

COUNCIL GUIDE

Internal document

II. Comments on the Council's Rules of Procedure

- September 2000 -

General Secretariat

DG F — Information Policy, Transparency and Public Relations

Notice

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Cataloguing data can be found at the end of this publication.

Luxembourg: Office for Official Publications of the European Communities, 2002

ISBN 92-824-2077-9

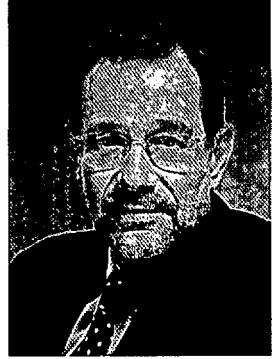
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Printed in Italy

FOREWORD

The complexity of the tasks facing the Council means that Council working methods need to be redefined regularly. In order to facilitate the work of the Presidency and of the delegations, the Council introduced systematic planning of meetings from the end of 1988 and initiated publication by the General Secretariat of a *Presidency vade-mecum*. The entry into force of the Treaty on European Union made the organisation of proceedings even more complex: consequently, the Council instructed the Secretary-General to draw up a genuine handbook covering all Council activities, the *Council Guide*.



This second edition of the *Council Guide* presented by the General Secretariat was compiled under its sole responsibility; it has no legal force and is an internal document intended solely as an aid for the Presidency and Member State delegations.

The guide covers the whole range of Council activities. It consists of four sections, each published separately. The first section — the **Presidency Handbook** — continues the operation begun with the *Presidency vade-mecum* and sets out in a practical context the arrangements concerning the preparation and running of a Presidency. The second section consists of **Comments on the Council's Rules of Procedure**, reflecting the current interpretation of that text in practice. The third section — the **Delegates' Handbook** — contains practical information on the planning and running of meetings, the internal organisation of the General Secretariat and the services provided for delegates. The fourth section — the **Co-decision Guide** — explains the new co-decision procedure resulting from the changes brought about by the Treaty of Amsterdam.

My wish, in making this version of the *Council Guide* available to those involved in the work of our institution, has been to satisfy the request voiced by the Council and to contribute towards efforts to ensure information and transparency. Any suggestions concerning the content of this guide will be welcome.

Secretary-General/High Representative

A handwritten signature in black ink, which appears to read 'Javier Solana'. The signature is written in a cursive, flowing style.

Javier Solana

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Part II

Comments on the Council's Rules of Procedure

INTRODUCTION

The Council's Rules of Procedure (CRP) constitute an instrument necessary for the operation of the institution. Within the framework established by the Treaty on European Union and the Treaties establishing the European Communities, the Rules of Procedure lay down a series of provisions governing the Council's proceedings. These comments on the Rules of Procedure (which are not intended to be exhaustive or to state the legal position but rather to serve as a practical guide for members of the Council and their representatives) have been divided into five chapters:

1. The Council's proceedings;
2. Council decision-making;
3. Council acts and their form;
4. Structure of the Council;
5. Other provisions.

The 28 articles of the Rules of Procedure have been grouped together by subject under these five chapters. The Rules of Procedure, in the version of 5 June 2000, are given in Annex I.

Chapter I — The Council's proceedings

1. Notice and venue of meetings (Article 1 of the CRP)

A. Notice

As in Article 204 of the Treaty establishing the European Community (TEC), Article 1(1) of the CRP provides that the Council meets when convened by its President on his own initiative or at the request of one of its members or of the Commission. If a delegation or the Commission requests that the Council be convened, the President is obliged to convene it. The President may, however, exercise some discretion in selecting the date. In making this choice, he must take account, in addition to his colleagues' opinions, of:

- the deadlines imposed by the Rules of Procedure (Article 3(1) and 3(3) of the CRP);
- the fact that the Council may be legally obliged to meet or to act before a set date (e.g. in the case provided for in Article 22(2) of the Treaty on European Union (TEU) or where the Council is obliged to state a position on a Commission proposal in the context of committee procedure);
- rules governing the quorum (Article 11(4) of the CRP) so that the Council can take a vote.

Without prejudice to the first paragraph of Article 203 of the TEC and the rules governing the quorum, each Council member is entitled to decide on the composition of his/her delegation ⁽¹⁾.

The future Presidency makes known the proposed dates for the Council meetings at least seven months before the start of its Presidency. Naturally, this programming is flexible and the scheduled dates may be changed during the Presidency. Not longer than one week before it takes office, the Presidency adopts a

⁽¹⁾ Note that the Council has not yet made use of the possibility given to it by Article 5(3) of the CRP to set a legal limit on the number of officials accompanying members of the Council. On 10 December 1988, however, the Council adopted conclusions concerning working methods in which a maximum of six members per delegation is set (see point 2(b) of the conclusions). On the limits and procedures for reimbursement of delegates' expenses by the Council, see below the decision of the Secretary-General on reimbursement of travel expenses of delegates of the Member States, in Chapter IV, Section 4.

six-month programme in the form of provisional agendas for the meetings of the Council, indicatively mentioning the legislative work and operational decisions envisaged.

For the common foreign and security policy (CFSP), Article 22(2) of the TEU provides that, in cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, may convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

In addition, in accordance with well-established practice, each Council Presidency organises informal ministerial meetings. The Presidency conclusions of the Helsinki European Council of 10 and 11 December 1999 provide for the number of such meetings to be limited to five per Presidency.

The aim of the informal meetings is to consider jointly and exchange ideas on topics of a general scope. They are not Council meetings and cannot replace the Council's activities. In order to preserve their informal character, there is no agenda and the discussions cannot give rise to the drawing-up of documents prior to or after the meeting. These meetings obviously cannot give rise to formal decisions or conclusions.

B. Venue of meetings

The protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol annexed to the Treaties provides that the seat of the Council is in Brussels and that Council meetings are held in Luxembourg in April, June and October. It may happen exceptionally that it is necessary for the Council to meet in other places. This is the case, in particular, with international negotiations in which the Community takes part. In that case, the second subparagraph of Article (1)(3) of the CRP provides that the decision must be taken unanimously by the Council or Coreper.

2. Agenda (Article 3 of the CRP)

A. Deadline for sending and inclusion of items

The provisional agenda for each Council meeting is drawn up by the President and sent to the other members of the Council and to the Commission at least 14

days before the beginning of the meeting. Convening a meeting at shorter notice is therefore possible on condition that there is unanimous agreement to include at least one substantive item on the agenda.

The provisional agenda contains items in respect of which a request for inclusion, together with any relevant documents, has been received by the General Secretariat at least 16 days before the beginning of the meeting.

A specific arrangement exists for proceedings under Title IV of Part Three of the TEC and Title VI of the TEU ('Justice and home affairs' — JHA). A statement for the Council minutes (given as a footnote) states that, in these fields, the President will endeavour to ensure that, in principle, the provisional agenda and relevant documentation are received by the members of the Council at least 21 days before the beginning of each Council meeting.

To allow national parliaments to express their views on questions that might have particular interest for them, the protocol on the role of national parliaments in the European Union, annexed to the Treaties by the Treaty of Amsterdam, established a mechanism preventing the Council from adopting a legislative act or a common position under co-decision before national parliaments have had time to examine the text.

Point 3 of the protocol provides that if the Council is notified of a legislative proposal or initiative, it may place it on the provisional agenda for decision only when six weeks have elapsed between the submission of the proposal or initiative and the Council's decision to adopt it.

That provision is recalled in Article 3(3) of the CRP.

The six-week period begins when the Council has all the language versions of the legislative proposal (Community field) or of the initiative pursuant to Title VI of the Treaty on European Union (JHA field). The Council may, acting unanimously, derogate from the six-week period for reasons of urgency set out in the act or common position.

The list of items on the provisional agenda is first drawn up by the Presidency. It is sent to the members of the Council by telex or fax (within the 14-day deadline) and then submitted to Coreper. Normally, the agreement reached in Coreper is confirmed by the Council. The provisional agenda is submitted to the Council, which adopts it by a simple majority. Any addition of an item to the agenda,

including 'A' items, must be approved unanimously ⁽¹⁾ if it was not submitted at least 14 days in advance. This is not the case with regard to 'Other business' items, whose addition to the Council agenda is generally requested by members of the Council or the Commission at the beginning of the meeting, since 'Other business' items cannot give rise to any decision or even, in principle, any discussion.

