (silence being taken to signify approval) (second subparagraph of paragraph 2). Constitutional law requires that the text while 'favourably viewed' within the committee should at least be given official tacit approval by the institutions themselves.

If conciliation failed (paragraph 3), the final stage of the existing cooperation procedure, updated in line with the Tindemans-Delors proposal, would be combined with the proposal set out in the Belgian Government's memorandum, i.e. Parliament could reject the Council's final text. In this way the Council would no longer be the only institution with a final say.

Under the existing cooperation procedure, following the second reading, the re-examined proposal,

¹ The cooperation procedure takes 20 months on average. In exceptional cases (German unification for instance) it takes much less time. But in others there is still no outcome several years after the initial proposals were submitted (see two 1986 proposals on insurance (annual accounts — liquidation) and two 1988 proposals on intellectual property (protection for computer programs and biotechnology products)).

² Where the common position is in line with Parliament's opinion (or the Commission's proposal where Parliament does not deliver an opinion), the Council could enact the law at this point (paragraph 1(a)).

³ The exact composition of the conciliation committee will have to be enshrined in an interinstitutional agreement.

whether or not it takes account of some or all of Parliament's amendments, can be adopted by the Council acting by a qualified majority, or amended by unanimous vote; if no decision is taken within the time-limit, the procedure is closed. Under the new co-decision procedure, the Council could take a decision on a re-examined proposal only if it incorporated all Parliament's amendments or if the proposal, having been referred to Parliament again, was not rejected by an absolute majority of its members. Con-

trary to the present arrangement, the procedure would be closed if Parliament rejected a proposal at this stage.

If the proposal was not rejected, the Council could either adopt it by a qualified majority, amend it by unanimous vote or reject it by a simple majority. If the Council amended the revised proposal, Parliament would have a further opportunity to reject it by an absolute majority of its members.

The social dimension and the development of human resources

Draft text

TITLE III

The social dimension and the development of human resources

Chapter 1

Social provisions

The provisions of Chapter 1 of Title III of Part Three of the Treaty are replaced by the following Articles.

Article 117

The Union's objectives shall be to improve living and working conditions, to guarantee fair social protection, to encourage the dialogue between management and labour, to develop human resources and to combat social marginalization.

These objectives shall be pursued through the completion of the internal market and economic and monetary union. They shall also be implemented through structural policies, the adoption of common rules and through agreements concluded between management and labour.

In pursuing these objectives, the Union shall have regard to the competitiveness of companies and the diversity of national practices, especially in the area of contractual relations.

Article 118

1. In order to attain the objectives set out in Article 117, the Union shall complement and support the action of the Member States in the following areas:

(i) the working environment and protection of the health and safety of workers;

(ii) living and working conditions, so as to ensure the protection of basic rights of workers;

(iii) basic and advanced vocational training;

(iv) levels of skills;

(v) information for and consultation and participation of workers;

(vi) the functioning of the labour market, in so far as this is made possible by economic convergence and the approximation of social practices in the Member States.

2. To this end the Council and the European Parliament, acting on a proposal from the Commission in accordance with the co-decision procedure and after consulting the Economic and Social Committee, shall adopt, by means of laws, minimum requirements applicable in each Member State.

3. Before presenting proposals in accordance with paragraph 2, the Commission shall consult . . . on the possibility of attaining the objectives set out in paragraph 1 through framework agreements in accordance with Article 118b. Where the Commission establishes that a framework agreement is possible, it shall take the initiative of initiating the procedure provided for in Article 118b.¹

If such an agreement cannot be reached within a reasonable time, the procedure provided for in paragraph 2 shall apply.

4. Where a law is not to be implemented by the Member States, the Commission shall be assisted by a . . .² acting as a management committee within the meaning of Article 189b(2) in respect of such implementing regulations as it is to adopt.

¹ The Commission may adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

(i) the outcome of discussions in the *ad hoc* Group on Social Dialogue;

(ii) the involvement in the procedure of a consultative body, the nature of which remains to be determined.

² A consultative organ of a type to be determined.

A law may, however, in the first instance, leave the responsibility for implementation of all or some of its provisions to management and labour.

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

6. This Article shall not apply to measures regarding the harmonization of social security systems, the right of association or the conditions governing the right to strike, nor to provisions regarding access to employment for nationals of non-member countries.

Measures in these areas shall be adopted in accordance with the procedure provided for in Article 235.

Article 118b¹

1. The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreements, including [framework] agreements applying throughout a trade or industry at European level.

2. At the request of the parties concerned, [framework] agreements may be the subject of a Commission recommendation or of a decision taken by the Council, acting by a qualified majority on a proposal from the Commission after consulting the European Parliament and the Economic and Social Committee, and addressed to the Member States so as to make them mandatory for the duration of their validity.

Article 119

1. Each Member State shall ensure equality of treatment between men and women at work. In particular, it shall ensure the application of the principle that men and women should receive equal pay for equal work and enjoy equal opportunities on the labour market.

2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement,

(b) that pay for work at time rates shall be the same for the same job.

3. Measures to facilitate the implementation of the principles laid down in paragraph 1 shall be taken in the form of laws adopted in accordance with the co-decision procedure by the Council and the European Parliament, acting on a proposal from the Commission after consulting the Economic and Social Committee.

Article 120

A law adopted in accordance with the co-decision procedure by the Council and the European Parliament, acting on a proposal from the Commission after consulting the Economic and Social Committee, shall define the conditions in which actions to promote the attainment of the objectives set out in Article 117, (especially) through exchanges of information and experience, may be launched in the framework of multiannual programmes.

Article 121

The Commission shall each year make a report on the evolution of the social situation in the union. It shall transmit this report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on specific problems concerning the social situation.

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¹ The Commission may adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

- (i) the outcome of discussions in the *ad hoc* Group on Social Dialogue;
- (ii) the involvement in the procedure of a consultative body, the nature of which remains to be determined.

Explanatory memorandum

The objectives of social policy, which is inseparable from economic policy, are to ensure a high level of employment, to improve living and working conditions with a view to harmonizing them while maintaining the improvement, to develop human resources, to enhance solidarity and to combat all forms of social marginalization. These objectives are sacrosanct.

Object and methods of social regulation: changes and permanent features

However, in recent years the circumstances in which social policy is conducted have changed considerably and deep-set trends, common to all the Member States, have become apparent. In all likelihood, these trends will continue over the next few decades.

(a) In broad terms, the trends can be described as follows:

(i) The internationalization of economies, in some cases even their globalization, has intensified. In the Community, the removal of internal frontiers will lead to substantial transnational integration of firms and increased workforce mobility. Indeed, this is already well under way.

(ii) In this context, improvement of the competitiveness of firms by keeping costs under control and seeking greater flexibility in working conditions and the organization of work is now a generally recognized imperative. This is to be perceived as the result of the acceptance of economic constraints by all those involved. The introduction of new technologies is of major significance here.

(iii) The quest for competitiveness is being pursued along specifically national lines. But it entails major changes in all the Member States, with considerable qualitative and quantitative effects on employment and labour relations.

Indeed, all the principal variables in the world of employment have altered as a result: the proportion of the labour force accounted for by the tertiary sector and by women has increased; forms of employment and methods of remuneration have become more diverse; the organization of work and working time has become more flexible; recognition has been given to the fundamental role of training, both initial and continuing; the mix of qualifications required is changing; geographical and occupational mobility is on the increase, and so on.

(iv) At the same time, the aspirations of workers — in fact, of the public at large — have also altered and diversified. In this way, the needs of firms and the aspirations of individuals have found new areas of convergence (e.g. new forms of employment).

(b) A basic feature of European patterns of change and of Europe's social model is that, in most cases, these developments have been kept under control and in balance by bargaining between the two sides of industry. Of course, this has caused adjustments to be made in the way in which developments are handled.

The main change has been a clear move to decentralize the handling of problems and in particular a shift towards negotiation at firm level. In some cases, direct relations (dialogue, participation) have been established between employers and workers.

In practice, decentralization takes the form of a new interplay between levels of negotiation: a wider range of issues is dealt with at firm level, though the higher levels are not abandoned. The role of the latter is developing: for example, framework or coordination agreements, which are essential for the development and harmonious application of company agreements, are tending to be worked out at interoccupational or industry level (e.g. the May 1990 agreement on working time in the German metal-working industry or the Italian labour costs agreement of January 1990).

At the same time, in several Member States central government has intervened, using a variety of methods, to change the rules and mechanisms of industrial relations (in France the Auroux Act of 1982; in Spain the Representation of Trade Unions and Employers Act of 1984; in the United Kingdom the 1984 Trade Union Act) or to regulate wage bargaining (indexation relaxed or dropped altogether in Belgium, Denmark, France, Italy and the Netherlands).

(c) Despite these developments and regardless of all the specifically national considerations, the fact remains that the autonomy of the two sides of industry — an autonomy conceded by the public authorities — has been maintained: negotiation at different levels has remained a basic component of regulation in all the Member States, which is something specific to the industrial relations field. The reasons why this is still the case are as much political as social or economic. As one of the recitals to the Charter states, 'the social consensus contributes to the strengthening of the competitiveness of undertakings, of the economy as a whole and to the creation of employment; ... in this respect it is an essential

condition for ensuring sustained economic development'.

Furthermore, in the attempt to keep change under control and to make structures and human resources more adaptable, the field covered by industrial agreements has been extended — to take in matters which had previously been dealt with separately (e.g. negotiations on flexibility) and to go beyond the limited context of the firm to encompass certain fundamental social values: for instance, anticipating social problems (particularly connected with employment) caused by decisions to invest or disinvest; the environment; lifestyles and family life; equal opportunities; solidarity and measures to combat social deprivation.

Over and above national initiatives and practices, the Community most certainly has a role to play in serving the purposes of social policy and in regulating certain changes.

But it has to adjust to developments, to changed circumstances, both in its own legislation and in encouraging regulation based on agreement. In other words, the Community's social policy has to provide the appropriate framework for the shared and balanced control of change while also helping to consolidate and improve the European social model.

The grounds for revision

With this in view, there are a number of arguments which plead in favour of modifying and extending the scope of the Community's social policy.

(a) First, there is the very nature of the process of European integration: the establishment of a single economic and social area in which economic and social advances are made in step. We need to keep up the momentum provided by the European Councils of Hanover (June 1988) and Madrid (June 1989: 'the same importance must be given to social aspects as to economic aspects and they should consequently be developed in a balanced fashion').

(b) The Community Charter of the Fundamental Social Rights of Workers adopted by the Strasbourg European Council reflects the urge to establish and build upon a platform of fundamental rights shared by all the Member States. This solemn declaration voices two ambitions:

(i) it is a proclamation of European identity, reaffirming the plan to ensure the harmonious develop-

ment of the Community on the basis of social progress, underlining the imperative need for increased solidarity and a refusal to allow changes to result in more and more people with outdated skills;

(ii) it is an expression of the determination to combat social dumping.

The enforcement of these rights — through the introduction of minimum provisions, for instance — is partly a matter for the Community, as far as its powers extend. The implementation of the social action programme to give effect to the Charter has shown how inconsistent and inappropriate (e.g. legal basis for the proposal for a Directive on non-standard forms of employment), how anachronistic (Articles 120 and 122) or how incomplete (Article 119) the Treaty is.

(c) Completion of the internal market and economic integration have clearly shown the need (given the transnational nature of the problems involved) for Community action in areas which have hitherto not been very sensitive or whose importance has been disputed, such as:

(i) the protection of workers' rights in the case of transfrontier operations (company mergers, takeover bids, bankruptcies, collective redundancies);

(ii) information/consultation, or even participation (industrial democracy and/or financial participation) of employees in transnational businesses;

(iii) new obstacles to mobility within the Community (supplementary pensions, etc.).

(d) In addition, steps must be taken to ensure that the economy of the internal market develops without any distortion of competition (examples of sensitive variables: health and safety, non-standard forms of employment, social security, equal treatment), and this calls for greater vigilance.

(e) More generally, at microeconomic level, consideration for the social dimension is increasingly becoming an integral part of management, and this contributes to added value and to competitiveness.

(f) The extension and/or redefinition of the Community's powers in the social field is/are not incompatible with the current trends towards decentralization of collective bargaining to be seen in the Member States (see above). The need to determine a Community framework for tackling the problems we have referred to remains.

Consequently, the wide gap between the powers available under the current legal bases and the

ambitions set out in the Charter and the new constraints arising from completion of the internal market warrant a revision of the social provisions of the Treaty.

Assigning new powers to the Community in the social field is hardly an adventurous undertaking. Indeed it should be stressed that in those very fields in which new powers have been accorded by the Single Act, regulation at Community level has worked satisfactorily, has operated largely by consensus and has proceeded at a steady rate (e.g. application of Article 188a, health and safety for workers).

It is true, none the less, that the method and principles underlying any modification and extension of the Community's powers have to be clearly defined.

Principles and method

(a) There are three principles which should underpin the new Community social framework:

(i) Subsidiarity, with due regard for the specific nature of social matters.

First of all, the application of this principle lies not so much in choosing between social issues, distinguishing those for which Community jurisdiction is recognized, as in suggesting what, in the light of the needs identified and the potential value added by Community action, is the most appropriate in each case — harmonization, coordination, convergence, cooperation, etc.

It is true that the Community has means and resources other than regulation for pursuing social policy objectives. For example, completion of the internal market, backed up by the structural policies, is 'the most effective means of creating employment and ensuring maximum well-being' (Charter).

Secondly, it has to be borne in mind that social issues are resolved not only by means of legislation but also on the basis of collective bargaining — through the autonomy of the two sides of industry, recognized by the public authorities. In social matters, then, there is a 'dual subsidiarity', requiring a choice to be made:

between Community action and national (or infra-national) action; and

between legislation and collective bargaining.

At Community level, then, the two sides of industry must be given the widest possible room for man-

oeuvre and precedence must be given to settlement by collective agreement.

(ii) Respect for the diversity of national systems, cultures and practices, provided this is constructive, i.e. consistent with the requirements of completing the single market and with the fundamental rights enshrined in the Charter. Constructive diversity is something to be exploited, making the various national models better known, tracing similarities between them and in some cases drawing inspiration from them.

(iii) Care to refrain from impairing the competitiveness of firms and to safeguard flexibility by reconciling economic and social considerations: whatever is done, there is a balance to be sought and found.

If then, it is to conform as closely as possible to the new realities which condition the approach to social matters, the Community will have to show great discernment in selecting from the whole range of functions and instruments available to it, whether they be mandatory or act as incentives, by choosing between Community level and national level on the one hand and between legislation and collective agreement on the other.