The provisional agenda also indicates items on which the Presidency, a member of the Council or the Commission may request that a vote be taken ⁽²⁾. The indication takes the form of an asterisk following the mention of the item on the agenda. It is intended to enable Member States to complete all the internal procedures they consider necessary or desirable and to ensure that the vote does not take them by surprise. This means that unless the Council unanimously decides otherwise, a vote must be scheduled at least 14 days before the Council meeting. The asterisk indicates that the conditions for a vote to take place are met, without making it obligatory.

But note that, unless otherwise required because of urgency and without prejudice to Article 3(2) of the CRP, the Presidency must withdraw from the provisional agenda those legislative items within the meaning of Article 7 of the CRP of which Coreper has not completed its examination by the end of the week preceding the week prior to the Council meeting (second subparagraph of Article 3(6) of the CRP).

B. Structure of the agenda

The provisional agenda is divided into Part A and Part B.

'A' items on the agenda are items for which, given their state of preparation by Coreper, approval by the Council seems possible without discussion, which does not exclude the possibility, offered to any member of the Council and to the Commission, of expressing an opinion at the time of the approval of those items and having statements included in the minutes. Matters which must be discussed and on which a vote may be taken are included under Part B.

⁽¹⁾ Note that if the item to be added, in accordance with the procedure laid down in Article 3(6) of the CRP, concerns a decision in respect of which, under the Treaties, members of the Council or of Coreper are not entitled to vote, account is not to be taken of votes by such members when the addition of the item is approved unanimously (Annex I(1)(b) to the CRP).

⁽²⁾ Re voting, see Chapter II below: 'Council decision-making'.

The practice of 'A' items prevents Council meetings from being burdened by a large number of items on which agreement has already been reached and which therefore do not need to be examined individually.

'A' items are included on a list which in principle is approved as a whole by the Council, normally at the beginning of the meeting. However, legally speaking, there is a set of votes covering each 'A' item; any item included on the list of 'A' items is the subject of a note, known as an 'A' item note, forecasting the outcome of the vote and indicating the existence of the majority required, as provided during Coreper's proceedings. By adopting the list of 'A' items, each item is formally adopted, confirming the forecasts of votes mentioned in each 'A' item. Those vote forecasts may, of course, be altered by the members of the Council as they see fit.

It must, however, be pointed out that an 'A' item is withdrawn from the agenda and thus is not adopted, unless the Council decides otherwise by simple majority, if a position on an 'A' item might lead to its further discussion or if a member of the Council or of the Commission so requests ⁽¹⁾.

It is then included in Part B of the same meeting by a decision taken by a majority of the members of the Council, if it was included on the provisional agenda at least 14 days before the meeting, and may then be discussed and possibly adopted.

Otherwise, i.e. if the 'A' item in question does not appear on the provisional agenda at least 14 days before the meeting, the Council decides unanimously ⁽²⁾ to keep it as a 'B' item during the same meeting, failing which, the item is carried over to another meeting.

⁽¹⁾ Note that with regard to the possibility of requesting that an 'A' item be withdrawn from the agenda (Article 3(8) of the CRP), a member of the Council or of Coreper may not make use of this provision in connection with decisions on which, under the Treaties, that member may not participate in the vote (Annex I(2)(a) to the CRP).

⁽²⁾ Note that if the 'A' item maintained on the agenda as a 'B' item under the procedure laid down in Article 3(8) of the CRP concerns a decision in respect of which, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members in the unanimous approval required to keep the item on the agenda (Annex I(1)(c) to the CRP).

3. Minutes (Article 13 of the CRP)

Article 13 of the CRP provides that the minutes of each Council meeting shall be drawn up. The minutes are a document which summarises the decisions taken and occasionally the content of the discussions held during that Council meeting ⁽¹⁾.

The draft minutes are drawn up by the General Secretariat within 15 days and submitted to Coreper for approval (Article 19(5)(f) of the CRP).

Before the minutes are approved, any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda. These requests may be made in Coreper. When approved, the minutes are signed by the President-in-Office at the time of approval and by the Secretary-General of the Council or by the Deputy Secretary-General.

According to the CRP, the minutes generally contain three points concerning each item on the agenda:

- indication of the documents submitted to the Council;
- decisions taken or conclusions reached by the Council;
- statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

With regard to the indication of documents, all documents submitted to the Council are numbered and bear a reference for their identification.

With regard to decisions taken or conclusions adopted, the practice of drawing up Council minutes tends towards a very brief description of the decision taken. The content of Council discussions is, in fact, reflected more fully in the press releases issued by the General Secretariat after each Council meeting than in the minutes of the meeting. Press releases are produced by the General Secretariat alone.

Any statements for the Council minutes are annexed to the minutes ⁽²⁾.

⁽¹⁾ A summary record of Coreper's meetings is also produced by the General Secretariat.

⁽²⁾ See Section 4D below for disclosure of items in the minutes concerning legislative acts and statements in the Council minutes.

4. Public access and transparency (Articles 5 to 10 of the CRP)

Articles 5 and 6 of the CRP, which provide, subject to exceptions, that Council meetings are not public and that the deliberations of the Council are covered by the obligation of professional secrecy, also apply to preparations for Council meetings, i.e. all the Council's subordinate bodies: Coreper, Committees (Article 113, Political, Article 36, Economic and Financial, SCA, etc.) and working parties.

The principle of openness set out in Article 1 of the TEU is reflected in the holding of public debates, the inviting of representatives of other institutions, the obligation to make votes and statements in the Council minutes public, as well as the minutes themselves, and public access to documents.

A. Public debates

Article 8 of the CRP provides that the Council holds public debates. The Council's General Affairs and Economic and Financial Affairs configurations each hold a public policy debate every six months on the work programme submitted by the Presidency and, if appropriate, on the Commission's annual work programme (Article 8(1) of the CRP).

As regards the other configurations of the Council, the Council or Coreper, acting by qualified majority, decides on a case-by-case basis on the public transmission by audiovisual means of debates concerning important issues affecting the interests of the Union or an important legislative proposal. For such matters, the Council must hold at least one public debate every half-year. It is for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such debates. Only debates held by the Council, and not those held by its preparatory bodies, may be retransmitted. The debates are sent to the Council's press room and transmitted by 'Europe by satellite' (<http://europa.eu.int/comm/eps/index.html>).

B. Reception of representatives from the other institutions

In practice, the Commission is practically always present at Council meetings and at meetings of Council preparatory bodies at all levels and in all fields of action, even if the act adopted by the Council does not require a Commission proposal. The European Central Bank is invited to take part in meetings of the Council in cases where it exercises its right of initiative. The Council rarely decides to deliberate without the presence of the Commission or of the European

Central Bank ⁽¹⁾, but this occurs above all when the Council considers internal affairs (appointment of officials, cases before the Court of Justice, etc.). Commission participation in the Council's proceedings is facilitated by the fact that it receives documentation issued by the Council General Secretariat on an equal footing with the permanent representations.

Other Community institutions or bodies participate occasionally in the Council's proceedings. Within the framework of the budgetary procedure, representatives of the European Parliament are sometimes invited to put their institution's viewpoint to the Council. Similarly, representatives of the Court of Justice or the Court of Auditors are normally invited to attend Council meetings dealing with matters connected with those institutions. The same applies to the European Investment Bank. Representatives of the Economic and Social Committee or the Committee of the Regions may also be invited to submit their budgetary requests to the Council.

The presence of representatives from other Community institutions or bodies depends to a large extent on the subject discussed and the appropriateness. A decision must be taken by the Council concerning any invitation.

C. Making agendas public

Article 1 of the decision of 6 December 1999 on the improvement of information on the Council's legislative activities and the public register of Council documents ⁽²⁾ provides that the General Secretariat of the Council shall in advance of meetings make accessible to the public a list of the items on the provisional agendas of meetings of the Council and its preparatory bodies referring to cases where the Council acts in its legislative capacity, as defined in Article 7 of its Rules of Procedure ⁽³⁾. This list includes references to the documents considered in respect of those items. It is available in advance of the respective meeting and

⁽¹⁾ Note that if the decision to deliberate without the presence of the European Central Bank, under the procedure laid down in Article 5(2) of the CRP, concerns a decision in respect of which, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex I(1)(d) to the CRP).

⁽²⁾ OJ L 9, 13.1.2000, p. 22.

⁽³⁾ Article 7 stipulates that: 'The Council acts in its legislative capacity within the meaning of the second subparagraph of Article 207(3) of the EC Treaty when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions).'

is updated in case of any changes. Since 1 January 2000, this list has been made public on the Internet (<http://ue.eu.int>).