(b) The involvement of the two sides of industry in Community social regulation could take two forms:

one was already proposed by the Commission in 1990 in connection with the implementation of the action programme — for example, with the proposal for a Directive on non-standard forms of employment (based on Article 100a); this would allow Member States to entrust the task of achieving the objectives of a binding instrument adopted by the Council primarily to the two sides of industry;

the other would stipulate that certain objectives of the Treaty might be attained via framework agreements drawn up directly at European level.

(c) Lastly, qualified majority voting should be extended to certain fields, notably some of those covered by the Charter, with the proviso that other particularly sensitive areas — with too diverse an organization and with too varied national practices — will still be subject to unanimous voting (harmonization of social security systems, access to employment for nationals of non-member countries).

There are two main, connected reasons which militate in favour of qualified majority voting:

(i) a concern for effectiveness — to ensure that the economic and the social actually do move ahead in step;

(ii) the desire to secure consistency and balance within the Treaty itself by ensuring that a fundamental area such as the social field is not treated any differently from other fields.

The new articles

Modernizing the legal framework along the lines sketched out above entails substantial amendment of the Treaty Articles that already exist, the incorporation of new Articles and the removal of obsolete or inadequate Articles. This can be done within the basic structure of the existing Chapter, which will help to make matters clearer.

Inspiration has been drawn from three sources:

- (i) certain provisions of the Community Charter of the Fundamental Social Rights of Workers;
- (ii) the Commission opinion on Political union;
- (iii) the results of the social dialogue, chiefly in the form of joint opinions on the introduction of new technology, the organization of work and the adaptability of the labour market.

The following basic structure is therefore proposed:

- (a) The objectives set out in Article 117 would be updated in conformity with the far-reaching transformation of the social field.
- (b) A new version of Article 118 would expand the potential offered by the existing Article 118a, in accordance with the guidelines in the Commission opinion of 21 October 1990; this could provide a basis for most of the provisions needed to implement the Charter and control the process of economic and social change.¹

This new legal basis has been drafted in such a way as to fully respect subsidiarity in relation to the Member States and the two sides of industry, and is confined to those areas which really are suitable for the co-decision procedure.

(c) Additional text in Article 118b provides a framework for collective bargaining at European level and for the approval of the resultant agreements, thus providing legal backing for the autonomy enjoyed by the two sides of industry in this respect.¹

It is provided that, before submitting its proposals, the Commission would consult a consultative body, whose nature remains to be determined, on the prospect of attaining the objectives by means of a framework agreement between management and labour as provided in the new Article.

The Union would act by means of legislation only if it were not found possible to achieve results through collective bargaining.

(d) Article 119 is rewritten for two purposes:

- to establish a legal basis for legislation to guarantee equal treatment for women and men;
- to extend its scope to cover all aspects of equal opportunities on the labour market.

The new Article is largely inspired by the old one so as to preserve the practical benefits of the extensive body of Court of Justice case-law.

(e) A new Article 120 would provide a foundation and a framework for operational activities (multiannual programmes) as an alternative or a supplement to legislative measures.

(f) The existing Article 122 becomes Article 121. Its aim is to ensure broader dissemination of information on the social situation.

(g) The existing Articles 118, 120 and 121 would be repealed since they would have no purpose in the new context.

The Commission reserves the right to adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

- (i) the outcome of discussions in the *ad hoc* Group on Social Dialogue;
- (ii) the involvement in the procedure of a consultative body, the nature of which remains to be determined.

¹ The wording of this Article may have to be changed in the light of the outcome of discussions in the *ad hoc* Group on Social Dialogue.

Economic and social cohesion

Draft text

PART THREE

Economic and social cohesion

TITLE V

The provisions of Part Three, Title V, of the Treaty are replaced by the following Articles.

Articles 123 to 127 of the Treaty shall remain in force until application of Article 130d.

Article 130a

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

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

Article 130b

Member States shall conduct and coordinate their economic policies in such a way as to attain the objectives set out in Article 130a. The implementation of the common policies and the internal market shall take into account the objectives set out in Article 130a and Article 130c and shall contribute to their attainment. The Union shall support the attainment of these objectives by the action it takes through the structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund), the European Investment Bank and the other financial instruments.

The Union and the Member States shall work together to promote harmonious development of the

regions, in particular through the structural policies — based on Fund operations in the less-favoured regions and areas — major trans-European networks and joint action.

The Commission shall report to the Council every five years on progress towards the achievement of economic and social cohesion.

The Council, acting by a qualified majority on a proposal from the Commission after consulting the European Parliament and the Economic and Social Committee, shall define the guidelines and conditions necessary for balanced progress.

Article 130c

The structural Funds shall contribute to the attainment of the objectives set out in Article 130a and shall, without prejudice to the application of Article 130d, pursue the following priority objectives in the context of their specific tasks for the purpose of promoting:

- (1) the development and structural adjustment of regions whose development is lagging behind;
- (2) the conversion of industrial regions and urban areas in decline;
- (3) employment, the geographical and occupational mobility of workers, initial and continuing training and the integration into employment of those excluded from the working world;
- (4) rural development.

Article 130d

A law adopted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission, after consulting the Economic and Social Committee, shall:

- (a) make such amendments as are necessary to clarify and rationalize the tasks of the structural Funds in

order to contribute to the attainment of the objectives set out in Article 130a and Article 130c, to increase their efficiency and to ensure coordination between the Funds and between them and the financial instruments;

(b) create new structural Funds or amalgamate existing Funds.

Article 130

The following is added at the end of the Article:

In its task the Bank shall facilitate the financing of programmes in conjunction with the operations of the structural Funds and the Community's financial instruments.

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Explanatory memorandum

1. The Rome European Council on 14 and 15 December 1990 instructed the Intergovernmental Conference on political union to take 'economic and social cohesion between the Member States' into account in the context of the 'extension and strengthening of Community action'.

In the context of revision of the Treaty, cohesion must be seen first and foremost in terms of the effectiveness of our structural policy. But because Article 130b links it to the conduct of economic policy by the Member States, structural policy is viewed by a number of delegations as an element of economic and monetary union with an eye in particular to increased funding from the Community budget to support steps taken to adapt their economies. The Commission tried to provide an initial response by suggesting a shock-absorbing mechanism to support the adjustment process.

It is essential therefore to make a clear methodological distinction between the question of amending Treaty provisions on cohesion and the question of increased funding for these policies, which would require an agreement along the lines of that of February 1988 (Delors package).

For the time being the Commission intends to contribute to the debate within the Intergovernmental

Conference on political union on amendment of the Articles introduced by the Single Act with a view to increasing the effectiveness of policies designed to promote cohesion.

2. A complete balance sheet of the achievements of the structural policies will not be available until the end of 1991. It is therefore premature to envisage any radical change in the philosophy or the principles underlying the structural policies.

On the contrary, the principles underlying these policies, as set out in the basic 1988 regulation rather than the Treaty — that is to say concentration, programming, additionality, partnership, etc. — are being implemented more or less correctly by the Member States.

However, cohesion goes far beyond the scope of action under the structural policies even if it is too often regarded as synonymous with assistance from the Funds.

The problem is not the concise definition of cohesion in Article 130a. There is no need to rewrite the provision, but it could be expanded to make it clear that cohesion must be seen in the much broader context of the harmonious development of the Community. To this end it is proposed that the concept of balanced development of the regions be introduced, to be promoted not only by assistance from the structural Funds, in particular in the less-favoured regions and areas, but also by major infrastructure networks and joint action (such as improvement of the environment or vocational training).

Care will also have to be taken to see that the promotion of cohesion is incorporated in the list of basic aims of the Union in Articles 2 and 3 of the Treaty, bearing in mind that objectives such as sustainable development and guarantee of a sound environment will be proposed.

3. One of the main difficulties in applying the Single Act stems from the fact that the express provision of Article 130b to the effect that the objectives of economic and social cohesion be taken into account in the implementation of common policies and the internal market is not fully complied with. We need to decide whether and how the Treaty can provide a better guarantee that cohesion will be taken into account in other Community policies.

Responsibility for this lies with the institutions in the day-to-day conduct of Community business. The Commission has a particular responsibility, firstly by

drafting proposals to take account of the diversity of situations (for example, varying the time allowed for adjustment to uniform application of Community rules), and secondly by exercising its management powers.

It is difficult to see how the Treaty itself could introduce monitoring machinery to ensure that each policy takes cohesion into account. This could open the door to repeated applications for further intervention by a given Fund and, in the event of assistance being refused, to requests for exceptional treatment.

The Treaty could however make provision for regular reviews to produce a detailed balance sheet of progress towards cohesion. It is therefore proposed that the Treaty should require the Commission to report every five years on progress towards the achievement of economic and social cohesion. This report would be used by the Council as a basis for defining the guidelines needed to guarantee balanced progress.

4. The Single Act specified that the priority objectives of the structural policies would be set out in a framework regulation, which was adopted in 1988. It would now be a good idea — without drawing up exhaustive lists — to write some of these objectives into the Treaty, paying attention notably to the need to improve conditions governing education and health (which should feature more prominently in the secondary legislation determining the conditions of eligibility for assistance) for the purpose of promoting:

- (i) the development and structural adjustment of regions whose development is lagging behind;
- (ii) the conversion of industrial regions and urban areas in decline;
- (iii) employment, geographical and occupational mobility of workers, initial and continuing training and the integration into employment of those excluded from the working world;
- (iv) rural development.

These objectives would be referred to in the new Article 130c, drawing on the experience acquired in pursuing the objectives specified in Article 1 of Regulation No 2052/88 currently in force. Special stress needs to be laid on the role of the Funds in countering the dereliction of certain urban areas affected by the decline of economic activity.

Provision also needs to be made for specific measures to promote the mobility of workers (in the spirit of the present Article 123 of the Treaty) or to facilitate the social integration of those excluded from the working world, given that general job-creation measures do not cater for their particular situation.

The recital of these priority objectives in the Treaty in no way rules out the definition of new missions by secondary legislation under Article 130d. In this connection the Commission believes that special attention should be given to the conversion of areas depending heavily on fishing.

Similarly Article 130d could be relied on to tackle problems of environmental decay affecting certain regions in particular.

5. As to institutional adjustments linked to the decision-making process, the effectiveness of structural policies could be improved by:

- (i) the introduction of qualified majority voting instead of unanimity for the framework regulation provided for in Article 130d, which could be a law adopted under the co-decision procedure;
- (ii) the option open to the legislator of creating Funds whose number would no longer be determined by the Treaty; the creation and amalgamation of Funds would be governed by a law.

6. The addition of a provision to Article 130 will also allow the European Investment Bank to be associated more closely with the various types of operation of the structural Funds.

Research and technological development

Draft text

Research and technological development

Article 130f

1. The Union's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level.

2. In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological development activities; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the Union's internal market potential to the full, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that cooperation.

3. In the achievement of these aims, special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.

4. Any research, technological development or demonstration activities undertaken by the union with a view to attaining the objectives assigned to it by the Treaty shall comply with the provisions of this Title.

Article 130g

In pursuing these objectives the Union shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by

promoting cooperation with undertakings, research centres and universities;

(b) promotion of cooperation in the field of Community research, technological development, and demonstration with third countries and international organizations;

(c) dissemination and utilization of the results of activities in Community research, technological development, and demonstration;

(d) stimulation of the training and mobility of research scientists within the Union.

Article 130h

The Union shall work to coordinate the Member States' policies on research and technological development so as to ensure that those policies are consistent with one another and with Community policy. In close contact with the Member States, the Commission may take any useful initiative to promote such coordination.

Article 130i

1. The Union shall adopt a multiannual framework programme setting out all its activities. The framework programme shall comprise a limited number of specific programmes and shall lay down the necessary activities to promote, back up and monitor Community research and technological development policy. The framework programme shall lay down the scientific and technical objectives, define their respective priorities, establish the rules applicable to the dissemination of knowledge resulting from the activities envisaged and fix the amount deemed necessary, the detailed rules for financial participation by the Union in the programme as a whole and the breakdown of this amount. The framework programme shall also establish the detailed arrangements for carrying out the specific programmes and shall indicate the rules for the participation of undertakings,

research centres and universities, which may include unsolicited projects.

2. The framework programme may be adapted or supplemented, as the situation changes.

3. The specific programmes provided for in paragraph 1 shall be put into effect by the Commission pursuant to the fourth indent of Article 155.

Article 130k

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible participation from the Union.

Where supplementary programmes are adopted, rules shall be adopted regarding the dissemination of knowledge and the access of other Member States.

Article 130l

In implementing the multiannual framework programme, the Union may make provision, with the agreement of the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 130m

In implementing the multiannual framework programme, the Union may make provision for cooperation in Community research, technological development and demonstration with third countries or international organizations.

Article 130n

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

Article 130o

The amount of the Union's annual contribution to the activities provided for under the multiannual

framework programme shall be laid down under the budgetary procedure, without prejudice to other possible methods of financing by the Union.

Article 130p

1. The provisions referred to in Article 130i and 130n shall be adopted in the form of laws by co-decision of the European Parliament and the Council, acting on a Commission proposal and after consulting the Economic and Social Committee.

2. The provisions referred to in Articles 130k, 130l and 130m shall be adopted by the Commission pursuant to the fourth indent of Article 155.

3. At the beginning of each year the Commission shall send a report on Community research and technological development policy to the Council and to the European Parliament. The report shall include information on activities carried out during the previous year and on the work programme of the current year.

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Explanatory memorandum

1. At its meeting in Rome on 14 and 15 December 1990, the European Council noted that among the specific areas in which it recognized the need to extend or redefine the Community's powers, 'a research effort commensurate with the development of the Community's competitive capacity' was one of the aspects to be borne in mind.

Similarly, the Commission, in its opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, emphasized that the Treaty needed to be rewritten so as to make research and technology activities carried out at Community level more effective.

Experience gained in implementing Articles 130f to 130q of the Treaty has shown that they are cumbersome and lead to malfunctioning, which must be rectified.

2. The first point concerns the objectives which the Treaty assigns to the Union in respect of research and technological development activities. Article 130f(1) states that this objective is to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level. It quite rightly emphasizes the vital importance of industrial activity. However, this wording of the objective has proved too restrictive. It has made it difficult to undertake research activities, which are hard to justify in terms of making industry competitive, but which are none the less useful with regard to the Community's other tasks (including research on the environment, health and improvement of the quality of life). Now, a fundamental requirement for consistency is that all Community research activities be coordinated and follow the same rules.

This is what the new Treaty must try to achieve; on the one hand, by stipulating that whenever research activities are provided for by specific provisions (provisions on health, energy), such activities should be carried out under Article 130f *et seq.*, and on the other, by adding a new paragraph to Article 130f confirming the general scope of the provisions relating to research and technological development.

Lastly, it goes without saying that the union's research and technological development policy must accord with the aims of the harmonious development of the Union as a whole and the strengthening of its economic and social cohesion.

3. The second problem concerns the coordination of the Member States' policies on research and technological development. Article 130h lays down merely that the Member States themselves must coordinate them in liaison with the Commission. This provision has proved unsatisfactory. The proposed new wording is designed to step up this coordination, by placing responsibility more clearly on the Union itself and by stipulating that the aim is to ensure that the national policies are consistent both with one another and with Community policy.

4. The main difficulty in implementing the Treaty's provisions on research and technological development is of an institutional nature. The problem is that the Treaty provides for a two-stage decision-making process in the adoption of the programmes, involving the Council and the European Parliament.

The first, for the adoption of the multiannual framework programme, requires the Council to act unanimously on a proposal from the Commission, having

consulted the European Parliament and the Economic and Social Committee (Articles 130i and 130q(1)).

The second, for the adoption of the specific programmes, requires the Council to act by a qualified majority on a proposal from the Commission, having consulted the Economic and Social Committee and in cooperation with the European Parliament (Articles 130k and 130q(2)).

These procedures are extremely cumbersome and have led to long delays, to the point where it has become almost impossible to complete a proposed programme within the period originally planned.

It would be expedient to remove this major obstacle and to take account of the new rules to be included in the Treaty, concerning the hierarchy of norms and the decision-making process within the Union.

To this end, the new Article 130p lays down that the multiannual framework programme is to be adopted by co-decision of the European Parliament and the Council. Its implementation, and thus the specific programmes, are part of the executive function and are the responsibility of the Commission. This is laid down in the new paragraph 3 of Article 130i.

With regard to the adoption of supplementary programmes (new Article 130k), participation in programmes undertaken by several Member States (new Article 130l) and cooperation with third countries or international organizations (new Article 130m), the Commission will be responsible for taking decisions.

5. The revised text of Article 130i(1) stipulates that the multiannual framework programme must comprise a limited number of specific programmes and lays down the necessary promotion, back-up and monitoring activities. These activities are not in themselves research activities as such, but it is clear that, whether in the preparation or in the promotion stage, Community research and technological development activities call for measures of this type. For instance, preliminary studies and activities, initiatives on trans-European networks, application of research in support of other Community policies, support for and exploitation of the activities of the scientific community, and international cooperation.

The first paragraph of the new Article 130i also indicates the various constituent elements of the framework programme. In particular, it refers to the detailed arrangements for carrying out the specific programmes and the rules applicable to the dissemi-

nation of knowledge. This means that the provisions of Article 130k become redundant and can be dispensed with.

Article 130i also takes account of the need to allow a place in Community programmes for possible consideration of projects drawn up directly by undertakings, research centres and universities, e.g. large interdisciplinary integrated projects likely to fall within the scope of several specific programmes.

6. The new Article 130k (which replaces Article 130l) has been reworded to take account of the new rules laid down in Article 130p regarding powers and the decision-making process.

The text of the new Article 130m, which replaces Article 130n, does not include the second paragraph

of the old Article since the detailed arrangements regarding international cooperation are given in that part of the new Treaty dealing with the Union's external relations.

7. The new Article 130p sets out the procedures already referred to in respect of Article 130i. The co-decision procedure also applies to the setting-up of joint undertakings, provided for in Article 130n.

Lastly, in order that the European Parliament and the Council be properly informed, paragraph 3 lays down that the Commission must send them a report at the beginning of each year on Community research and technological development policy. The report must include information on the previous year's activities and the work programme of the current year.

Energy

Draft text

Energy

Article 1

The objectives of this Treaty shall, in matters governed by this Title, be pursued within the framework of a common energy policy.

The common energy policy shall be closely coordinated with the policies pursued in the framework of the ECSC and EAEC Treaties.

Article 2

The common energy policy shall have the following objectives:

- (a) to guarantee security of supplies throughout the Union under satisfactory economic conditions;
- (b) to contribute to the stability of energy markets;
- (c) to complete the internal market in the energy field;
- (d) to define the measures to be taken in respect of each energy source in the event of a crisis;
- (e) to promote energy savings and the use of new and renewable energy sources.

It shall ensure a high level of protection in relation both to the environment, and to health and safety.

Article 3

The measures required to implement the objectives specified in Article 2 shall be adopted in the form of a law on a joint decision of the European Parliament and the Council on a proposal from the Commission

and after consulting the Economic and Social Committee. Any Community research which may prove necessary shall be carried out within the framework of Articles 130f to 130q.

Article 4

1. The provisions of Article 85(1) may be declared inapplicable to any agreement in the energy field which contributes to guaranteeing security of supplies in the Union, provided that the restrictions involved are indispensable to the attainment of that objective and do not afford the enterprises concerned the means to eliminate competition in respect of a substantial part of the products in question.

2. Aid within the meaning of Article 92(1) making an effective contribution to ensuring security of supplies in the Union shall be considered compatible with the common market where it does not distort the operation of the internal energy market to an extent contrary to the common interest.

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Explanatory memorandum

The ECSC, EEC and Euratom Treaties apply to the energy sector depending on the type of energy source concerned.

In the case of the ECSC Treaty, which will expire in 2002, the Commission takes the view that, in the light of the conclusions of the European Council held in Rome on 14 and 15 December 1990, it is not appropriate, at this stage, to amend it in the context of this Intergovernmental Conference. Equally, it does not propose any amendment of the Euratom Treaty.

It does consider, however, that a specific provision concerning energy policy should be inserted in the EEC Treaty, in order to:

(i) introduce in that Treaty the concept of security of supplies in the Union,

(ii) affirm the need to complete the internal market also in the field of energy, and to make decision-making in that area more effective.

It was considered appropriate at this juncture to clarify the situation as regards the application of the competition rules to the energy sector.

Environment

Draft text

TITLE VII

Environment

Article 130r

1. Action by the Community relating to the environment shall have the following objectives:

- (i) to preserve, protect and improve the quality of the environment;
- (ii) to contribute towards protecting human health;
- (iii) to ensure a prudent and rational utilization of natural resources.

2. Action by the Community relating to the environment shall be based 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 the Community's other policies.

3. In preparing its action relating to the environment, the Community shall take account of:

- (i) available scientific and technical data;
- (ii) environmental conditions in the various regions of the Community;
- (iii) the potential benefits and costs of action or of lack of action;
- (iv) the economic and social development of the Community as a whole and the balanced development of its regions.

4. The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at

Community level than at the level of the individual Member States.

Article 130s

The measures required under Article 130r shall be adopted as laws by the Council and the European Parliament under the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee.

Article 130t

The protective measures adopted jointly pursuant to Article 130s shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

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Explanatory memorandum

At its meeting in Rome on 14 and 15 December 1990, the European Council noted that protection of the environment was one of the specific areas in which it recognized the need to extend or redefine the Community's powers. It noted that environmental protection needed to be improved 'in order to ensure sustainable growth'.

Similarly, the Commission, in its opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, emphasized that the provisions dealing with the environment needed to be rewritten so as to make the decision-making process more effective, and proposed use of qualified-majority voting in this area.

The amendments proposed by the Commission (II) are designed to meet two essential requirements (I), namely to ensure more effective action by the Union to protect the environment and to facilitate and encourage consideration of environmental imperatives in the other policies.

I. The following objectives are to be attained:

A. Recourse to the Treaty's provisions on the environment must be made more effective

This calls for:

1. A better decision-making process:

(i) In this respect, the shift to qualified-majority voting should speed up decision-making. It should also put an end to disputes on legal bases (100a to 130s).

(ii) In this connection, when formulating its proposals the Commission will take into account objectively different situations in the Member States or in the regions, in accordance with Article 130r(3), in order to allow adjustment periods where necessary.

2. Greater implementing powers for the Commission:

(i) In a general manner, the need to step up the Commission's implementing powers is mentioned in the conclusions reached by the European Council in Rome, 'so that it may ... help to make Community action more effective'.

(ii) With regard to environmental protection, this should, in particular, enable the Commission to make a better contribution towards the funding of Community action, both within the Community and in the context of international cooperation. The possibility of setting up new financial instruments (for the environment and research) is brought up in the Commission's opinion of 21 October 1990 (p. 13). Moreover, the Commission has recently proposed a specific financial instrument for the environment (LIFE).

3. Greater compliance with environmental legislation: this point could be examined within the framework of the broader discussion on the idea of penalties put forward in the Commission opinion to encourage greater compliance with the judgments of the Court of Justice.

B. Greater consideration of the environment in the other policies

One of the chief aims of the Union must be 'sustainable growth'. This cannot be attained unless environmental imperatives are taken fully into account in the other policies of the Union (policies pursued both within the Union and internationally).

The Commission is therefore proposing the following:

1. A statement in the opening provisions of the Treaty (Articles 2 and 3 of the EEC Treaty) that protection of the environment is one of the objectives of the Union.

The essential objectives of the Union's action on the environment must be set out in those articles.

The terms employed at the European Councils (sustainable growth, guarantee of a healthy environment for this and future generations) could be retained.

These amendments will be included, in due course.

2. The wording of the last sentence of Article 130r(2) needs to be made tighter and more forceful in order that genuine account be taken of the environment in the definition and implementation of the other policies.

3. Provisions on the Union's external action to protect the environment to be included in the general articles of the future Treaty which deal with the common external policy, since action to protect the environment is merely one aspect of a common external policy.

In addition, reference to the general articles relating to the Union's external policy is desirable in order to clarify the Union's external powers and simplify procedures.

II. The following amendments to Title VII of the EEC Treaty are therefore being proposed:

A. To improve effectiveness

1. Amendment of Article 130s:

Introduction of qualified-majority voting under the co-decision procedure.

2. Deletion of the last sentence of Article 130r(4): 'Without prejudice to *certain* measures of a Community nature, the Member States shall finance and implement the other measures'.

This sentence does not appear to add anything useful to the general rules on implementation of the Treaty and secondary legislation. It is already the rule that Member States implement regulations and apply directives.

It is always possible for them to help finance Community operations or even to finance them in full (as with the part-financing of agreements concluded within the framework of the common commercial policy).

This sentence ('certain measures') could be interpreted in such a way as to hinder Community financing, for which there is a recognized need.

B. For greater integration

1. Rewording of the last sentence of Article 130r(2):

The current wording 'Environmental protection requirements shall be a component of the Community's other policies' appears:

(i) imprecise: the practical implications of this statement are not clear;

(ii) optimistic: the words 'shall be a component' record a fact rather than impose an obligation [*translator's note*: this is more true of the French version].

The proposed text is designed to be more precise and more forceful, which should make it easier for full account of the environmental factor to be taken in other areas of action.

2. The deletion of Article 130r(5) for the reasons given above (I.B.3).

Trans-European networks

Draft text

Part Three of the EEC Treaty, Title I (Common rules), new Chapter 4

Chapter 4 (new)

Trans-European networks

Article 102a

1. In order to help to attain the objectives of Article 8a of this Treaty and to enable all operators and regions to derive full benefit from the establishment of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks, in particular infrastructure for transport, telecommunications, energy and vocational training.

2. The Member States shall regard infrastructure programmes that may have a significant impact on the attainment of the objective referred to in paragraph 1 as a matter of common interest. To that end, they shall coordinate those programmes with the assistance of the Commission, and shall cooperate as far as necessary in their implementation.

3. Action by the Union shall aim in particular to promote the interconnection and interoperability of the networks. It shall take account of the demands of economic and social cohesion, environmental protection and cooperation with third countries.

Article 102b

1. In order to attain these objectives the Union shall:

(i) establish a reference framework for trans-European networks, laying down the objectives, priorities and broad lines of measures envisaged for each sector. This reference framework shall identify projects of common interest;

(ii) implement such measures as may prove necessary to ensure the interoperability of the networks, in particular in the field of standardization.

2. In network finance, the Union shall provide additional financial aid for projects of common interest identified in the reference framework referred to in paragraph 1. The Union shall also take account of the development of trans-European networks in the implementation of structural policies.

Article 102c

The measures provided for in Article 102b shall be adopted in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee.

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Explanatory memorandum

Article 8a of the Treaty provides that: 'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'.

The Single Act gave the Community the instruments it needed to adopt a legal framework for achieving these freedoms, but it is now clear that a set of legal rules alone is not enough to ensure real freedom of movement, which alone can produce the economic effects the internal market is intended to achieve.

A substantial effort in structural and technical improvement is also necessary, for the operation of the internal market is at present being hindered by

missing links, bottlenecks and missing networks in sectors which are essential for free movement.

The legal means available to the Community until now have not enabled these difficulties to be overcome.

For the future, networks facilitating communications and bringing the different parts of the Community closer together, so as to increase its cohesion, are of fundamental importance if the frontier-free area is to operate properly.

The need for such networks was stressed at the meetings of the European Council in Strasbourg and Dublin and the Commission sent the Council a communication on the matter (COM(90) 585 final).

Looking at the four main areas concerned:

(i) transport infrastructure, which is essential for free movement of persons and goods, has to be seen globally, so as to ensure an intermodal and multimodal approach, which is indispensable for optimum exploitation of existing infrastructures and for developing them in a way which will help protect the environment;

(ii) telecommunications have a vital role to play in ensuring free movement in general, by providing rapid and secure transmission of necessary information; pan-European services are indispensable for the operation of the frontier-free area;

(iii) energy must be available throughout the Community and this requires gas pipelines and electricity lines which are interconnected at the Community, and indeed the continental, level; such interconnection is necessary in order to help optimum exploitation of existing capacities and to guarantee the Union's security of supply;

(iv) vocational training is an area where efforts have to be undertaken to improve the way everyone can be integrated into economic and social life and to facilitate mobility in the Union as a whole. The links here with telematic services are clear, as regards exchange of information to make sure that training systems are transparent, that experience is exploited and that the methods used are improved (Cedefop, Eurylee, Erasmus) and also in setting up systems of distance training.

Assessing the needs at Community level cannot simply be a matter of adding together the requirements as worked out at national level. There must be Community consultation between all those concerned in designing and setting up infrastructures and services,

so as to appreciate the value to the Community of existing and planned infrastructures in order to ensure that they will be developed in a way consistent with the operation of the internal market.

Links which already exist or are being developed with other European and neighbouring countries must also be taken into account.

Protecting the environment is another reason for such assessment, which may lead to a more efficient and effective use of existing infrastructures. The requirements of environmental protection also have to be taken into consideration in developing networks.

In the four areas singled out above, the assessment of needs at Community level should help in identifying, realizing and developing trans-European networks.

The barriers to the emergence of these networks have already been pointed out. They are due to difficulties in interoperability across frontiers, mostly for technical reasons, to inconsistent rules and regulations, to the absence of an overall vision at European level of the way demand and the corresponding infrastructures will develop, and to financing problems connected with the size of the risks and an insufficiently European view of the projects to be undertaken.

The remedies have also been identified and they mostly involve a greater degree of coordination at Community level between all those concerned.