D. Publicising votes, minutes and statements in the minutes

Pursuant to Article 207(3) of the TEC, when the Council is acting in its legislative capacity, the results and explanations of votes are made public in accordance with the terms of Article 9 of the CRP. A distinction can be drawn between making votes public automatically and requiring a vote to make them public.

(a) Making votes public automatically

The following are made public automatically:

- the results and explanations of votes by Council members, statements entered in the Council minutes and items in those minutes relating to the adoption of legislative acts, when the Council is acting in its legislative capacity, as defined in Article 7 of the CRP;
- the results of votes and explanations of votes when the Council adopts a common position pursuant to Article 251 or 252 of the TEC;
- the results of votes and explanations of votes cast by the members of the Council or their representative on the Conciliation Committee set up by Article 251 of the TEC (co-decision);
- the results of votes and explanations of votes when the Council establishes a convention on the basis of Title VI of the TEU.

(b) Decision to make votes public

- **Statements entered in the Council minutes and items in those minutes** relating to the adoption of conventions based on Title VI of the TEU are made public by a Council or Coreper decision taken by simple majority at the request of one of their members.
- When the Council acts pursuant to Title V of the TEU or adopts a common position as defined by Title VI of the TEU, the vote is made public by a unanimous Council or Coreper decision taken at the request of one of their members. In other cases, a Council or Coreper decision taken by a simple majority at the request of one of their members is required.

- When the results of the votes referred to in the preceding indent are made public, the **explanations of votes** will also be made public at the request of the Council members concerned, with due regard for the CRP, legal certainty and the interests of the Council.
- Statements entered in the Council minutes and items in those minutes relating to the adoption of the acts referred to above are also made public by Council or Coreper decisions taken unanimously at the request of one of their members.

In all cases where a vote is taken, it is for the Antici Group, the Mertens Group and the SCA to examine these statements before the definitive adoption of the act. The lists of 'A' items submitted to the Council are marked 'AL' and, where appropriate, 'D', to indicate, respectively, that it is a legislative act, possibly accompanied by one or more statements entered in the Council minutes. Consequently, when the Council adopts an 'A' item bearing these two references, it decides *ipso facto* to make public the statements in question (for the arrangements for access, see Section E below).

Lastly, Article 6(2) of the CRP provides that the Council or Coreper may authorise the production for use in legal proceedings of a copy or an extract from Council documents if they have not already been released to the public. Prior authorisation by Coreper must therefore be requested before a Council document not released to the public can be produced for use in legal proceedings.

Use of that provision is made particularly when a Member State or an institution wishes to produce a Council document in a case before the Court of Justice, the Court of First Instance or a national court. In such a case, the Council Legal Service examines the content of the document to assess whether it contains confidential information, disclosure of which could be harmful to the Council's interests. After that assessment, the Legal Service suggests to Coreper the action that should be taken on the request. Similarly, in cases in which the Council is involved, the Legal Service's agents appointed to represent the Council ask the latter for authorisation to produce documents which they consider it useful to make known to the Court of Justice or the Court of First Instance. The Council's decision on the application of this article is taken by a simple majority.

E. Access to documents

Pending a decision of the European Parliament and of the Council on the basis of Article 255 of the TEU ⁽¹⁾, public access to Council documents is governed by Council Decision 93/731/EC of 20 December 1993 ⁽²⁾, which constitutes the legal instrument for the implementation of the code of conduct approved by the Council and the Commission concerning public access to the documents of these two institutions ⁽³⁾.

The procedure laid down in Decision 93/731/EC guarantees the applicant for access to a Council document a deadline for the Council's reply, a detailed examination of his/her request and the right of appeal to the Council if the first reply — drawn up by the Council General Secretariat — is negative. Finally, if a confirmatory application is rejected, the applicant is informed of the content of Articles 195 and 230 of the TEC concerning respectively the conditions governing referral to the Ombudsman and review by the Court of Justice of the legality of Council acts.

A report on implementation of that decision is submitted every year by the Secretary-General of the Council pursuant to Article 9 of that decision ⁽⁴⁾.

Statements in the Council minutes concerning the final adoption of legislative acts are released to the public. Anyone may obtain them simply by requesting them from the Council General Secretariat. The Council General Secretariat prepares a monthly record of legislative acts adopted by the Council, accompanied by the statements for the minutes that are made public. These monthly records are also available on request or via the Council's Internet site (<http://www.eudor.com>). They are sent regularly to the European Parliament and to delegations. Extracts from the minutes may be found on the EUDOR site (<http://www.eudor.com>).

Decision 93/731/EC was supplemented by Council Decision 2000/23/EC of 6 December 1999 ⁽⁵⁾, which provides for a public register listing documents made

⁽¹⁾ Commission proposal (COM(2000) 30 final/2, 21.2.2000).

⁽²⁾ OJ L 340, 31.12.1993, p. 43.

⁽³⁾ Decision 93/731/EC (OJ L 340, 31.12.1993, p. 41) was amended by Decision 96/705/Euratom, ECSC, EC of 6 December 1996 (OJ L 325, 14.12.1996, p. 19).

⁽⁴⁾ First report on the implementation of Council Decision 93/731/EC on public access to Council documents (July 1996, 8330/96) and the second report (June 1998, 6715/2/98 REV 2 COR 1) are published in Council of the European Union, *Basic texts on transparency concerning the activities of the Council of the European Union*, Luxembourg, February 2000; third report (13275/00).

⁽⁵⁾ OJ L 9, 13.1.2000.

accessible to the public. The content of these documents since 1 January 1999 is available on the Council's Internet site (<http://ue.eu.int>) (Article 3 of Decision 2000/23/EC).

5. *Language rules (Article 14 of the CRP)*

The rules governing languages which apply to the various basic Treaties (European Communities and European Union), the Treaties amending them and conventions between Member States, on the one hand, must be distinguished from the rules applicable to the institutions of the European Union (acts of the institutions and working languages), on the other.

A. Language rules which apply to the constituent Treaties and conventions between Member States

Apart from the ECSC Treaty which was drawn up in French, the only authentic text of which is in French (Article 100 of the ECSC Treaty), the authentic text of the EC, Euratom and EU Treaties is in 12 languages, namely: Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish ⁽¹⁾. In this context, Irish is also an official language of the Community and the European Union.

Similarly, the texts of conventions concluded between the Member States of the European Union (either within the framework of Article 293 (ex Article 220) of the EC Treaty or on the basis of Article 34(2)(d) of the TEU (ex Article K.3(2)(c) of the TEU) are authentic in the 12 languages concerned ⁽²⁾.

B. Language rules which apply to the institutions of the European Union (acts of the institutions and working languages)

The rules applicable to the institutions are based on Article 290 (ex Article 217) of the EC Treaty (the wording of Article 190 of the Euratom Treaty is identical). Pursuant to Articles 28 and 41 of the TEU, Article 290 applies to Titles V and VI of the TEU.

⁽¹⁾ See Article 314 of the EC Treaty, Article 225 of the Euratom Treaty and the Accession Treaties, most recently Article 176 of the Treaty concerning the accession of Austria, Finland and Sweden, and Article 53 of the TEU.

⁽²⁾ See, for example, Article 68 of the Brussels Convention concluded within the framework of Article 293 of the TEC and the final wording of conventions based on Article 36 of the TEU.

(a) *Basic texts*

Article 290 of the TEC instructs the Council to determine unanimously the rules governing the languages of the institutions of the Community 'without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice'. It was therefore on that basis that on 15 April 1958 the Council adopted Regulation No 1 determining the languages to be used by the European Economic Community (1), as amended by the various acts of accession. That regulation provides for 11 official languages (Ireland waived the right for Irish to become an official language of the institutions of the Community) (2). The main provisions of that regulation are as follows.

- 'The official languages and the working languages of the institutions of the Community shall be Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Swedish and Finnish.' (Article 1).
- Documents which a Member State or a person subject to the jurisdiction of a Member State sends to the institutions may be in one of the official languages selected by the sender, the reply being drafted in the same language, whereas documents which an institution sends to a Member State or to a person subject to its jurisdiction are drafted in the language of that State (Articles 2 and 3). Only the text in the languages used in that correspondence is authentic.
- Regulations and other documents of general application are drafted in the 11 official languages and the Official Journal is published in those languages (Articles 4 and 5). All the linguistic versions are authentic.

(b) *Arrangements for internal implementation (Article 14 of the CRP)*

Under Article 6 of the abovementioned Council Regulation No 1, the institutions may stipulate in their rules of procedure which of the languages are to be used in specific cases, which the Council did in Article 14 of the CRP.