The first task is to find out what is the most appropriate network configuration at Union level for all the parties concerned, and at the same time to identify those difficulties which may arise in creating the network, at the technical level and also as regards rules and regulations and administration. It must be possible to use the reference framework to determine what action is necessary to create the network, in compliance with the principle of subsidiarity. It should also enable the advantage to the Community to be clearly identified and the scope of Community action precisely circumscribed.

Interoperability of networks is essential in ensuring their interconnection at Community, and indeed continental, level. It justifies Community action on rules and regulations, and on standardization.

As far as possible, trans-European networks should be financed on private capital markets. Public financing will still be essential in those cases where profitability cannot be ensured, and in particular where it is justified for economic and social reasons. The situa-

tion of the outlying parts of the Union as regards the creation and interconnection of networks deserves special attention, with a view to economic and social cohesion and the implementation of the Union's structural policies.

Community financing — which should be additional financing only — will be concentrated on projects which have been shown to be of value to the Com-

munity and it may be in addition to national or regional help, taking in particular the form of financing for feasibility studies or loan guarantees.

The measures to be taken to achieve the objectives of the Union will be adopted by the Council, acting by a qualified majority on a proposal from the Commission, The Economic and Social Committee will be consulted and the European Parliament will be associated through the co-decision procedure.

Culture and protection of the heritage

Draft text

Culture and protection of the heritage

Article . . .

1. The Union shall contribute to the flowering of cultures in Europe while respecting their national and regional diversity. It shall pay particular attention to improving familiarity with and dissemination of the cultures, languages and history of the peoples of Europe, to safeguarding the cultural heritage and to cultural exchanges, in particular by developing communications media and audiovisual cooperation.

2. The Union shall also develop cooperation with non-member countries and with international organizations with responsibilities for cultural matters, in particular the Council of Europe.

3. In pursuance of the objectives set out in paragraph 1, the Union shall have regard for the cultural dimension in its other policies, in particular when adopting measures to achieve the objectives set out in Article 8a.

4. Measures to encourage European artistic creation, cultural exchanges, multilingualism and audiovisual cooperation shall be adopted [in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee]. They may take the form of programmes.

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Explanatory memorandum

1. Culture is one of the fundamental elements of the European identity. Since the Union is to have the

general aim of bringing its component peoples closer together, it cannot be confined to the purely economic and social areas to which the Community, under the existing Treaties, is basically limited. It must also have regard for those values which, for every citizen, for every community and for every people, constitute the heritage through which they express their sense of belonging and solidarity and the source of influence which they can exert in their relations with each other and with non-members. It is everybody's business to preserve these heritages and renew them through artistic creation and cultural exchange. Consequently, the Treaty guarantees every Union citizen the right to cultural expression and imposes on him the obligation to respect cultural expression by others (Article X6 of the 'Union citizenship' Title). At different levels, however, this is also a collective responsibility, devolving partly upon the Union.

The Rome European Council of 14 and 15 December 1990 recognized this. One of the specific areas in which it affirms the need to extend or redefine the powers of the Union is 'safeguarding the diversity of the European heritage and promoting cultural exchanges and education'. The Commission, too, referred to culture in its opinion of 21 October 1990, stating: 'in line with the principle of subsidiarity, cultural affairs should continue to be a matter for the Member States and the regions. It would be a good idea, however, to include an article on the cultural dimension of Community activities'. That is the background to the present draft.

2. Paragraph 1 begins by setting out the Union's objectives in cultural matters and stressing the importance of the principle of subsidiarity. The Treaty does not set out to introduce a common cultural policy and certainly does not aim at the kind of centralization that can only result in uniformity. The Union is conceived as having a purely supporting role, with powers over cultural matters remaining firmly with the Member States and their regional authorities. All the Union would do would be to make its contribution where this seems potentially useful.

The corollary is that the emphasis is placed on cultural diversity. The draft would guarantee respect for

this diversity by the Union, and quite specifically refers to cultures in the plural.

That paragraph further clarifies the general significance of Union action along two main lines:

first, to support efforts made to safeguard and develop the cultural heritage;

second, to promote cultural enrichment and dissemination by developing exchanges and encouraging mutual understanding.

Special attention would therefore be devoted to improving familiarity with and dissemination of the cultures, languages and history of European peoples, to safeguarding the cultural heritage and to cultural exchanges, in particular by means of developing communications media and audiovisual cooperation.

3. The fact that international cooperation is necessary for the dissemination and defence of cultures is reflected in paragraph 2. The Union must be open to the world in this respect as in others and must be involved in international cooperation with non-member countries and the appropriate international organizations, both in promoting exchanges and interaction between peoples of different cultures and in working together with countries which, without being members of the Union, share the same values as its Member States. The clear reference here is to other countries of Europe which are as much a part of the European identity as the Member States. The specific role of the Council of Europe is highlighted.

4. The forms that Union action can take are set out in paragraphs 3 and 4 and are of two types:

First, the Union must have regard for the cultural dimension in its other policies, in particular when adopting measures to achieve the objectives set out in Article 8a. Free movement of cultural goods, and in particular of audiovisual material; harmonization of standards as the necessary means of promoting high-definition television; freedom of establishment and freedom to provide services for 'cultural workers'; training of young artists — these are areas in which the beginnings of Community action are already present. By expressly calling for consideration for the cultural dimension, paragraph 3 consolidates the foundation thus laid but also involves the institutions in making appropriate adaptations to general rules if they have a potential impact on cultural goods and services (the book trade, for instance, or respect for the Member States' language rules in the teaching profession).

Second, the Union can contribute to the flowering of cultures by taking measures to encourage them. Paragraph 4 offers a basis for such action which may concern European artistic creation, cultural exchanges, multilingualism and audiovisual cooperation, though this list is not to be regarded as exhaustive. Measures are to be taken in the form of laws [enacted by Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee].

Health

Draft text

Health

Article . . .

1. The Union's objective shall be to complement and support action undertaken by the Member States to protect health, and in particular to combat major health scourges such as cancer, AIDS, and cardiovascular and mental illness.

2. The measures needed to support action undertaken by the Member States, to approximate and coordinate the provisions they implement and to organize mutual assistance to this end shall be adopted [in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee].

3. Research activities carried out pursuant to Articles 130 to 130p shall contribute to achieving the objective set out in paragraph 1.

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Explanatory memorandum

This new Article gives the Union the new task of complementing and supporting action undertaken by the Member States and is a dynamic implementation of the subsidiarity principle in defining the Union's contribution to public health. While the purpose is to enhance the action of the Member States by supplying a horizontal, comprehensive and coordinated approach, the union clearly cannot and must not intervene in the whole range of health protection matters.

For one thing, the action concerned must relate to questions of general interest. Priorities need to be defined here, and the Article takes a first step by referring to major health scourges. This may be regarded as a historical priority, since at all times the fight against epidemics has been carried beyond national borders. But apart from epidemics, which are tending to disappear in our part of the world, there are new health scourges with substantial human and economic costs that are further compounded by the general ageing of our population.

The major health scourges identified here are those where the Council, at the explicit request of the European Council, has already begun action — such as cancer, AIDS and cardiovascular disease. The new Article will make it possible to pursue and amplify this action. Closely related to these major diseases are the social problems related to the use of drugs and tobacco and the abuse of alcohol.

The objective set out in this Article will require measures to promote cooperation and mutual assistance between the Member States. This in concrete terms confirms the orientation taken by the Council in recent years; exchanges of information between the Member States and the possibility of Community action have been introduced despite the absence of a specific basis for health protection.

Nevertheless this Article would enable the Union to go further and to take action to give a Community character to the prevention of health risks and the fight against major scourges wherever necessary, particularly where there is a cross-frontier element. Consideration could be given to health protection measures to accompany measures taken under other policies, including those for the completion of the internal market. When adopting the Directive on products derived from human blood, for example, the Council asked for general consideration to be given to the supply of blood products in the Community. Human organ transplants also qualify for cross-frontier consideration.

It is proposed that the Union should act by establishing minimum requirements applicable in each Member State so that a common base can be established

at a minimum level without prejudicing existing or future national measures providing for a higher degree of protection or more intensive action.

Unlike the present situation, in which separate measures are taken in isolation from each other, the combination of all these components (minimum requirements, coordination and mutual assistance) should make it possible to ensure consistency, efficiency and harmonization of basic principles; in this manner, health protection may be better assured and the campaign against major health scourges improved.

Given the importance attached to health protection in the Member States, the fullest possible involvement of Parliament must be ensured and the adoption of measures facilitated by introducing the majority voting rule.

Union research policy has an integral role to play in health protection; medical and health research is already provided for in the framework programme (Articles 130f to 130p).

Compliance with the judgments of the Court of Justice

Judgments of the Court of Justice: penalties for failure to comply

(Commission staff paper)

1. In its Opinion of 21 October 1990 the Commission expressed concern at the fact that, in the absence of sanctions, Court of Justice rulings are not always implemented, and stated that it might consider proposing a system of sanctions to deal with this type of situation. The correct application of Community law suffers from the all too frequent reluctance of Member States to implement Court judgments declaring that they have failed to fulfil their obligations, even though Article 171 of the EEC Treaty requires them to comply.

The only possible way of dealing with such situations as the Treaties stand is to commence new proceedings under Article 169 for infringement of Article 171, but experience has shown that a second adverse ruling may have no more effect than the first.

The Commission's annual reports to Parliament and the Council on the application of Community law reveal that the number of judgments given under Article 171, even where the Court has given a second adverse ruling, remains excessively high. In the last three report years alone, 83 Article 171 judgments were not implemented. On 12 occasions the Commission, following a first condemnation, has had to bring yet further proceedings against Member States in the Court of Justice in respect of the very same infringement.

This being so, the idea of applying sanctions to make the procedure more effective was bound to arise.

2. Of the various types of sanction that might be envisaged, there is one which must be dismissed immediately: there can be no question of providing or authorizing countermeasures against the recalcitrant Member State. The possibility exists in subparagraph (b) of the third paragraph of Article 88 of the ECSC Treaty¹ but has never been used. Above all, while it might be possible to conceive of this kind of

measure in the ECSC, which is a Community of limited scope, the idea is inconceivable in a general Community. If there were a whole series of infringements, and derogations along these lines proliferated, new barriers would inevitably be raised whereas the point of the Community is to remove them. In other words, the remedy would run the risk of actually dismantling the single market.

3. It might, however, be possible to envisage financial sanctions against Member States which, having been condemned by the Court of Justice for infringing Community law, were again arraigned before the Court for failure to comply with the first judgment. This is the idea which has been put forward by the UK delegation.

One solution might be to give the Court, in its second judgment, the power to decide, or to authorize the Commission to decide:

(a) to suspend payment of sums owing to the offending Member State (as already provided in the ECSC Treaty);

(b) to inflict a financial penalty on the Member State.

Community secondary legislation already provides examples of measure akin to financial penalties. Where the Community provides financial assistance under the structural Funds, payment of aid which has been decided upon is dependent on the Member State complying with requirements of Community law relating to the operation to be financed (Article 7 of Regulation No 2052/88; Article 24 of Regulation No 4253/88). The same applies also in the application of common rules on public procurement: where

¹ Article 88 provides that where a Member State fails to comply with a decision recording that it has failed to fulfil an obligation, 'the High Authority may, with the assent of the Council acting by a two-thirds majority:

...

(b) take measures, or authorize the other Member States to take measures, by way of derogation from the provisions of Article 4, in order to correct the effects of the infringement of the obligation'.

an operation for which Community support is available involves the award of public contracts, the payment of Community aid is dependent upon compliance with the requirements of the relevant directive.

The question now is whether the possibility of financial sanctions should be written into the Treaty in general terms, specifically wherever a Member State fails to comply with a judgment given against it by the Court of Justice.

There is no legal obstacle to a power to inflict financial penalties, but it has to be admitted that the exercise of it may come up against practical and political difficulties. The first difficulty would lie in setting the penalty at such a level that it can be both effective and balanced. Experience has shown that the Member States which are the most frequent offenders are also those which suffer from difficult economic and financial situations and need Community assistance. The impact of a financial penalty can accordingly vary from one Member State to another. A penalty which hurts one Member State may have little deterrent effect on another. Likewise, the practical consequences of an infringement may vary, not only according to its nature but also according to the Member State concerned. These, then, are all material considerations for the determination of the amount of a financial penalty.

Another important question is the decision as to which institution should have power to impose a sanction and set its amount. It would have to be an independent institution, either the Court of Justice or, at the very least, the Commission acting with the Court's authorization. If the Council were to be involved, the spirit of mutual understanding between the Member States, or indeed their complicity (if several of them were guilty of an infringement), could make the sanction ineffectual in practice. The Court's preliminary thinking on the subject favours the Commission as the institution which would be responsible for setting the amount.

Whatever the outcome of these reflections, the Commission reserves the right to make proposals in due course for the introduction of financial penalties against Member States in breach of their obligations, covering both the nature of the penalty and rules for determining the amount.

4. Are there, however, other ways of making the Member States comply with Community law?

(a) In the decentralized system set up by the Treaty, the Member States are responsible for ensuring the

implementation of Community law and the protection of rights conferred on citizens and firms by them. A power is thus conferred on the Member States, but so, above all, is a duty, flowing from the general principles of the Community legal order as defined by the Court of Justice on the basis, notably, of the general obligation imposed by Article 5 of the Treaty.¹ One of the requirements imposed on Member States is that their domestic law should contain provisions of such a nature that anybody with an interest can reap the benefit (or suffer the detriment) of a failure to comply with Community law — recovery of aid wrongly paid; availability of remedies in the event of wrongful acts or failure to act; possible liability of public authorities towards victims of failure to apply Community law.

However, the situation is far from satisfactory. Community law relies on the national legal orders for its application, but suffers from the fact that they are widely different and in some cases frankly inadequate (some, but not all, Member States have a principle of liability for abuse of legislative powers, but even where this liability exists it is extremely difficult to obtain redress).

The question, then, is whether the efficacy of Community law would not be adequately boosted by relying on the broad obligation flowing from Article 5 and from the general principles of law, but spelling out their requirements in provisions explicitly offering guarantees. A number of instruments of Community secondary legislation have attempted to achieve this in specific areas (the directives on equal treatment for women and men at work require the Member States to provide judicial remedies for the victims of discrimination, and Directive 89/665/EEC provides for remedies in relation to public procurement).

Should this approach be generalized, and should it be written into the Treaty itself? The technique would be to amplify Article 5 of the EEC Treaty by specifying what rules must be laid down in internal legal systems to deal with failures to comply with Community obligations and redress their consequences (judicial or similar remedies for citizens; liability of public authorities towards the victims, whatever the nature

¹ 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.'

or origin (administrative or legislative) of the infringement; possibility of interim measures to ensure that a wrongful act does not have irreparable consequences). If necessary, the institutions could be empowered to take the requisite harmonization or coordination measures, for even if the rules to be laid down here remained in the first instance to be taken within the national legal systems of the Member States, it might be found necessary to ensure at least a modicum of consistency between them.