(i) **The principle**

Pursuant to paragraph 1 of Article 14 of the CRP, except as otherwise decided unanimously, 'the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force

(1) OJ 17, 6.10.1958, p. 385.

(2) Statement made on 24 November 1971 during the accession negotiations.

governing languages' (i.e. the above Regulation No 1) ⁽¹⁾. The term 'drafts' refers, in particular, to Commission proposals that must be submitted to the Council in the 11 official languages. This provision allows a delegation to oppose discussion of an item if, when the Council brings up the item, the relevant documentation is not available in the official language it prefers.

Paragraph 2 of Article 14 of the CRP also enables each member of the Council to oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify ⁽²⁾.

If a document is not yet available in all 11 official languages, it can nevertheless be the subject of a 'political agreement' on the substance. However, subject to the possible derogations set out below, that text may be adopted only if it is available in good and due form (i.e. finalised by the legal/linguistic experts) in the 11 official languages.

It is to be noted that:

- a regulation or a directive addressed to all Member States or a decision addressed to all Member States cannot enter into force (nor, therefore, be published nor the Member States be notified of it) unless the text exists in the 11 official languages (Article 4 of Regulation No 1);
- a common position of the Council adopted pursuant to the procedures referred to in Articles 251 and 252 of the TEC is not forwarded to the European Parliament unless it is available in all 11 official languages.

(ii) Waivers

Article 14(1) of the CRP, in fact, allows for the possibility of waiving that rule, provided that the Council both decides unanimously and that it is a matter of urgency. That waiver is mainly used in the first few months following the accession of new Member States to the European Union as revised translations in their languages may not be available within the period laid down.

⁽¹⁾ Note that under the procedure provided for in Article 14(1) of the CRP (unanimous decision concerning deliberations and decisions on the basis of documents and drafts not drawn up in all the languages) when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex I(1)(h) to the CRP).

⁽²⁾ A member of the Council or of Coreper may not make use of this provision in connection with decisions on which, under the Treaties, that member may not participate in the vote (Annex I(2)(d) to the CRP).

As stated above, the normal languages' rules apply in the fields under Title V of the TEU (CFSP). This was emphasised in a statement annexed to the TEU (1).

In the CFSP field, however, Council acts may be adopted by a simplified written procedure (known as COREU, Article 12(4) of the CRP) (2) particularly adapted to urgent situations justifying recourse to the derogation provided for in Article 14(1) of the CRP. Consequently, while the normal language rules apply to the adoption of any act in the CFSP field, in particular those having a legal scope (joint action or common position), the Council may nonetheless decide, on a case-by-case basis, on grounds of urgency, to act in the absence of texts in all the official languages, when it does not intend to publish the text of its decision in the *Official Journal of the European Communities*. It is desirable that this particular urgent situation be briefly mentioned in a recital of the act justifying, in the particular case, the waiving of the ordinary language rules.

In practice, whenever the Council has recourse to the waiver provided for in Article 14 of the CRP, it is necessary to:

- indicate it in the documents submitted to it (report to the Council, 'I/A' item notes);
- record in the Council minutes the decision to have recourse to the waiver;
- likewise note any decision to postpone publication or notification of the act pending availability of the text in the 11 official languages;
- provide, where appropriate, for subsequent adoption of the missing language versions by the Council.

It is to be noted that:

- the addressee(s) of a directive or an individual decision may be notified of it in the language(s) of the Member State concerned without waiting for the text to be available in the 11 official languages (Article 3 of Regulation No 1);
- a decision *sui generis* having no effect vis-à-vis third parties may enter into force without the text being available in the 11 official languages.

(1) Declaration No 29 on the use of languages in the field of the common foreign and security policy, annexed to the Final Act of the TEU.

(2) See Chapter II, Section 3, below for further details concerning this procedure.

Chapter II — Council decision-making

1. Voting rules (Article 11 of the CRP)

A. *Decision to take a vote*

According to Article 11(1) of the CRP, the decision to take a vote is taken by the Presidency, which judges its desirability, even if it may be obliged to do so by a simple majority of the Council. The second subparagraph of Article 11(1) of the CRP provides that any member of the Council or the Commission may request a vote. In that case, the Presidency is obliged to open a voting procedure provided that a majority of the Council's members so decides ⁽¹⁾. That provision merely reflects the unwritten general rule that the Presidency is always 'in the Council's hands': it can always override a procedural decision by its President.

However, as stated above ⁽²⁾, a set of rules is applied for setting the provisional agenda which makes 'surprise' voting impossible. The fact that it is indicated on the provisional agenda that a vote may be taken on an item does not imply that the vote will necessarily be taken. The Presidency may postpone the vote if it observes that the conditions have not been met.

B. *Voting procedure*

Pursuant to Article 11(2) of the CRP, the members of the Council vote in the order of the Member States laid down in Article 27 of the ECSC Treaty, Article 203 of the TEC and Article 116 of the Euratom Treaty ⁽³⁾, beginning with the member who, according to that order, follows the member holding the office of President. That practice is not always followed; it is specifically followed in cir-

⁽¹⁾ Note that according to the procedure provided for in the second subparagraph of Article 11(1) of the CRP (decision to open a voting procedure) when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex I(1)(f) to the CRP).

Note also that if a member of the Council requests that a voting procedure be opened (second subparagraph of Article 11(1) of the CRP), a member of the Council or of Coreper may not make use of this provision in connection with decisions on which, under the Treaties, that member may not participate in the vote (Annex I(2)(b) to the CRP).

⁽²⁾ See above Chapter I, Section 2: 'Agenda'.

⁽³⁾ This is the order laid down for holding the Presidency of the Council in turn (see the Council decision of 1 January 1995 determining the order in which the office of President of the Council shall be held (OJ L 1, 1.1.1995, p. 220).

cumstances where the vote requires a degree of solemnity or where delegations' positions are not sufficiently clear. Most frequently, at the end of the discussion, the Presidency asks the members voting for, against or wishing to abstain to identify themselves.

A member of the Council may wish to receive confirmation from his/her national authorities of the position to be adopted or the internal formalities for defining the position may not be completed. He/she will then enter a reservation which may subsequently be withdrawn; the reservation must be withdrawn during the same meeting. If at the end of the meeting the reservation is not withdrawn and the required majority has therefore not been achieved, the item is not adopted. It is deleted from the provisional agenda and added to the provisional agenda of another meeting. Apart from the written procedure, voting is carried out only during a meeting of the Council.

In cases where adoption of an act is subject to a proposal from the Commission, at some stage in the procedure the Commission may be unable to agree to the amendments made to its proposal by the Council. This situation changes the Council's voting rules because, under Article 250(1) of the TEC, the Council must act unanimously if it wishes to adopt an act constituting an amendment to the Commission proposal. In practice, therefore, the Council votes only when the Commission has clearly adopted a position on any amendment of its proposal.

Finally, the Council often takes a so-called 'indicative' vote that serves to define its members' positions concerning the item under consideration. An 'indicative' vote is not a vote within the meaning of the Treaty and has no legal effect. Such a vote need not be made public (Article 9(4) of the CRP). Formal adoption must therefore take place in due course ⁽¹⁾.

The voting procedure within the Council is laid down in Article 205 of the TEC.

(a) Simple majority voting

Paragraph 1 states the principle that, failing a specific provision in the Treaty, the Council shall act by a majority of its members, i.e. at present a majority

⁽¹⁾ See Chapter II, Section 3, below for voting by the written procedure.

of eight members. Such is the case, for example, with adoption of the CRP (Article 207(3) of the TEC), requests for studies or proposals addressed to the Commission (Article 208 of the TEC) or decisions taken pursuant to Article 284 of the TEC (1).

However, the Treaty rarely fails to provide for other rules and acting by a majority of members remains exceptional, apart from procedural decisions which are always taken by a simple majority (see, in particular, Articles 23(3) and 34(4) of the TEU), as are the adoption of replies to be given to parliamentary questions, decisions on consultation or further consultation of the European Parliament.

(b) Unanimity

Article 205(3) of the TEC provides that abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity (2).

In addition to cases in which the Council adopts an act amending a Commission proposal (Article 250(1) of the TEC), unanimity is required by a number of articles of the TEC, such as those concerning social security (Article 42), harmonisation of indirect taxation (Article 93), legislative harmonisation (Article 94), certain measures to protect the environment (Article 175), certain actions necessary for attaining one of the objectives of the Community (Article 308), certain measures in the fields of social policy, culture, education, health and industry.