(b) Another approach might be to extend the jurisdiction of the Court of Justice in cases concerning failure by a Member State to comply with its obligations.

(1) Most infringements in fact concern failure to transpose harmonization directives into domestic law. Where the Court of Justice finds against a Member State more than once on the same issue, it could conceivably be given the power to take its own decision, with direct effect, on the measures needed to transpose Community rules into the national law of the offending State.¹ It might, for instance, declare in certain cases that a directive was directly applicable.

In some ways this would be more than an extension of the rule already to be found in Court judgments to the effect that individual citizens can rely on directives against recalcitrant Member States.

But there are two dangers here:

(i) This approach would be inadequate where the Community legislation requires the national authority to take positive action (especially where it actually has the possibility of choosing between different, equally effective transposition techniques) or to establish complex administrative machinery;

(ii) This approach would, moreover, entail the establishment of a decentralization mechanism in the form of a superior authority enjoying a fully fledged power of substitution. The concept is familiar in many federal States, but given the present situation of Community integration, even assuming that further progress is made towards political union, some Member States might for that very reason find it unacceptable.

Ultimately, the difficulties are such that the solution scarcely seems realistic; it must be ruled out on political grounds.

(2) Another possibility would be to confer on the Court of Justice a jurisdiction similar to that enjoyed by the constitutional courts of a number of federal States to scrutinize federal legislation in the light of the federal constitution. The Court would then have

power to rule that the legislation of a Member State conflicts with a provision of Community law and to declare it inapplicable or even to annul it.

This technique, unfortunately, would only work where there was a positive act by a national authority. It would not help to solve the numerous disputes arising from a Member State's failure to take action.

Moreover, even without going so far as to establish a substitution mechanism as considered above, the approach would probably encounter general opposition since it would give the Court the power to interfere in the national legal orders.

(3) To take a more modest and less aggressive approach, the Court of Justice could be given jurisdiction to declare, in judgments finding that an infringement has been committed, what measures should be taken by the offending Member State in order to put an end to it.

There are a number of possible ways of extending the Courts's jurisdiction along these lines:

(i) The Court might be given the power to impose periodic penalty payments on Member States as an incentive to come into line. The same practical difficulties might arise here as were already mentioned in connection with financial penalties earlier in this paper, but the psychological effect on the national authorities of the recalcitrant Member State could be quite salutary.

(ii) The Court could also be given jurisdiction to issue injunctions. As it happens, the Court of Justice already sees itself as having this jurisdiction when hearing applications for interim measures against Member States, but it is reserved for exceptional cases. It is predicated on there being a degree of urgency with a risk of irreparable damage being done. All the Court can do is order provisional measures, pending its consideration of the substance of the case. It would be worth considering the possibility of extending and formalizing this power of injunction.

(4) The consequences of infringements include the liability of Member States towards persons who suffer as a result. A real possibility of having this liability duly established would have a much greater deterrent effect on Member States than the possibility of being ordered to make fixed or periodic penalty

¹ The Commission would, of course, be expected to assist the Court by its pleadings and its involvement in the oral proceedings.

payments. The principle of this kind of liability already exists in the Community legal order. It is for the courts and tribunals of each Member State to implement it in accordance with their respective legal systems.

It would be worthwhile amplifying the liability without affecting national jurisdiction. One way would be for the Court, when confirming that an infringement has been committed, to declare explicitly in its judgment that the effect of the infringement is to render the offending Member State liable towards persons whose rights are affected. The authority enjoyed by a judgment duly given in these terms and pleaded in the national courts would be of great assistance to those seeking redress.

5. One last point: if the foregoing suggestions were accepted — particularly as regards expanding Article 5 of the EEC Treaty and extending the jurisdiction of

the Court to declare the consequences of a judgment ruling that an infringement has been committed — and if one or more mediators were instituted in each Member State, as has been proposed in connection with European citizenship, these mediators would then have an important role to play in seeing that Community law was properly applied. If they were responsible for safeguarding the rights and interests of Union citizens in each Member State, one of their prime concerns would quite naturally be to ensure that national legislation was adapted so as to provide proper protection for these rights and interests, and they would be at pains to make all the necessary representations both to national authorities and to Community institutions. Where an infringement was committed by public authorities, one of the mediators' tasks would be to provide citizens with full information on the extent of their rights and to assist them in using all proper ways and means of obtaining redress (notably in proceedings to establish the liability of public authorities, as mentioned above).

Economic and Social Committee

Draft text

Economic and Social Committee

Article 4

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

a European Parliament,

a Council,

a Commission,

a Court of Justice.

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

2. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee, which shall be an institution with advisory status.

3. The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.

Article 154

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice, and the allowances of the members of the Economic and Social Committee.¹ It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

Note: The provisions of the Financial Regulation relating to the presentation of the budget will have to be amended, as will the rules on the emoluments of the members of the institutions.

Chapter 3

The Economic and Social Committee

Article 193

An Economic and Social Committee is hereby established. It shall have advisory status.

The Committee shall consist of representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.

Article 194

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

Belgium	12
Denmark	9
Germany	24
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Luxembourg	6
Netherlands	12
Portugal	12
United Kingdom	24

The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable.

¹ The purpose of this amendment is to define the scope of the last sentence of the Article.

The members of the Committee may not be bound by any mandatory instructions.¹

Article 195

1. For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals.

The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

Article 196

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

It shall adopt its rules of procedure.²

The Committee shall be convened by its chairman at the request of the European Parliament, of the Council, of the Commission or on its own initiative.

Article 197

The Committee shall include specialized sections for the principal fields covered by this Treaty.

In particular, it shall contain an agricultural section and a transport section, which are the subject of special provisions in the Titles relating to agriculture and transport.

These specialized sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Sub-committees may also be established within the Committee to prepare, on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The rules of procedure shall lay down the methods of composition and the terms of reference of the specialized sections and of the sub-committees.

Article 198

1. The Committee must be consulted by the European Parliament, by the Council or by the Commission where this Treaty so provides.³ The Committee may be consulted by these institutions in all cases in which they consider it appropriate. The Committee may also deliver opinions on its own initiative in cases where it considers it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and, where appropriate, that of the specialized section, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

2. Where the co-decision procedure provided for in Article 189a applies, the Commission shall send its proposal to the Committee at the time of transmission to the European Parliament and the Council.

The Committee shall submit its opinion and the record of its proceedings to the European Parliament, the Council and the Commission within one month of the transmission of the proposal.

3. The Committee shall be kept informed of the action taken on its opinions by the institution which consulted it.

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¹ The reference to the appointment of members in their personal capacity has been deleted, at the Committee's request.

² Abolition of the requirement that the Committee's rules of procedure must be unanimously approved by the Council.

³ Subject to review, in particular if the co-decision procedure is not adopted for all areas of Community competence.

Explanatory memorandum

1. The Rome European Council on 14 and 15 December 1990 instructed the Intergovernmental Conference on political union to examine ways of improving the effectiveness of Community institutions and bodies other than the European Parliament, the Council and the Commission in the light of the suggestions presented by these institutions and by the Member States.

The Economic and Social Committee has informed the Conference of its desire for greater autonomy and an extension of the number of cases where it must be consulted.

In its opinion of 21 October 1990 the Commission had already stressed that the development of the social dialogue presupposed *inter alia* enhancing the status of the Committee and of its members.

2. The Commission feels that the Conference should accede to the Committee's requests, which, moreover, were already contained in the Committee's 1989 memorandum on the consolidation of its role in the run-up to 1992 and were broadly supported by the Commission. From the budgetary angle, the 1989 proposal to amend the Financial Regulation would give the Committee the status of an institution by

granting it its own section in the budget and the power to transfer appropriations within each Title.

It is therefore proposed that the Committee's status as an institution be clearly laid down in an amendment to Article 4 of the Treaty, which would render superfluous any specific reference to its autonomous status in other provisions.

However, the Committee's autonomy must be further strengthened by giving it the power to adopt its own rules of procedure and by recognizing its right to deliver opinions on its own initiative, which is already current practice. Moreover, under the proposals for a new institutional balance, the European Parliament, as well as the Commission and the Council, would be able to consult the Committee when it considers it appropriate.

The Commission feels that the question of extending the cases where the Committee must be consulted must be solved in a way which fits in with the reforms of the legislative process it is proposing. The Committee would therefore have to be consulted on all primary legislation adopted, in the hierarchy of norms proposed by the Commission, by the co-decision procedure decision between the European Parliament and the Council. Moreover, the Commission has now incorporated this idea in its working documents for the Intergovernmental Conference.

Human resources (vocational training and education)

Draft text

Human resources

Article 122

1. In order to develop the potential of its human resources, the Union shall implement a vocational training policy, which reinforces and complements the actions of Member States and takes account of the diversity of the training systems.

2. Action relating to vocational training shall have the following objectives:

(i) to improve social and professional entry and re-entry into the labour market, and continuing training throughout working life;

(ii) to develop the exchange of information and experience in the field of vocational training, particularly through the exchange and mobility of trainers and trainees and the creation of trans-European networks;

(iii) to facilitate access to vocational training throughout the Union in particular through the recognition of diplomas, certificates and other evidence of formal qualifications.

3. This action shall be implemented, in so far as workers are concerned, in accordance with the terms of Articles 118, 119 and 120.

4. To this end, the necessary provisions shall be established by laws adopted in co-decision with the European Parliament and the Council, on a proposal from the Commission and after consulting the Economic and Social Committee. The laws may take the form of programmes.

Article 123¹

1. With a view to consolidating the European dimension of education and improving mutual understanding, while maintaining full respect for the diversity of the education systems, the Union shall encourage:

(i) links and cooperation between the education systems, particularly through the establishment of trans-national networks and the exchange of information and experience;

(ii) the exchange and mobility of pupils and young people;

(iii) the teaching and learning of foreign languages within the union.

2. The law, adopted in co-decision with the European Parliament and the Council, on a proposal from the Commission and after consulting the Economic and Social Committee, shall define the conditions under which the actions to promote the above objectives shall be conducted in the context of pluriannual programmes.

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* *

Explanatory memorandum

1. Introduction

In its opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, the Commission considered that an increase of Community powers should concentrate on certain fields, including 'basic and further vocational training'.

Meeting in Rome on 14 and 15 December 1990, the European Council took the view that there was 'a wide recognition of the need to extend or redefine the Community's competence in specific areas', including education. The European Council also 'stressed the importance of the support that young

¹ Actions involving relations with non-member States and international organizations under Articles 122 and 123 are covered by the provisions of Title V on a common external policy.

people can bring to European integration and the hope that Community action ... will be extended'.

The Commission therefore proposes to amend the provisions of the existing Article 128 so as to clarify its scope and provide the necessary means of action. The Commission further considers that an Article should be introduced in order to provide for some competence in the Treaty with respect to education. In coherence with the new provisions presented by the Commission for Title III 'Social dimension and human resources', these two Articles are presented in the form of a Chapter 2 for this Title referring to 'Human resources' and include an Article 122 on vocational training and an Article 123 on education. Article 128 would thus be deleted.

2. Vocational training

The Commission has carefully examined the approach that should be taken to amend Article 128. The existing Article has evolved to provide increased scope for action, both in the area covered by the notion of vocational training and in the fact that it entitles the Commission to propose and the Council to adopt action programmes with substantial budgetary implications. Article 128 could, however, benefit from clarification so as to remove the ambiguities which will continue as long as concrete policy and actions remain based on a generally worded text. The simple majority voting procedure and the lack of express provision for consultation of the European Parliament also impose a revision of the existing Article.

Moreover, it is imperative that the Union stresses the importance it will attach to developing the potential of its human resources, particularly through vocational training policy, increasingly recognized as an essential element in the strengthening of economic and social cohesion (see the Commission's proposal for Title V) and in increasing the competitiveness of European industry through the quality of the contribution to be made by the training systems throughout the Union. The central role of continuing training and life-long learning is now widely regarded as essential in developing an active society, capable of mastering economic, technological, social and cultural change, and in meeting the challenges from other parts of the world.

The Commission proposes, therefore, to provide in clearer terms for the main policy objectives to be pursued by the Union in the field of vocational training, bringing thereby an added value to the policies and activities of the Member States.

The scope of action by the Union in terms of the notion of vocational training remains unchanged by the amendments, and as defined by the Court of Justice in the *Gravier* case.¹ This notion includes university-level courses in general.

The proposal for an Article 122, amending Article 128, highlights, in its first paragraph, the need to take into account the diversity of the different vocational training systems. It also clearly establishes that action of the Union will reinforce and complement the action of Member States, in accordance with the concept of subsidiarity. These elements confirm that the overall aim of the Union is neither to seek blanket harmonization nor the standardization of training policy.

The amended Article then, in its second paragraph, centres the Union's vocational training policy on three principal objectives:

(i) The first objective relates to initial training, retraining and continuing training. This covers vocational training following full-time compulsory education and preceding full-time entry into the labour market. All forms of youth training, apprenticeships, university and higher education are considered to be covered here, the objective of the Union being to equip young people with the skills and competences needed to enter the labour market. Continuing training of workers is also covered here as a policy objective essential to a vocational training policy. Other categories covered by this objective will include those who are not considered to have active links with the labour market, i.e. women returning to the labour market after bringing up children, for whom retraining may be necessary.

(ii) The second objective relates to the means to promote a European dimension to vocational training through the exchange of experience and information and mobility, particularly of students and trainees. This refers essentially to programmatic and catalytic action at Community level, such as Comett (university-industry cooperation in training in the field of technology), Force (development of continuing training), Petra (youth training) and Erasmus (inter-university cooperation and student mobility),

¹ Education 'which prepares for a qualification for a profession, trade or employment or which provides the necessary training and skills for a particular profession, trade or employment is vocational training, whatever the age or training level of the pupils or students, and even if the course includes a part of general education.' (*Gravier v City of Liège*, Judgment of 13 February 1985 — Case 293/83, *Reports of Cases before the Court* 1985-2).

etc. In addition, measures will be taken to develop the networking infrastructures necessary to provide for information on opportunities for training and transfrontier cooperation throughout the Union.

(iii) The third objective relates to the question of access to vocational training which may be impeded, amongst other things, by the non-recognition, for academic as opposed to professional purposes, of qualifications acquired in another Member State. It is a matter of concern to the Commission that, while mobility in the training field is a priority objective of the Community, individuals still face sometimes insuperable difficulties in achieving access to training in another Member State.

In its third paragraph, it is noted that as far as vocational training for workers is concerned, the provisions of the Commission's proposals for Chapter I of Title III, Articles 118 to 120, apply. The term 'worker' is intended to mean any person employed by an employer, including trainees and apprentices.¹

The means of action provided under Article 122 will in all cases involve a procedure of co-decision with the European Parliament, consultation of the Economic and Social Committee, and a qualified majority voting procedure. For the establishment of programmes, the same procedure as that provided for in the proposal for a revised Article 120 is envisaged.