(c) Qualified majority voting

This voting procedure is also frequently provided for by the TEC. The votes of the Council members are weighted as follows:

(1) See the judgment of 9 November 1995, Case C 426/93 *Germany v Council* [1995] BCR I-3723.

(2) Acts of the representatives of the governments of the Member States meeting within the Council are adopted by 'common accord', which implies the agreement of all the Member States. They are not Council acts. The TEC, for example, provides in a number of provisions for the adoption of an act by the Member States themselves or their governments rather than the Council (see Article 20 concerning diplomatic protection of EU citizens, Article 214 on appointment of members of the Commission, Article 223 concerning the appointment of judges and advocates-general of the Court of Justice, etc.).

- Germany, France, Italy, United Kingdom: 10 votes each;
- Spain: 8 votes;
- Belgium, Greece, Netherlands, Portugal: 5 votes each;
- Austria, Sweden: 4 votes each;
- Denmark, Ireland, Finland: 3 votes each;
- Luxembourg: 2 votes.

There are two arrangements for voting by a qualified majority. The majority is 62 votes (out of 87) ⁽¹⁾ where the Council acts on a Commission proposal ⁽²⁾ and 62 votes in favour, cast by at least 10 members, in other cases, for example in budgetary matters where the Commission draws up only a preliminary draft budget or for recommendations concerning an excessive deficit in the context of economic and monetary union (Article 104(13) of the TEC) or where the Council acts by a qualified majority under Titles V and VI of the TEU.

Finally, two texts known as the 'Luxembourg compromise' and the 'Ioannina compromise' must be mentioned.

The 'empty chair' policy practised by France for seven months in 1965 led to the adoption of a text generally known as the 'Luxembourg compromise'. That political statement contained the following paragraph:

'Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty.'

That paragraph is followed by the following divergent assessments:

'With regard to the foregoing paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached. The six delegations note that there is a

⁽¹⁾ The blocking minority is therefore 26 votes.

⁽²⁾ The fact that the Commission does not support a text put to the vote which requires a qualified majority does not attenuate that requirement but adds the additional condition of unanimity to that of a qualified majority (Article 250(1) of the TEC).

divergence of views on what should be done in the event of a failure to reach complete agreement.’

The ‘Luxembourg compromise’ — which has no legal value and can have no effect unless a number of Council members sufficient to form a blocking minority join the member who avails himself/herself of the ‘compromise’ — is therefore a political rather than a legal weapon, which has not, in fact, been invoked operationally for several years.

The texts known as the ‘Ioannina compromise’ arose from the change in the minimum number of votes required for a qualified majority as a result of the enlargement to include Austria, Finland and Sweden. Certain Member States considered that the new weighting of the votes could, in certain cases, result in States grouping together a considerable proportion of the Community’s population being defeated. After difficult discussions, a solution called the ‘Ioannina compromise’ was found, which took the form of a Council decision of 29 March 1994 ⁽¹⁾. That decision gives the ‘Ioannina compromise’ legal status, unlike the ‘Luxembourg compromise’. It provides that if the members of the Council representing 23 to 25 votes indicate their intention to oppose a decision, the Presidency will do all in its power to reach, within a reasonable time, a satisfactory solution that can be adopted by at least 65 votes. This procedure is subject to compliance with the Treaties, which means that where the Treaty sets the Council a deadline for acting, the search for a solution cannot lead to that deadline being postponed. Furthermore, and above all, it is also subject to the CRP, which means that Article 11 of the CRP applies and that at any time a simple majority of members may request and obtain the taking of a vote. A minority of 23 to 25 votes cannot therefore in any case delay the taking of a decision if it does not win the support of a majority of the members of the Council.

2. Quorum and delegation of voting rights (Articles 4 and 11 of the CRP)

A. *Quorum*

When the vote is taken, the President, assisted by the General Secretariat, checks that there is a quorum.

Since the accession of Austria, Finland and Sweden, the presence of eight members of the Council is required to enable the Council to vote.

⁽¹⁾ OJ C 105, 13.4.1994, p. 1, as last amended on 1 January 1995 (OJ C 1, 1.1.1995, p. 1).

The quorum requirement must be read in the light of Article 203(1) of the TEC, which provides that the Council consists of a representative of each Member State at ministerial level, authorised to commit the government of that Member State. For the Council to be able to take a vote, there must therefore be at least eight representatives of Member States who fulfil the conditions of Article 203 of the TEC.

The quorum rule, normally limited to the final stage of decision-making, i.e. voting at a Council meeting, nevertheless also inspires the practice of preparatory Council bodies which, in practice, generally suspend their discussions if fewer than eight delegations are present.

B. Delegation of voting rights

Delegation of voting rights is provided for both in Article 206 of the TEC and Article 11(3) of the CRP. Article 206 of the TEC provides that a member of the Council may act on behalf of not more than one other member. Article 11(3) of the CRP employs the exact terms of Article 206 of the TEC: 'Where a vote is taken, any member of the Council may also act on behalf of not more than one other member.' ⁽¹⁾

No formalities are required for delegation of voting rights. In practice, the position of the member concerned is expressed by the Permanent Representative of the Member State or the Deputy Permanent Representative and the vote is deemed to have been exercised by a member of the Council.

3. Written procedure (Article 12 of the CRP)

A. Decision on recourse to the written procedure

Two possibilities exist for deciding on recourse to the written voting procedure:

- the decision may be taken beforehand, unanimously, at a Council or Coreper meeting ⁽²⁾;
- failing that, the Presidency may propose recourse to the written procedure by means of the written procedure itself. In that case, the decision to agree

⁽¹⁾ If a member of the Council or Coreper cannot take part in the voting, he/she may not receive a delegation of voting rights (Annex I(2)(c) to the CRP).

⁽²⁾ Note that according to the procedure provided for in Article 12(1) of the CRP (unanimous decisions to use the written procedure) when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex I(1)(g) to the CRP).

to recourse to the written procedure forms part of the procedure itself: all the members of the Council must agree to recourse to the written procedure before expressing their substantive opinions.

In both cases, the Commission must also agree to recourse to the written procedure if it concerns a subject referred to the Council by the Commission.

Where a decision has already been taken within the Council or Coreper to adopt the written procedure, the only question put in writing to members of the Council will be whether they agree to adopt the act concerned.

However, if recourse to the written procedure has not been decided beforehand within the Council or Coreper, the members of the Council and, where appropriate, the Commission must reply to the first question concerning recourse to the written procedure and the members of the Council must express their positions on the second question concerning adoption of the act.

In order to speed up the written procedures, replies must be addressed to the General Secretariat official responsible for the dossier. Replies must, of course, be written (normally sent by fax or telex); oral replies are not sufficient in any case.

If the deadline for replying has not already been agreed within the Council or Coreper, it is set in accordance with the urgency of the matter. The importance of meeting the deadline must be emphasised if the act must be adopted before a specific date. If replies are delayed, the General Secretariat will issue a reminder. If the delay continues, an assessment should be made in each individual case of whether the period after which the procedure must be concluded is reasonable and whether its outcome is considered as being negative.

If the Council or Coreper has already decided to have recourse to the written procedure and if the act in question must be adopted by a qualified majority or simple majority, the conditions for adopting the act are met as soon as the number of positive replies received tallies with the number of votes required.

However, if the question of recourse to the written procedure was raised, a positive reply to this question is required from all the members of the Council (unanimity), and from the Commission if the procedure concerned a matter which it brought before the Council. Adoption of the act remains subject to the relevant voting rules.

Once the General Secretariat is certain that the conditions for adoption of the act have been met, it takes the necessary steps for signature, publication in the Official Journal, or notification of the parties to which it is addressed.

It is the General Secretariat's responsibility to conclude written procedures and to state their results.

On that occasion, all members of the Council and, where appropriate, the Commission are informed of any unilateral statements made by the other members of the Council or the Commission to enable them to decide if they wish to respond to them. Neither the conduct nor the completion of the written procedure for adoption of the act concerned is affected by such statements.

Acts adopted by the written procedure are the subject of press releases drawn up individually by the General Secretariat's press office. On that occasion, the outcome and the explanation of the vote is made public under the terms of Article 9 of the CRP (see under Chapter I, Section 4D, above).

The General Secretariat produces a monthly summary of acts adopted under the written procedure, which also includes any statements and explanations of votes.

In addition, the General Secretariat's archives conserve at least:

- the communication opening the written procedure, the document on which the procedure was based and any Council statements;
- the replies from members of the Council and, where appropriate, the Commission together with any unilateral statements;
- the duly signed original of the act adopted by the Council.

B. Special written procedures

Two other types of written procedure are also provided for.

Firstly, there is the simplified written procedure (COREU) or 'silent procedure' for the implementation of the common foreign and security policy (CFSP). In this case, a decision is deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects (¹).

In addition, the normal streamlined written procedure (Article 12(5) of the CRP) may be used by the Council, on the initiative of the Presidency and in order to decide to consult other institutions or bodies in all cases where such consultation

(¹) Statement (f) re Article 12(4) of the CRP: 'The Council would point out that the COREU network must be used in accordance with the Council conclusions of 12 June 1995 concerning the Council's working methods.'

is required by Community law (such a decision may be taken by Coreper in accordance with Article 19(5)(h) of the CRP). The decision to consult is deemed to be adopted after expiry of the deadline (usually one week) set by the Presidency, unless a member of the Council objects.

Cases in which the Council must act urgently must be the subject of a special examination. The General Secretariat makes suitable suggestions in this context, in particular on a reasonable period to be allowed for the European Parliament to deliver its opinion, after which the Council may act even if it has not received that opinion, provided that it complies with the conditions established by case-law.

The same procedure applies for deciding on consultation of the Economic and Social Committee and the Committee of the Regions.

The streamlined written procedure is also used to approve the opening of the mission to the European Union of a non-member State or the accreditation of the head of such a mission. In that case, the members of the Council have one month to raise any objections.

Chapter III — Council acts and their form

1. Signing of acts (Article 15 of the CRP)

Like Article 254 of the TEC, Article 15 of the CRP provides for the obligation to sign acts adopted by the Council, alone or together with the European Parliament under the co-decision procedure. Those acts must be signed by the President-in-Office of the Council at the time of their adoption and by the Secretary-General of the Council or by the Deputy Secretary-General.

Article 15 of the CRP stipulates that the signature of the President of the Council is that of the President-in-Office at the time when the act is adopted. The Secretary-General or the Deputy Secretary-General must also sign and may delegate their signatures.

In practice, the President of the Council signs the last page of the original text of the act (this is a multilingual page); signing takes place at the Council meeting which adopted the act concerned. The Secretary-General or the Deputy Secretary-General subsequently signs the same page of the text, the original of which is forwarded to the Council General Secretariat's archives, where it is kept in a safety vault.

The last sentence of Article 15 enables the Secretary-General and the Deputy Secretary-General to delegate their signature to directors-general of the General Secretariat.

2. Title and form of regulations (Annex II, Section A, to the CRP)

Section A of Annex II to the CRP specifies the various features which must be included in the title of regulations adopted by the Council, alone or together with the European Parliament under the co-decision procedure:

- the word 'Regulation';
- the serial number;
- the date of adoption; and
- the subject matter.

These are features which must be included in the regulation and which serve to identify it; moreover, acts adopted by the Council, alone or under the co-decision procedure with the European Parliament, also contain the name(s) of the institution(s) which adopted the act and an indication of the Community or Communities concerned.

The structure of the preamble to regulations adopted by the Council, alone or under the co-decision procedure with the European Parliament, is specified in Section A(1) of Annex II ((b), (c), (d), (e), (f)) to the CRP, which reflects the obligation to state the reasons as laid down by Article 253 of the TEC (or Article 162 of the Euratom Treaty). The preamble to the regulation incorporates the features provided for in Section A(1) of Annex II ((b), (c), (d), (e), (f)) to the CRP in the order followed therein.

With regard to citations, it should be noted that the legal bases of the regulation and the prior procedural acts are set out in that order and preceded by the words 'Having regard to'.

The citations are followed by the recitals, which constitute the reasons, in the strict sense, for the regulation. They are introduced by the word 'Whereas' ⁽¹⁾ and are also numbered.

3. Structure of regulations (Annex II, Section A(2), (3) and (4), to the CRP)

Section A(2) of Annex II to the CRP organises the enacting terms of the regulation. It is subdivided as follows: the regulation contains articles which may be grouped into chapters or sections. No other name, such as 'rule' or 'principle', is permitted to describe or subdivide the components of the enacting terms of the regulation.

To take account of Article 254 of the TEC (or Article 163 of the Euratom Treaty) concerning the entry into force of regulations, Section A(3) of Annex II to the CRP provides that if the Council, alone or under the co-decision procedure with the European Parliament, wants a regulation to enter into force on a date other

⁽¹⁾ With regard to recitals, the following statement concerning Sections A(1) and B of Annex II to the CRP, published in OJ L 149, 23.6.2000, p. 34 (see Annex I), was entered in the Council minutes:

'The Council notes the undertaking given by the Commission in the Presidency conclusions of the Edinburgh European Council to justify in a recital in each of its proposals the relevance of the proposal with regard to the principle of subsidiarity.'

than the 20th day following its publication in the Official Journal, it stipulates the date in the last article. If appropriate, that article may contain details concerning application of the regulation.

According to Section A(4) of Annex II to the CRP, the last article of a regulation is followed by a form of words reflecting the general scope and the binding character of the regulation as provided for in Article 249 of the TEC (or Article 161 of the Euratom Treaty).

Finally, the place and date of adoption of the regulation are indicated. A Council regulation is normally 'Done at Brussels' unless adopted in April, June and October, periods during which Council meetings are held in Luxembourg (1).

Regulations adopted by the European Parliament and the Council under the co-decision procedure give Brussels, Luxembourg or Strasbourg as the place of signature, depending on the case. Only one date of signature is given for those regulations; where the Presidents of the two institutions do not sign on the same day, it is the date of the last signature that appears in the regulation.

The name(s) of the signatory or signatories appear(s) at the end of the enacting terms: depending on the case, the name of the President of the European Parliament (on the left-hand side at the foot of the enacting terms) and that of the President of the Council (on the same line on the right-hand side), or else only the name of the President of the Council. This is the layout of the text of the regulation as it appears in the Official Journal. The name of the Secretary-General or of the Deputy Secretary-General (who, pursuant to Article 15 of the CRP, also signs the text of the regulation adopted) does not appear in the Official Journal.

4. Title and form of other acts of secondary legislation (Annex II, Section B, to the CRP)

Like Section A(1) of Annex II concerning regulations, Section B of Annex II to the CRP organises the title, preamble and enacting terms of other Council acts. It therefore provides that directives, decisions, recommendations and opinions should respectively include the word 'Directive', 'Decision', 'Recommendation' or 'Opinion' in their titles.

(1) For the Council's places of work, see Chapter I, Section 1, above.

Section B of Annex II makes no mention, however, of the other features (serial number, date of adoption, subject matter) which must be included in the title of regulations pursuant to Section A(1) of Annex II. In practice, however, all Council acts include these features, enabling them to be identified. For the preamble and enacting terms of directives and decisions, Section B of Annex II refers to the provisions of Section A of Annex II as applicable to those acts (1).

Article 22 of the CRP lays down that in order to assist the Council in its task of ensuring the drafting quality of the legislative acts which it adopts, the Legal Service is responsible for checking the drafting quality of proposals and draft acts at the appropriate stage, as well as for bringing drafting suggestions to the attention of the Council and its bodies, pursuant to the interinstitutional agreement of 22 December 1998 (2).

5. Title and form of instruments under Titles V and VI of the TEU (Annex II, Sections C and D, to the CRP)

Sections C and D of Annex II to the CRP define the title to be borne, on the one hand, by common strategies, common positions and joint actions adopted on the basis of Article 12 of the TEU (Section C of Annex II) and, on the other hand, by common positions, framework decisions, decisions and conventions on the basis of Article 34(2) of the TEU (Section D of Annex II).

The titles read as follows:

- 'European Council Common Strategy, a serial number (year/number/CFSP), the date of adoption and the subject matter';
- 'Council Joint Action, a serial number (year/number/CFSP), the date of adoption and the subject matter';
- 'Council Common Position, a serial number (year/number/CFSP [JHA]), the date of adoption and the subject matter';
- 'Council framework Decision, a serial number (year/number/JHA), the date of adoption and the subject matter';

(1) For example, the wording concerning the general scope and binding character of the act referred to in Section A(4) of Annex II appears only in regulations; in directives, the last article indicates the Member State(s) to which the directive is addressed.

(2) OJ C 73, 17.3.1999.

- ‘Council Decision, a serial number (year/number/JHA), the date of adoption and the subject matter’.