3. Education

In addition to action in the field of vocational training, the Commission has carefully examined the scope for an Article relating to general education. The need to complement the efforts of Member States to improve the quality of their education systems through the pooling of experience and innovations and the building of transnational cooperation is well recognized and indeed demanded by the Member States. Understanding of the role and development of the Union, knowledge of languages and opportunities for the exchange and mobility of pupils, young people and the teachers accompanying them are important elements in the education of future active citizens of the Union. Moreover, the present situation, whereby Community support can be given, for example, to inter-university cooperation and the mobility of trainees, but not to young people in the

academic streams of secondary schools is anachronistic and potentially unfair. Cooperation in the youth field is in its early stages of development, largely through support for youth exchanges, outside formal educational structures, for which recourse to Article 235 is currently necessary.

In Article 123 is therefore proposed relating to education, in which the Union's involvement is clearly delimited and defined, dealing only with aspects of cooperation, mobility and exchange. The Commission's formulation of this Article draws on established terms and practice as expressed in the different Resolutions agreed by the Council and the Ministers for Education meeting within the Council on many occasions. Member States remain exclusively responsible for the school systems and indeed for education policy; the means of action provided for the Union are supportive and programmatic, as opposed to harmonizing legislation.

In terms of scope, the term 'education' as used in this Article is intended to refer to full-time general education in the school systems of the Member States.

The first paragraph of the proposed Article 123, which establishes its overall objective — to promote a European dimension to education, while maintaining full respect for the diversity of the education systems, and indeed a better mutual understanding of the richness of this diversity — has already been underlined in different texts submitted for Treaty revision (see Union citizenship and culture). Here too, the Union will not be seeking harmonization or standardization but to complement the policies of Member States through the added value of cooperation at Community level, through exchange and mobility and specifically through the improving of foreign-language competence, as well as by pooling information and experience on innovation and themes of common interest.

The second paragraph defines the procedure for the adoption of pluriannual programmes, involving co-decision with the European Parliament, consultation of the Economic and Social Committee, and a qualified majority voting procedure.

In the field of action covered by Articles 122 and 123, cooperation with non-member States and with international organizations is covered by the Commission's proposal for a Title V on a common external policy.

¹ See Article 3 of Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989).

Financial provisions of the EEC Treaty ¹

Draft text

Financial provisions of the EEC Treaty

Article 199

(Unity and balance of the budget)

1. All items of revenue and expenditure of the Community, including those relating to borrowing and lending activities pursued under Article 203a and to the European Development Fund, shall be included in estimates to be drawn up, approved and shown in the budget for each financial year.

2. The revenue and expenditure shown in the budget shall be in balance.

Article 200

(Own resources)

1. Community expenditure shall be financed, without prejudice to other revenues, from own resources which guarantee the Community's financial autonomy. The Member States shall ensure that sufficient own resources are made directly available to the Community.

Own resources may include one or more Community taxes.

2. The Council, acting unanimously on a proposal from the Commission and after consulting Parliament, shall lay down the rules on own resources and recommend them to Member States for adoption in accordance with their respective constitutional requirements.

Should the Council intend to depart from the position of Parliament then it shall introduce a conciliation procedure. Conciliation shall take place in a

conciliation committee, which shall consist of members of the Council and the same number of representatives of Parliament, and whose proceedings shall be attended by the Commission. The committee shall have the task of achieving agreement between Parliament and the Council. At the end of the conciliation procedure Parliament shall adopt a new position. The Council shall decide only after presentation of this new position or at the earliest three months after the introduction of the conciliation procedure.

3. The conditions for calling in own resources and the corresponding rules of procedure shall be laid down in the decision taken in accordance with paragraph 2.

Article 201

(Medium-term financial planning and budgetary discipline)

1. The multiannual financial perspective shall constitute the reference framework for budgetary discipline. For each financial year it shall indicate, as appropriations for commitments, the volume and structure of foreseeable Community expenditure, including expenditure for new policies. Furthermore, it shall include a reserve in order to meet unforeseen expenditure.

The overall annual totals shall, moreover, be shown in payment appropriations which shall remain within the own resources resulting from the decision provided for in Article 200(2). These amounts shall further be expressed in terms of percentages of gross national product.

2. The amounts appearing in the multiannual financial perspective shall be ceilings binding on the Community institutions during the annual budget procedure.

¹ The corresponding provisions of the ECSC and Euratom Treaties are also to be similarly amended.

3. The financial perspective shall be annexed to an interinstitutional agreement [a decision], which shall, on a proposal from the Commission, be adopted by the Council, acting by a qualified majority, and by Parliament, acting by a majority of its members and three-fifths of the votes cast.

As long as the interinstitutional agreement [the decision] has not been adopted, the Commission may alter its proposal. Unanimity shall be required for the Council to amend the Commission's proposal.

4. The multiannual financial perspective may be modified in accordance with the procedure laid down in paragraph 3.

5. In the absence of any decision on a proposal for a new multiannual financial perspective, the figures laid down for the latest year shall also apply to the following year.

Article 201a

(Medium-term financial planning and budgetary discipline)

Any financial commitment resulting from a legal act adopted on the basis of this Treaty is conditional upon the availability of financial resources. No decision which has a financial impact exceeding the resources available in the budget or laid down in the financial perspective shall be implemented until the budget and, where appropriate, the financial perspective have been correspondingly adjusted in accordance with the appropriate procedure.

Article 203

(Budgetary procedure)

1. The financial year shall run from 1 January to 31 December.

2. Each institution of the Community shall draw up estimates of its expenditure. The Commission shall consolidate these estimates in a draft budget. It may attach thereto an opinion which may contain different estimates.

The draft budget shall be drawn up in accordance with the financial perspective referred to in Article 201 and the decision provided for in Article 200.

3. The Council and Parliament shall decide at all stages of the procedure on the estimates for both expenditure and revenue in accordance with the financial perspective referred to in Article 201 and the conditions laid down in the decision provided for in Article 200.

4. The draft budget shall be transmitted to Parliament. Parliament shall express its opinion on the draft budget within 45 days.

It may amend the draft by a majority of votes cast if the Commission raises no objections.

Where the Commission objects to proposals for amendments to the draft budget, their adoption by Parliament shall require the votes of a majority of its members and three-fifths of the votes cast.

The Commission may object to:

(i) proposals for amendments which would reduce expenditure which the budgetary authority must include in the budget if the Community is to fulfil its internal and external commitments resulting from the Treaties or from acts adopted in accordance therewith;

(ii) proposals for amendments which would increase other expenditure.

5. The draft budget adopted by Parliament shall be transmitted to the Council. If Parliament has not expressed an opinion within the time-limit provided for by paragraph 4, the initial version of the draft budget shall be transmitted to the Council. The Council shall adopt its position on the draft budget by a qualified majority within 30 days.

If the Council does not propose amendments to the draft budget adopted by Parliament within this period, the budget shall be deemed to be adopted in this form.

6. If the Council proposes amendments, it shall immediately introduce a conciliation procedure. Conciliation shall take place in a conciliation committee, which shall consist of members of the Council and the same number of representatives of the Parliament, and whose proceedings shall be attended by the Commission. The committee shall have the task of achieving agreement upon a common draft budget.

If the Council, acting by a majority of its members, and the representatives of the Parliament, acting by a majority, agree within 20 days, then the amended

draft budget shall be sent to Parliament; if not, then the draft budget in the form amended by the Council shall be sent to the Parliament.

7. Parliament may within 30 days adopt the draft budget by a majority of its members' votes or may amend it by a majority of its members' votes and two-thirds of the votes cast. In this case the budget may only include amendments proposed by Parliament in accordance with paragraph 4 or by the Council in accordance with paragraph 5. If Parliament does not take a decision within this period, the budget transmitted to the Parliament shall be deemed to be adopted.

8. Within the time-limits laid down in paragraphs 4 and 7, Parliament acting by a majority of its members and two-thirds of the votes cast may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

If Parliament rejects the draft budget, the Commission shall draw up a new draft. The procedure shall be repeated in accordance with paragraphs 3 to 7. The emergency procedure shall apply; the time-limits laid down shall be reduced by half for the stages of the procedure completed before rejection.

9. When the procedure provided for in this Article has been completed, the President of Parliament shall declare that the budget has been finally adopted.

10. The exact timetable for the course of the budgetary procedure shall be laid down in the Financial Regulation provided for in Article 209.

Article 203a

(Borrowing and lending activities)

1. The Community shall have the power to borrow funds in order to grant loans. The proceeds of its borrowing activities shall be used exclusively to finance its lending activities, decided on the basis of this Treaty.

2. The Council and Parliament, acting on a proposal from the Commission in accordance with the procedure laid down in Article 203, shall approve the ceilings for borrowings and lendings.

3. Borrowing and lending activities shall be listed in a separate part of the budget in accordance with the Financial Regulation provided for in Article 209.

Article 204

Provisional twelfths

If at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 209; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorize expenditure in excess of one-twelfth.

The Council shall forward its decision immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision. The decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third paragraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Article 206

(Court of Auditors)

The first subparagraph of paragraph 4 is replaced by the following:

The members of the Court of Auditors shall be appointed for a term of six years by the Council, acting by a qualified majority with the consent of Parliament.

Article 206b

(Discharge)

The following paragraph is added:

2. *The institutions shall take the necessary measures to act upon the observations in the discharge decision provided for in paragraph 1 and shall, at the request of Parliament or of the Council, give an account of the measures which they have taken.*

Article 207

(The ecu — Treatment of balances)

The budget shall be drawn up and implemented in ecus in accordance with the Financial Regulation established pursuant to Article 209.

The own resources provided for in Article 200(1) shall be placed at the disposal of the Community by the Member States in ecus.

The available balances of these own resources or contributions shall be deposited with the Treasuries of Member States or with bodies designated by them.

The balances may be invested on terms to be agreed between the Commission and the Member State concerned.

Article 209

(Financial regulations)

The Council, acting by a qualified majority on a proposal from the Commission after receiving the consent of Parliament and obtaining the opinion of the Court of Auditors, shall:

(a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget, for presenting and auditing accounts and for carrying out borrowing and lending activities;

(b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Communities' own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;

(c) lay down rules concerning the responsibility of authorizing officers and accounting officers and concerning appropriate arrangements for inspection.

Articles 202, 205, 205a, 206a, 208

Unchanged.

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Explanatory memorandum

As envisaged in its opinion of 21 October 1990, the Commission is putting before the Intergovernmental Conference a proposal for the revision of the financial provisions of the Treaty. The purpose of this memorandum is to explain the reasons and the principles underlying the proposal and to outline its content.

I. Reasons and principles

(a) The 1988 financial reform and in particular the Interinstitutional Agreement introduced a different system and different rules from those contained in the Treaty. The maximum rate rule no longer applies in practice. The Council's first reading of the draft budget has become a mere formality. The exclusive rights reserved by the Council on compulsory expenditure and Parliament on non-compulsory expenditure hardly reflect the present situation: the volume of non-compulsory expenditure will soon exceed that of compulsory expenditure and the principles of budgetary discipline should now be applied just as rigorously — if not more so — to non-compulsory expenditure as to compulsory. The timetable set by the Treaty is completely divorced from reality.

(b) The budgetary discipline arrangements deriving from the February 1988 agreement are a key factor in the financial system but remain a fragile achievement. Repeated revisions of the financial perspective, dictated by unforeseen circumstances, have undermined their status as binding rules. There is a good case for confirming that these arrangements are strictly binding, since it is in the interests of all the institutions to agree on a stable financial framework which reflects a common vision of the development of Community policies.

(c) Applying the principles underlying the work of the Intergovernmental Conference on political union, the Commission has already presented propo-

sals for associating Parliament in the common foreign and security policy, for enhancing its legislative powers, for making other areas subject to its assent and for involving it in the investiture of the Commission. These same principles obviously apply to the Community's finances:

(i) the desire for greater democracy must surely concern the budget: it is by using their influence on the budget that parliamentary regimes have enhanced their authority;

(ii) the quest for greater effectiveness has three clear implications:

the need to make the budget procedure less cumbersome and to consolidate the rules;

the need to strike a comprehensive institutional balance between the Council and Parliament, weighted differently in three different areas: greater influence for the Council in determining the 'tax law'; evenly shared decision-making powers for defining and managing the financial perspective; the final say for Parliament in the annual budget procedure;

more scope for the Commission, which is responsible for implementing the budget, to influence budgetary and financial procedures.

(d) The proposal for the revision of the financial provisions is concerned only with procedures and has no bearing on the size of the Community budget for the post-1992 period.

II. Proposed provisions

(a) Own resources

The Community would be financed solely from own resources, which guarantee it financial autonomy and could take the form of Community taxes. There would be a clear statement of the obligation for the Member States to provide the Community with sufficient own resources. The Decision laying down the nature of the own resources and setting a ceiling would be ratified by national parliaments as at present, but after a conciliation procedure between the Council and Parliament.

The Treaty would stipulate that the Decision must lay down the conditions for calling in own resources, while leaving open the possibility that, once the conditions were met, a connection might be made between the use made by the budgetary authority of its right of initiative over expenditure and the rate of a Community tax. This could be the subject of a dec-

laration annexed to the Treaty which would be binding on the institutions.

In the annual budget procedure the two arms of the budgetary authority would vote on both revenue and expenditure, but would have to comply with the provisions of the own resources Decision.

(b) The financial perspective and budgetary discipline

The principle of a financial perspective setting ceilings for various categories of expenditure within a coherent financial framework would be enshrined in the Treaty. This instrument would be drawn up, managed and revised in accordance with an Interinstitutional Agreement (or a Decision) adopted by the Council and Parliament by a qualified majority; however, the text of the Agreement (or Decision) would not be allowed to depart from the Commission's original proposal without the Commission's consent, unless the Council was unanimous.

(c) Budget procedure

The draft budget would be drawn up by the Commission. It would be adopted at first reading by Parliament then transmitted to the Council for a single reading. Parliament would then have the last say. Binding deadlines would be set for the various stages of the procedure.

The procedure would offer guarantees to both the Council and the Commission.

The Council would have the power to initiate a conciliation procedure. If this procedure were to produce agreement, Parliament could then adopt the agreed budget by a simple majority. Otherwise, it would have to muster a qualified majority in order to amend the budget as passed by the Council. If Parliament failed to take a decision within the time allowed, the draft budget adopted by the Conciliation Committee, or, failing this, the budget emerging from the Council reading, would be deemed to be adopted.

The Commission could object to amendments envisaged by Parliament, in particular if it wished to ensure that the appropriations required to cover expenditure resulting from Council decisions were actually available. To defeat this opposition, Parliament would have to produce an augmented qualified majority.