The title of conventions reads as follows:

- ‘Convention established by the Council in accordance with Article 34 of the Treaty on European Union and the subject matter.’

6. Publication of acts (Articles 17 and 18 of the CRP)

Pursuant to Article 17 of the CRP, regulations, directives and decisions adopted by the Council under the co-decision procedure with the European Parliament and Council regulations and Council directives addressed to all the Member States must be published in the *Official Journal of the European Communities*.

Publication in the Official Journal is a condition of the applicability of those acts and their entry into force may be subject to it (Article 254 of the TEC).

The Official Journal is divided into two series, ‘L’ and ‘C’, the ‘L’ series being itself divided into two categories (I and II). Acts having a binding legal effect are published in the ‘L’ series. Category ‘L.I’ comprises acts whose publication is a condition of their applicability and category ‘L.II’ comprises acts whose publication is not a condition of their applicability. The ‘C’ series contains information and notices.

Article 17 of the CRP stipulates that:

The following shall be published in the Official Journal by the Secretary-General or the Deputy Secretary-General:

- acts referred to in Article 254(1) and (2) of the TEC;
- acts referred to in the first paragraph of Article 163 of the Euratom Treaty;
- common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the TEC, and the reasons underlying those common positions;
- framework decisions and decisions referred to in Article 34(2) of the TEU;

- conventions established by the Council in accordance with Article 34(2) of the TEU;
- conventions signed between Member States on the basis of Article 293 of the TEC;
- international agreements concluded by the Community or in accordance with Article 24 of the TEU.

Unless the Council or Coreper decides otherwise, the following are published in the Official Journal by the Secretary-General or the Deputy Secretary-General:

- initiatives presented to the Council by a Member State pursuant to Article 67(1) of the TEC ⁽¹⁾;
- initiatives presented to the Council by a Member State pursuant to Article 34(2) of the TEU ⁽²⁾;
- common positions referred to in Article 34(2) of the TEU ⁽³⁾;
- directives other than those referred to in Article 254(1) and (2) of the TEC, decisions other than those referred to in Article 254(1) of the TEC, recommendations and opinions ⁽⁴⁾.

The following acts are published in the Official Journal, following a decision by the Council or Coreper acting unanimously, on a case-by-case basis, by the Secretary-General or the Deputy Secretary-General:

- common strategies referred to in Article 12 of the TEU;
- joint actions referred to in Article 12 of the TEU;
- common positions referred to in Article 12 of the TEU.

⁽¹⁾ Note that in accordance with the procedures laid down in Article 17(2)(a) of the CRP, when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members (Annex I(1)(i) to the CRP).

⁽²⁾ Note that in accordance with the procedures laid down in Article 17(2)(b) of the CRP when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(i) to the CRP).

⁽³⁾ Note that in accordance with the procedures laid down in Article 17(2)(c) of the CRP when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(j) to the CRP).

⁽⁴⁾ Note that in accordance with the procedures laid down in Article 17(2)(d) of the CRP when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(j) to the CRP).

The following are published in the Official Journal, following a decision by the Council or Coreper, on a case-by-case basis and taking account of possible publication of the basic act, by the Secretary-General or the Deputy Secretary-General:

- measures implementing the joint actions referred to in Article 12 of the TEU;
- joint actions, common positions or any other decision adopted on the basis of a common strategy, as provided for in the first indent of Article 23(2) of the TEU;
- any measures implementing the decisions referred to in Article 34(2) of the TEU and any measures implementing the conventions established by the Council in accordance with Article 34(2) of the TEU ⁽¹⁾.

On this point, the Council agreed at its meeting on 19 and 20 December 1994 that any agreement to be concluded between the Communities and one or more States or international organisations setting up a body with powers to take decisions must contain a provision on the publication of the decision which that body will take ⁽²⁾.

7. Notification of acts (Article 18 of the CRP)

The first two paragraphs of Article 18 of the CRP instruct the Secretary-General, the Deputy Secretary-General of the Council, or a director-general acting on their behalf to give notification of or transmit a number of acts to the Member States and the Commission.

Under paragraphs 1 and 2, the Secretary-General or the Deputy Secretary-General of the Council or a director-general acting on his behalf notifies the addressees of the following acts:

- Council directives other than those referred to in Article 254(1) and (2) of the TEC, i.e. directives which are not addressed to all the Member States (directives which are not of general application);

⁽¹⁾ Note that in accordance with the procedures laid down in Article 17(4)(c) of the CRP when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(k) to the CRP).

⁽²⁾ Note that in accordance with the procedures laid down in Article 17(5) of the CRP when, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(l) to the CRP).

- decisions other than those referred to in Article 254(1) of the TEC;
- Council recommendations;
- common strategies, joint actions and common positions referred to in Article 12 of the TEU;
- common positions of the Council referred to in Article 34(2) of the TEU;
- measures implementing acts referred to in Articles 12 and 34 of the TEU.

Recommendations, common strategies, common positions and implementing measures are notified only if not published in the Official Journal.

Under paragraph 3, the Secretary-General, the Deputy Secretary-General or a director-general acting on their behalf sends authentic copies of the following acts to the governments of the Member States and to the Commission:

- directives other than those referred to in Article 254(1) and (2) of the TEC;
- Council decisions;
- Council recommendations.

For all acts which have not been mentioned, the practice is to inform the Member States and the Commission.

Pursuant to the right granted to him to delegate his powers, the Secretary-General, by Decision No 351/84 of 11 April 1984, authorised the directors-general or, if prevented from attending to their duties, the directors in order of seniority in the directorate-general concerned, to sign on his behalf the notifications and communications of Council acts provided for in Article 18 of the CRP according to the fields of competence of the respective directorates-general.

Chapter IV — Structure of the Council

The Council of the European Union is a single body although it meets in different ‘configurations’ — the expression used in the Rules of Procedure since 1999. When an act has to be adopted, no link is needed between the ‘configuration’ of the Council and the nature of the act. Thus, for example, one configuration may adopt as an ‘A’ item a text prepared by another configuration.

1. Configurations of the Council (Article 2 of the CRP)

The configuration of the Council which brings together the Ministers for Foreign Affairs is known as the ‘General Affairs Council’. This configuration is responsible, in particular, for the overall coordination of policies and preparatory work for European Council meetings. The General Affairs Council decides on the list of configurations, which at present numbers 16 ⁽¹⁾.

2. Coreper and committees or working parties (Articles 19 and 21 of the CRP)

A. *Coreper*

The Permanent Representatives Committee (Coreper) was originally set up for the EEC by the CRP in 1958, modelled on the Coordination Committee (COCOR) in the field of the ECSC Treaty. The two bodies were merged in 1967 by Article 4 of the Merger Treaty, which mentioned Coreper for the first time within the framework of the Treaties. In December 1974, the Heads of State or Government strengthened this role by agreeing to give the permanent representatives ‘greater latitude [...] so that only the most important political problems need be discussed in the Council’.

As indicated by its name, Coreper is composed of the permanent representatives of the Member States to the European Union. Coreper is divided into two parts, the first, Coreper (Part 1), composed of deputy permanent representatives and the second, Coreper (Part 2), of the permanent representatives themselves.

⁽¹⁾ The list of configurations provided for at present is published in OJ C 174, 23.6.2000 (see Annex II to the Presidency handbook, Part I of this *Council Guide*).

Coreper ensures consistency in the Union's policies and actions and sees to it that the following principles and rules are observed:

- the principles of legality, subsidiarity and providing reasons for acts;
- rules establishing the powers of the Union institutions and bodies;
- budgetary provisions;
- rules on procedure, transparency and the quality of drafting.

It may adopt the following procedural decisions provided, however, that the relevant items are entered on its provisional agenda at least three working days prior to the meeting:

- decision to hold a Council meeting in a place other than Brussels or Luxembourg ⁽¹⁾;
- authorisation to produce a copy of or an extract from a Council document for use in legal proceedings;
- decision to hold a public debate in the Council;
- decision to make the results of votes public in the cases laid down in Article 9(2) and (3) of the CRP;
- decision to use the written procedure;
- approval or amendment of Council minutes;
- decision to publish a text or an act in the Official Journal;
- decision to consult an institution or body;
- decision setting or extending a time limit for consultation of an institution or body;
- decision to extend the periods laid down in Article 251(7) of the TEC;
- approval of the text of a letter sent to an institution or a body.

⁽¹⁾ Note that in accordance with the procedures laid down in Article 1(3) of the CRP (unanimous decision to convene the Council in another place) when, under the Treaties, members of the Council or of Coreper cannot participate in the vote, account is not to be taken of the votes by such members (Annex I(1)(a) to the CRP).