The concept of 'compulsory expenditure' would remain but would not entail any difference in the powers of the two arms of the budgetary authority. The Commission would have the means to ensure that sufficient appropriations were set aside for this type of expenditure.

(d) The universality of the budget

The main priority is to include the EDF in the budget with effect from the next renewal in 1995.

The next step would be to include borrowing and lending operations in the budget; the ceilings would be authorized by the budgetary authority without prejudice to the provisions of the basic regulations. It is hardly logical to restrict the budgetary authority's role to authorizing the provision of a budget guarantee when the growth in loans to non-member countries means that the risk is becoming less and less hypothetical.

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Commentary

Introduction

Two of the aims of the Intergovernmental Conference are to strengthen the democratic legitimacy of the Community's decision-making structures and to increase the effectiveness of the institutions and the decision-making process. These aims also apply to the system of Community finances. With this in mind, the Commission suggested in its opinion of 21 October 1990 that discussion be concentrated on the following specific areas:

- (i) increasing Parliament's powers and responsibilities by giving it some influence over revenue;
- (ii) establishing a (new) interinstitutional balance;
- (iii) incorporating the principles of budgetary discipline into the EEC Treaty;
- (iv) reconsidering the distinction between compulsory and non-compulsory expenditure.

The Commission based its opinion on the realization that the legal and political framework for decisions

on the Community's finances changed considerably in the 1970s and 1980s from that originally laid down in the Treaty.

The most significant developments have been the Interinstitutional Agreement of 29 June 1988 and the Council Decisions of 24 June 1988 on the system of the Communities' own resources and on budgetary discipline which implemented it.

Without anticipating the detailed reports on the implementation of the Interinstitutional Agreement, the Decision on own resources and the borrowing and lending operations to be presented by the Commission by the end of 1991, it is safe to say that the new system of own resources and the budgetary discipline based on the Interinstitutional Agreement are now regarded as established Community practice. They should therefore be accorded their rightful place and incorporated into the Treaty itself.

In enshrining these principles in the Treaty, the overriding aim must be to take into account the two horizontal objectives of the Intergovernmental Conference, namely democratic legitimacy and increased efficiency, without calling into question the operation of the present system of own resources.

Article 199 (unity and balance of the budget)

1. The budget is the expression of the financial activities of the Community and as such should express the unity of the Community's activities. It should therefore incorporate the activities of the European Development Fund and borrowing and lending activities. The EDF could be included from 1995 (when the present allocation of resources to the seventh EDF expires).

Consequently the new Article 199 stipulates that the EDF falls within the budget; a 'transitional arrangement' will have to be introduced into the 'treaty modifying certain financial arrangements' in order to specify that budgetization shall only take effect with the eighth EDF, foreseen in the course of the 1995 exercise.

However, it will no longer be necessary to make specific reference to the European Social Fund, since all the structural Funds are automatically included in the Community budget.

It would be theoretically possible to include the ECSC operating budget in the general Community budget. However, because of its different system of

financing and the fact that the ECSC Treaty expires in 2002, such a move would be of little practical value.

2. The unity and balance of the budget is not affected by the type of revenue. Provisions on the sources of revenue and the (limited) possibilities for raising loans are therefore laid down in Articles 200 and 203a.

However, it must be made clear that budget decisions cover estimates and approval of both revenue and expenditure.

Article 200 (own resources)

1. At its meeting on 14 and 15 December 1990, the European Council stressed that all the resources needed to achieve the objectives of political union — within the framework laid down by the Intergovernmental Conference — and the implementation of Community policies must be made available. Since the reform of the Community's finances by the Decision of 21 April 1970, it is generally agreed that the Community's activities should no longer be financed from contributions by the Member States — as originally provided in the EEC Treaty — but by its 'own resources'. The Council Decision of 24 June 1988 increased the number of resources to four. The fourth resource, which is linked to the GNP of Member States, not only serves to cover an increase in financial requirements but is also designed to make contributions fairer by linking them to Member States' ability to pay.

2. The system of own resources should be retained. In fact, only the first two resources laid down in the 1988 Decision are by nature 'own' resources; however, these two sources of revenue can be expected to become less and less significant. It will therefore be appropriate to strengthen the 'own' aspect, namely the 'community' aspect of all resources. Moreover, it seems desirable for any new decision on own resources to introduce at least in principle a new source of revenue which might also take the form of a Community tax.

3. However, the Intergovernmental Conference need not decide on the form these resources would take nor on their number. It will be enough to lay down in the Treaty the procedure for adopting own resources decisions. Consideration should be given here to the growing integration of the Community and the aims of the Intergovernmental Conference.

Parliament should therefore be given greater influence over own resources decisions, without diminishing the role of the Member States, which have transferred their responsibilities to the Community and are therefore responsible for providing it with adequate financial resources. Giving Parliament joint responsibility for all revenue is a more effective way of strengthening democratic legitimacy than giving it specific powers for a single (additional) resource. This solution also seems to fit in better with the present system and is more practical from the point of view of the unity of the budget (Article 199) and budgetary discipline with its ceilings applicable to all the institutions (Article 201).

Other questions can also be left to a new own-resources decision, such as its period of validity, the assessment base, the maximum rate and the detailed rules for calling in individual resources. In the interests of the Community's stability, the own resources at its disposal should be fixed for a longer period, extending beyond the financial perspective (see Article 201).

However, agreement could be sought on making an explicit connection between Parliament's right of initiative in budgetary matters and the fixing of a call-in rate for a given source of revenue. The Commission could put forward concrete proposals to this effect within the context of the report [on the operation of the system of own resources] which it will submit by the end of 1991.

4. Since the Community cannot operate without own resources, a decision on own resources should remain in force until it is replaced by a new one. A similar arrangement is laid down in the Decision of 24 June 1988.

Article 201 (medium-term financial planning)

1. The most important lesson to be learned from the application of the Interinstitutional Agreement of 29 June 1988 is that the introduction of a binding medium-term financial plan makes it possible to enforce strict budgetary discipline and is a useful way of achieving reliability and avoiding conflict in the establishment and implementation of the Community budget. The basic features of budgetary discipline should therefore be enshrined in the Treaty itself. The essential element is medium-term financial planning (covering a period of four to five years). It is an attempt to reconcile forecast expenditure and expected revenue and to set compulsory ceilings for each budget year and for each category of expendi-

ture. These upper limits provide a framework within which the annual budget is established.

2. Only the basic features of budgetary discipline and the procedure for establishing the financial perspective, including the principle of the inclusion of a reserve for unforeseen expenditure, need to be laid down in the Treaty. On the other hand the details (in particular the division of expenditure into categories, setting of ceilings, the period of validity of the financial perspective, conditions and procedure for the amendment and renewal of the financial perspective, etc.) can be decided, on the basis of a Commission proposal, by an Interinstitutional Agreement or a decision.

Only in this way can the necessary flexibility be guaranteed, since the Interinstitutional Agreement or decision can then make adjustments to account for changing circumstances without the need for amendments to the Treaty. However, in drawing up a new Interinstitutional Agreement or decision, care must be taken to ensure that adequate procedures are introduced for adjusting the financial perspective to changing circumstances and that the reserve for unforeseen expenditure can be used for its intended purpose.

Leaving these details to be decided by an Interinstitutional Agreement will provide the best guarantee that the widest possible consensus is reached between the three institutions and that all three keep to the agreement in the establishment and implementation of the budget. In this respect, the Agreement of 29 June 1988 has proved successful.

Since the financial perspective offers the Council sufficient guarantees, the institutional balance can be tipped in Parliament's favour at the next stage (establishment of the budget).

3. Medium-term financial planning should be approached in the same way as the decision on own resources: the financial perspective, once fixed, should remain valid until a new perspective takes effect. Otherwise at the end of the last year of the financial perspective the volume of credits would be fixed by the annual budgetary procedure.

Article 201a (medium-term financial planning and budgetary discipline)

1. Parliament has wider powers over the budget than over legislation. With the budget, Parliament can take the initiative in entering items and determining avail-

able resources to fund them, whereas the Council broadly determines the content of legal instruments.

There is therefore a need to define the connection between the adoption of legal instruments having a financial impact and their implementation in the budget. The aim here must be to ensure that budgetary discipline — binding on both institutions — is not breached, without at the same time eroding the legal powers of either institution.

2. These proposals do not affect the existing balance between the legislative authority and the budgetary authority. Article 22 of the Financial Regulation already contains the provision that the implementation of appropriations entered for significant Community action shall require a basic act.

However, it is proposed to raise the provision of Article 16 of the Decision of 24 June 1988 on budgetary discipline to the level of a Treaty provision.

Article 203 (budgetary procedure)

1. Since 1975, budget procedure has in practice been moving steadily further away from what the Treaty originally prescribed:

(i) since 1975, a new — more realistic — timetable has been followed;

(ii) ever since the Interinstitutional Agreement introduced medium-term financial planning and since budgetary discipline has entailed meeting the conditions of the financial perspective for the various categories of expenditure, the distinction between compulsory and non-compulsory expenditure has counted for much less. But the current wording of Article 203 still makes much of the distinction;

(iii) the need to fix a maximum rate of increase for non-compulsory expenditure (Article 203(9)) has been overtaken by the binding conditions imposed by the financial perspective.

Key basic decisions for establishing the budget now derive from the decision-making procedure for medium-term financial planning. At the same time the annual budgetary procedure has been streamlined. The EEC Treaty as it stands does not clearly specify whether, when the two arms of the budgetary authority together determine expenditure, they are to act likewise regarding revenue.

The annual budget procedure constitutes the third and most concrete stage in the financial planning

system. At the first stage the overall volume of available funds is defined by determining own resources. At the second stage, in the medium-term financial planning process, binding ceilings for specific categories of expenditure are set for each financial year within the bounds of available revenue. At the third stage precise sums are allotted to individual areas of Community activity (expressed as budget entries) within the previously defined margins.

2. The proposal is now that, while Parliament is to have a role to play, the Member States should retain their broad power of decision on own resources; the decision on own resources will still have to be ratified in future. At the medium-term financial planning stage provision has been made for genuine co-decision by the Council and Parliament.

With the fixing of binding upper limits both on own resources and on the various categories of expenditure, the Member States have an adequate guarantee that these limits will not be exceeded in the annual budget procedure.

Given that one of the objectives of the Intergovernmental Conference is to strengthen democratic legitimacy and that the power to approve the budget is one of the traditional powers of any parliament, it is clear that Parliament's position in the budget procedure needs to be enhanced. The easiest way to do this would be to abandon the rather blurred distinction between compulsory and non-compulsory expenditure, which, moreover, has been largely superseded with the rising importance of medium-term financial planning.

The consequence is that Parliament will now have the last word for all expenditure, subject to the constraints of budgetary discipline. The Council would, then, in the new situation, consider the draft budget after Parliament, so that it can take account of Parliament's position in its deliberations.

The actual content of the budget (entry of items and allocation of specific amounts) has a considerable impact on the performance of the tasks entrusted to the Community. The Commission is directly affected for it has the right to propose legislation, it is the institution which executes the Community's budget and has the task of defending the Community interest. It should therefore have the possibility of acting to ensure that the Community always discharges its legal obligation to meet expenditure and that non-compulsory new expenditure does not exceed the limits of budgetary discipline and own resources.

3. The budget procedure can be considerably streamlined by introducing the following procedure:

- (i) the draft budget is drawn up by the Commission;
- (ii) the draft is transmitted direct to Parliament, which takes a position at first reading and, where appropriate, proposes amendments. These amendments can relate to expenditure described hitherto either as non-compulsory (giving rise to 'amendments') or as compulsory (giving rise to 'proposed modifications'). In future, therefore, the institutions will still have to agree on a demarcation between these two categories although they could modify to a certain extent that contained in the Joint Declaration of 30 June 1982;
- (iii) the Council gives its opinion at a single reading of the Commission's draft and Parliament's proposed amendments;
- (iv) the draft is returned to Parliament for formal adoption or, failing agreement, for a final decision at second reading.

A precise time-limit should be set in the Treaty for each individual stage, as it has been in the proposals for changes to the legislative cooperation procedure. However, it does not appear essential to lay down a new timetable for the budget procedure in the Treaty. This can be done in the Financial Regulation, so as to provide more flexibility.

The budget procedure should lead to the broadest possible agreement between the two arms of the budgetary authority and the Commission. To avoid any stalling of the budget procedure, it should be stipulated that if necessary one institution can ultimately prevail over the views of the other institutions; in this case the last word would rest with the Parliament. To give the other institutions a guarantee that their views will be taken into account in the event of disagreement, the Decision would have to be adopted by a greater majority.

4. In order to secure the widest possible agreement between the two arms of the budgetary authority, with no risk of holding the budget up, a conciliation procedure between the Council and Parliament is provided for. It is to be initiated by the Council if the budget passed at the close of the Council reading is different from the budget passed at Parliament's first reading. If the conciliation procedure results in an agreement, Parliament can then adopt the budget at the ensuing second reading by a majority of its members or can amend the budget by a qualified majority. Should the procedure not result in an agreement, then Parliament shall decide upon the budget in the

form decided upon by the Council. It may adopt this draft by a majority of its members or may amend it by a qualified majority. If Parliament fails to take a decision within the time allowed, the budget is deemed to be adopted in the form in which it was sent to the Parliament.

The composition of the Conciliation Committee must be such that both arms of the budgetary authority are appropriately represented. This applies particularly to the Council, to which the results of the conciliation are transmitted for approval, although it has no formal second reading. From this it follows that the Committee should be made up of one representative for each Member State and an equal number of representatives of Parliament; Parliament's representatives would be taken from the groups in proportion to their relative size, in order to secure optimum representation of its membership. The Commission should play an advisory role in the work of the Committee, so that it can perform its task as the guardian of Community interest.

5. In the context of the new budgetary procedure proposed in Article 203, the Commission considers that it is essential as far as existing obligatory expenditure is concerned that the budgetary authority should be bound to make available the budgetary resources which the Commission considers necessary in order to meet the expenditure decided by the Council.

The most appropriate way of ensuring this would be by a Joint Declaration of the three institutions annexed to the Treaty amendments agreed at the IGC and to be incorporated subsequently in any future Interinstitutional Agreement. In that Joint Declaration the two arms of the budgetary authority would commit themselves to making available the necessary budgetary resources and the Commission would commit itself to proposing the necessary credits and to drawing the attention of the budgetary authority to their obligations in this regard including by means of its right of objection under Article 203(4).

6. Parliament retains its right to reject the draft budget by a qualified majority if there are important reasons. The Commission must then present a new draft budget. This launches a new budgetary procedure under which the time-limits for the individual stages are halved.

7. The decision on the budget covers both expenditure and revenue at the same time (see point 1 above). The decision on revenue must comply with

the provisions of the own resources decision on the calling-in of the individual sources of revenue. If there is a margin available within the framework provided, the budgetary authority may also amend the volume of the various sources of revenue called in to finance foreseeable expenditure.

8. Since the budget must also keep within the framework of medium-term financial planning, any amendment to the financial perspective must normally be carried out before the start of the budgetary procedure in accordance with the conditions laid down (see comments on Article 201).

Article 203a (borrowing and lending)

The Community already resorts to borrowing, but only in specific areas and in order to finance loans. The Community's borrowing activity will increase considerably with economic and monetary union and the internationally coordinated aid measures for other European countries.

Borrowing represents a special type of Community revenue and is therefore covered by the general provisions of the Treaty, in particular Article 199. However, in accordance with the proposals drawn up by the Commission in the context of EMU, borrowing is not meant to finance the general budget (exclusion of deficit-spending). The volume and purpose of borrowings are to be decided case by case. The corresponding borrowing and lending activities are to be listed separately in the budget. Moreover, each time that the Community considers it necessary to have recourse to a borrowing/lending instrument a specific legal base must be adopted according to the appropriate legislative procedure.

EEC guarantees, on the other hand, which include both:

(a) guarantees in connection with Community instruments (under which the Community borrows funds to grant loans); and

(b) guarantees on behalf of third parties (such as the EIB or other bodies which grant loans from their resources);

are still to be given a token entry in the budget as potentially 'normal' expenditure to cover the eventuality of the Community having to act on its guarantee if a debtor defaults.

The guarantee referred to at (b) therefore raises the specific problem of assessing and containing the risk arising for the Community budget.

The horizontal rule proposed would obviate the need for the specific rule for economic and monetary union contained in Commission working paper SEC(90) 2500.

Article 204 (provisional twelfths)

The existing text should be brought into line with the new Article 203 since the distinction between compulsory and non-compulsory expenditure has been abolished and Parliament has been given the final decision on all expenditure.

Article 206 (Court of Auditors)

The proposed amendment satisfies the wishes of Parliament and the Court of Auditors.

Article 207 (use of the ecu)

1. The proposed amendment takes account of the fact that the ecu is gradually becoming a standard unit and general means of payment in dealings between the Community and its Member States and in the drafting and implementation of the Community budget. This is consistent with efforts towards economic and monetary union.

2. The final paragraph of the old Article 207 is no longer relevant since the general provisions apply to the administration of the European Social Fund.

Article 209 (Financial Regulation)

The proposed amendments to the decision-making procedure, designed to strengthen democratic legitimacy and increase efficiency (qualified majority in the Council, consent of Parliament), extend to the Financial Regulation and the rules for implementation of the own-resources decision. Introducing the same procedures at subsidiary levels is consistent with the system.

Structure of the draft treaty on the Union

Draft text

Contents

Treaty on ... union

Principles

Union citizenship

Union policies

- External policy¹
- [Union policy on home affairs and judicial cooperation]

The institutions of the Union

General and final provisions

Provisions amending the ECSC Treaty

Provisions amending the Euratom Treaty

Principles

Article A

Unchanged.

Article B

The Union shall take the place of the European Communities as established by the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community and subsequent treaties and acts modifying or supplementing them; *they constitute the original nucleus of the Community edifice and their federal vocation is thus confirmed.*

Article C

1. The Union shall have as its task to organize, according to principles of consistency and solidarity, relations as a whole among its Member States and their peoples and to achieve their gradual progress towards ever closer association.

2. (Set out Union objectives based on Article 2 of the EEC Treaty, as updated by the SEA, together with those of EMU and common foreign and security policy. (Article A(2) on p. 76 of the Presidency draft)

3. *The Union shall have the resources needed to attain the objectives it has set itself and to carry through the policies to that end.* (Rome II)

4. *Moreover, the Member States of the Union shall provide mutual assistance in all circumstances where the interests of any of them are threatened.*

Article D

1. Unchanged.

2. [See Presidency text but spell out its scope]

3. [Possibility of a provision on subsidiarity (see Article B on p. 14 of the Presidency draft), subject to the outcome of negotiations, particularly on Article 235]

Article Da

[List Union activities, taken over from Article 3 of the EEC Treaty, as updated by the SEA, together with those of EMU and common foreign and security policy]

¹ Common foreign and security policy, commercial and economic policy, and development cooperation policy (including association of OCTs).

Article E

[Article 4 of the EEC Treaty, listing the institutions and other bodies but adding the European Council and the Central Bank]

Article F

Article 5 of the EEC Treaty

NB: Articles 6, 8a, 8b and 8c of the EEC Treaty to be reviewed.

Union citizenship

Presidency text, subject to points under discussion at the Conference, in conjunction with Article 7 of the EEC Treaty.

Union policies

TITLE X

The external policy of the Union

Article

1. *The purpose of the external policy of the Union is to secure the coherence of the whole of the Community's external activities in the framework of its foreign, security, economic and development policies.* (Rome II)

2. [Article B(2) on p. 77 of the Presidency draft unchanged, except for replacing 'Community' by 'Union']

Chapter I

Common foreign and security policy

Article A

1. The Union shall define and implement a common foreign and security policy ... (rest unchanged).

2. Moved to Article C2, above.

Article B

1. Unchanged.

2. Moved to new Article above.

Article C

Unchanged.

Article D

1. Unchanged.

2. The Political Committee, composed of the heads of the political departments of the Member States and of the Commission shall have as its tasks: ... (rest unchanged).

3. *Council proceedings and decisions shall be prepared and their implementation monitored by the General Secretariat of the Council, cooperating in organized fashion with the Commission.*

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

4. Unchanged.

Articles E, F, G, H and I

Unchanged, subject to current negotiations.

Articles J and K

Replace 'joint action' by 'Union action'.

Article L

Unchanged, subject to current negotiations.

Articles M to P (general provisions)

The Commission considers that Article N should be reviewed in the light of changes made to other articles.

Article 228a applies to the conclusion of international agreements under the common foreign and security policy.

Chapter II

Commercial policy and external economic policy

The Commission reminds the Conference that it has proposed an amended version of the existing Treaty articles for insertion in this Chapter.

Article 228 applies to the conclusion of international agreements in areas covered by this Chapter.

Chapter III

Development cooperation policy

The Commission reminds the Conference that it has proposed a set of provisions to govern this policy and give it an explicit legal basis in the Treaty.

Article 228 applies to the conclusion of international agreements in areas covered by this Chapter.

Chapter IV

'Multidimensional' agreements

Article 228b applies to the conclusion of agreements in areas covered both by the common foreign and security policy and by other Union policies.

General and final provisions

Article 223

The Commission reminds the Conference that it has proposed that this Article be deleted.

Article 228

Presidency draft, pp. 69 and 70.

Article 228a

[Provisions derogating from the Article 228 procedure as regards the conclusion of agreements relating to the common foreign and security policy]

Article 228b

[Provisions derogating from the Article 228 procedure as regards the conclusion of agreements relating to common foreign and security policy and to areas covered by other Union policies ('multidimensional' agreements)]

Article 228c

1. In areas to which the procedure of Article 228 applies, the Union shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

2. For all questions of specific interest to the Union, without prejudice to the provisions of Chapter I, the Member States shall act jointly in international organizations and conferences. To this end, the Commission shall present proposals relating to the scope and implementation of such joint action to the Council, which shall act by a qualified majority.

Explanatory memorandum

1. The Dublin and Rome European Councils, responding among other things to initiatives by Mr Kohl and Mr Mitterrand, declared the intention of transforming the Community into a European Union, and of developing its political dimension, notably on the international scene. The Commission considers that the Intergovernmental Conference should be guided by the basic thinking which has been behind the construction of Europe for 40 years now, namely that all progress made towards economic, monetary, social or political integration should gradually be brought together in a single Community as the precursor of a European Union.

This being so, it is somewhat paradoxical that the current trend in the Intergovernmental Conference favours a kind of revision of the Treaty of Rome that would depart from this general unification process and keep the Community no longer as the focal point but simply as one entity among others in a political union with ill-defined objectives and a variety of institutional schemes.

True enough, the Intergovernmental Conference is faced with the difficult task of generating a consensus on a common foreign and security policy at a time when the 12 Member States are faced with a series of challenges on the world scene.

It is equally true that the foreign and security policy will undoubtedly involve adjustments to the way in which common decisions are prepared and implemented and confer an eminent role on the European Council.

But in this area, as with EMU, where a new institution is also to be established, this adjustment to the Community approach cannot be allowed to go so far as to break up the existing model, which has demonstrated its dynamism and efficiency.

2. In its instructions to the Intergovernmental Conference, the Rome European Council laid emphasis on 'the vocation of the Union to deal with aspects of foreign and security policy, in accordance with a sustained evolutive process and in a unitary manner, on the basis of general objectives laid down in the Treaty' as a fundamental principle. It was on this basis that the Commission supported a single Treaty. Yet the structure of the draft Articles presented by the Luxembourg Presidency on 15 April highlights the risk that the Conference will depart from this basic orientation.

In that draft foreign and security policy is conceived and defined as standing alone as a separate pillar of the general structure. It is fully separated from all other policies, described as Community policies. A third pillar, also to be set up alongside the Community, is also envisaged as consisting of 'home affairs and judicial cooperation'. These new entities are attached to the Community only artificially and only under the heading of a political union which, in Article B(2), gives equal but separate status to the Community, foreign and security policy and cooperation. This jeopardizes the Rome European Council's avowed objective of securing 'coherence of the overall external action of the Community in the framework of its foreign, security, economic and development policies'.

3. Following the guidelines set by the European Council, the Commission stands by the view set out in its opinion of 21 October 1990 that the main, indeed the central, objective of transforming the Community into a European Union should be to ensure the unity, the consistency and, as a result, the efficiency of its international activities. It is, of course, clear that a common foreign and security policy is a *sui generis* policy that can be implemented only gradually; but it is not possible to affirm the identity of the Union and the consistency of its international personality simply by adding a foreign and security policy to existing policies. The reality of international life makes clear how closely political relations, extending from external security to compliance with human rights, are related to economic policies. This consistency can be guaranteed in full only if the construction of the Community is conceived on a unitary base. Consequently, there can be no question of grafting the Union concept onto the existing Treaty; the Union must absorb the Community and all that it has achieved.

4. The Commission accordingly proposes that the Presidency draft be amended on a number of points which are essential if objectives defined by the European Council are to be achieved. In particular:

(a) the external policy of the Union can be made efficient and coherent by:

(i) the existence of institutional machinery for the preparation and implementation of Union decisions in the common foreign and security policy area;

(ii) strengthening the existing external policies — a redefined common commercial policy; cooperation with European countries to be written into the Treaties; likewise for developing countries;

(iii) a clear statement of the Union's international identity in terms of its treaty-making power in areas within its general jurisdiction, particularly, of course, in relation to its common foreign and security policy and its presence on the international scene;

(b) the unitary character of the European construction should be reflected in the structure of the Treaty:

(i) by combining in the introductory articles all the foundations and objectives of the Union, both those already covered by the existing Community, including the single market, and those of economic and monetary union and of the new foreign and security policy;

(ii) placing in this first part of the Treaty both the provisions for the Union institutions and the concept of Union citizenship, with the rights and obligations pertaining to it.

The few proposed amendments to the Presidency draft annexed to this paper chiefly concern the structure of certain parts of the Treaty and affect the texts of the relevant articles only in so far as is strictly necessary.

Consultative Committee of Regional and Local Authorities

Draft text

Chapter 4

The Committee of Regional and Local Authorities

Article 198a(new)

1. A Committee of Regional and Local Authorities shall be attached to the Commission. It shall have consultative status.
2. The members of the Committee shall be elected representatives at regional or local level. They shall be appointed in their personal capacity and shall not be bound by any mandate.
3. The number of members of the Committee shall be as follows:

Belgium	7
Denmark	5
Germany	24
Greece	7
Spain	18
France	24
Ireland	5
Italy	24
Luxembourg	2
Netherlands	8
Portugal	7
United Kingdom	24 ¹

4. Each Member State shall appoint the number of members of the Committee to which it is entitled pursuant to paragraph 3 for four years following consultation with the national representative bodies of the regions and local authorities.

The mandate of members of the Committee may be renewed.

Article 198b(new)

1. The Committee shall elect its chairman and officers.
2. The Committee shall adopt its rules of procedure. It may set up specialized sections or working parties.

Article 198c(new)

1. The Committee may be consulted by the Commission on any matter concerning regional development and in particular on the preparation and implementation of the regional policy of the Union, including the regional and local implications of the other policies of the Union.
2. The Commission shall consult the Committee on all draft proposals for laws concerning the regional policy of the Union, as defined in paragraph 1.

The Commission shall, if it considers it necessary, set the Committee a time-limit which may not be less than one month from the date on which the Chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

3. The Commission may publish the opinions of the Committee.

The Committee shall be informed by the Commission of the action taken on its opinions.

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Explanatory memorandum

1. The European Council meeting in Rome on 14 and 15 December 1990 noted the importance which

¹ Total: 155.

some Member States attach to the adoption of arrangements that take account of the special competence of regional or local institutions as regards certain Community policies and the need to consider suitable procedures for the consultation of such institutions.

The Commission's opinion of 21 October 1990 stressed the usefulness of the establishment of a consultative representative body for the regions.

In its resolution of 22 November 1990 on the Intergovernmental Conferences, Parliament advocated setting up a committee of the regional and local authorities of the Community with consultative status composed of elected representatives of the regions and municipalities of the Community.

2. The Commission considers that the Treaty should contain provision for the regional and other local authorities to be represented through a specific consultative body based on the existing Consultative Council of Regional and Local Authorities, set up by Commission Decision 88/487/EEC of 24 June 1988.¹ Like that Council, the body would consist of elected members of those authorities and would give its opinions on all matters concerning regional

development and on the regional or local implications of any Community policy.

To take account of the variety of regional and local structures in the Member States, the members of the Committee will be appointed from among elected regional or local members by the Member States, following consultation with national representative bodies.² The composition of the Committee reflects the breakdown among the Member States adopted in the case of Parliament (Article 138 EEC). Naturally, different figures could be used if those chosen pose particular difficulties for any Member State.

Once set up, the Committee would advise the Commission, which could refer matters to it whenever necessary. Consultation would be compulsory in the case of proposals for laws in the field of regional policy in the broad sense.

The Committee would enjoy a certain autonomy in that it could issue opinions on its own initiative and would be free to adopt its own organization within its rules of procedure, for example by setting up specialized sections or working parties.

Periodically, perhaps twice a year, the Commission could hold joint working meetings with the Committee.

¹ OJ L 247, 6. 9. 1988, p. 23.

² Such as the national sections of the Council of European Municipalities and Regions, which exist in a number of Member States, or similar bodies (e.g. the Local Government International Bureau in the United Kingdom).

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