Coreper (Part 1) prepares the work of a large number of Council meetings (Agriculture; Internal Market, Consumer Affairs and Tourism; Employment and Social Policy; Environment; Transport and Telecommunications; Industry and Energy; Fisheries; Education and Youth Affairs, Research, Cultural Affairs and Health. Coreper (Part 2) prepares, in particular, the work of the General Affairs (covering, in particular, external economic relations, CFSP, institutional and general affairs), Economic and Financial Affairs, Justice, Home Affairs and Civil Protection, Budget and Development configurations.

Coreper is 'responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council' (Article 207(1) of the TEC, reiterated in the first sentence of Article 19(1) of the CRP ⁽¹⁾). Coreper's main role is to coordinate the proceedings of the various Council configurations and to attempt to achieve agreement at its level for subsequent submission for adoption by the Council.

Coreper is responsible for ensuring suitable presentation of each dossier to the Council. It evaluates the different aspects of the dossier, defines the options available and prepares all the Council's discussions.

Coreper's central role is illustrated by the fact that all the items included on the Council's agenda must be examined beforehand by Coreper (Part 1 or 2) unless, in an emergency, the Council decides unanimously to consider the matter without prior examination or Coreper itself has decided (by a simple majority) to refrain from prior examination (Article 19(2) of the CRP).

It should, however, be emphasised that broad conclusions worked out by Coreper can always be called into question by the Council, which alone has the power to make decisions.

Coreper is therefore neither an EU institution nor a decision-making body which can replace the Council. It is certainly vested with its own powers (see item above — list of Coreper decisions, Article 19(5) of the CRP), but it can reach a valid decision only in this limited sphere. It is a preparatory body or, as recently described by the Court of Justice, 'an auxiliary body of the Council, for which it carries out preparation and implementation work. Coreper's function of carry-

⁽¹⁾ The wording of Article 30(1) of the ECSC Treaty and Article 121(2) of the Euratom Treaty is the same.

ing out the tasks assigned to it by the Council does not give it the power to take decisions which belongs, under the Treaty, to the Council' (1).

Coreper is chaired respectively by the Permanent Representative and the Deputy Permanent Representative of the Member State which holds the Presidency (first sentence of Article 19(4) of the CRP).

Coreper's agenda, like the Council's, is divided into two parts: I and II. Part I, like Part 'A' of the Council's agenda, includes items which do not in principle require discussion, whereas Part II, like Part 'B' of the Council's agenda, implies discussion. If Coreper reaches agreement on a 'II' item on its agenda, that item will therefore become an 'A' item on the Council's agenda.

Coreper meets every week. Preparations for its work are made the day before by the personal assistants of the Coreper members who meet respectively under the name of the **Mertens Group** for Coreper Part 1 and the **Antici Group** for Coreper Part 2. The Antici Group (named after its first chairman) was set up in 1975 to review the agenda for Coreper Part 2 and settle technical and organisational details. That preparatory stage also sometimes makes it possible to have an initial idea of the positions which the various delegations will adopt at the Coreper meeting. The Mertens Group (also named after its first chairman) was set up for the same purpose in 1993.

B. Committees set up by the Treaties or by the Council

The Treaties set up certain specific committees responsible for coordinating activities in a particular field. However, given the institutional unity provided for in Article 3 of the TEU, as reflected in Articles 21 and 36 of the TEU (which render applicable to Titles V and VI various provisions of the TEC, in particular Article 207), those committees are without prejudice to Coreper's central role. Each provision of the Treaty setting up one of those committees specifically reserves application of Article 207 of the TEC, i.e. Coreper's general responsibility for preparing the work of the Council. Reports from those committees must be available in good time prior to the Coreper meeting at which they are to be examined (Article 21 of the CRP).

(1) Paragraphs 26 and 27 of the judgment of 19 March 1996, Case C-25/94 *Commission v Council* [1996] ECR I-1469.

Unless the Council decides otherwise, those committees are chaired by a delegate of the Member State which holds the Presidency (second sentence of Article 19(4) of the CRP). However, for the preparation of meetings of Council configurations meeting only once during the first half of a six-monthly period, the meetings of those committees held during the preceding six months may be chaired by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(4) of the CRP).

The **Economic and Financial Committee**, set up by Article 114 of the TEC, is responsible for keeping under review the monetary and financial situation of the Member States and may deliver opinions. Without prejudice to Article 207 of the TEC, it is also responsible for helping to prepare the work of the Council in various fields such as safeguards for the movement of capital and the coordination of Member States' economic policies. Finally, it is responsible for examining the situation regarding capital movements and freedom of payments. In addition to these tasks, the committee also follows the monetary and financial situation and the Member States' general payment arrangements. A specific reminder of that committee's special role is given in a footnote to Article 19 of the CRP. Its chairmanship is not subject to the normal rules of rotation every six months.

The **Special Committee on Agriculture (SCA)**, set up in May 1960, is specifically responsible for preparing many matters falling within the scope of the Agriculture Council. That committee therefore plays the same role in very technical agricultural areas as Coreper does in other areas. The items which it has examined are therefore included directly on the agendas for the Agriculture Council.

The special committee (known as the '**Article 133 Committee**'), the establishment of which is laid down by Article 133(3) of the TEC, is responsible for assisting the Commission when, after receiving authorisation from the Council, it conducts negotiations for the conclusion of an international agreement under the common commercial policy.

The **Political Committee (COPOL)**, set up by Article 25 of the TEU, is composed of the political directors of Member States' Ministries of Foreign Affairs. The committee is a body for consultation and conciliation which monitors and analyses the international situation and its development in the areas covered by the CFSP. It contributes to the definition of policies by delivering opinions, all of which is without prejudice to Article 207 of the TEC.

The coordinating committee in the fields covered by Title VI of the TEU (the '**Article 36 Committee**'), set up by Article 36 of the TEU, gives opinions and contributes to the preparation of the Council's discussions in the fields covered by Article 29 of the TEU, without prejudice to Article 207 of the EC Treaty.

The **Employment Committee**, set up in accordance with Article 130 of the TEC, has the task of monitoring employment and employment policy developments in the Member States and in the Community and for delivering opinions, also without prejudice to Article 207 of the TEC.

In the context of the strengthening of the CFSP, and, in particular, of the common European security and defence policy provided for in Article 17 of the TEU, the Council set up a **Political and Security Committee (PSC)** and a **Military Committee** ⁽¹⁾.

The PSC is made up of high-level national representatives (ambassadors) in office at the permanent representations of Member States. In close liaison with the Secretary-General/High Representative, this committee draws up recommendations concerning the future operation of the common European security and defence policy and deals with day-to-day CFSP business.

The Military Committee is made up of representatives of the chiefs of defence staff of the armed forces of the Member States and gives military opinions to COPOL, to the PSC and to the Secretary-General/High Representative ⁽²⁾.

Finally, in May 2000, the Council set up a **Committee for Civilian Aspects of Crisis Management** ⁽³⁾. This committee is made up of representatives of the Member States and its task is to formulate recommendations and give its opinion to the PSC and other appropriate Council bodies, in accordance with their respective areas of responsibility, on civilian aspects of crisis management.

C. Committees and working parties set up by Coreper

To help in preparing the Council's work, Coreper may set up committees or working parties and establish their mandate (Article 19(3) of the CRP). Those working parties are composed of delegates from each Member State. They may

⁽¹⁾ OJ L 27, 30.1.2001, p. 1.

⁽²⁾ The Council decided, in February 2001, that military experts are to be seconded by Member States to the Council General Secretariat.

⁽³⁾ OJ L 127, 27.5.2000, p. 1.

be more or less permanent as required. To date, Coreper has set up more than 250 working parties in the various areas of the Council's activities (¹).

As with the committees set up by the Treaties or by the Council, these committees and working parties are chaired, unless Coreper decides otherwise, by a delegate of the Member State which holds the Presidency (second and third sentences of Article 19(4) of the CRP). When preparing for a meeting of a Council configuration which meets only once during the first half of a six-month period, the meetings of committees and working parties held during the preceding six months may, however, be chaired by a delegate of the Member State which will hold the Presidency during the following six months (last sentence of Article 19(4) of the CRP).

Reports from Council committees and working parties must be available in good time prior to the Coreper meeting at which they are to be examined. It is the responsibility of the Presidency pursuant to Article 21 of the CRP, assisted by the General Secretariat, to organise and plan the meetings of the various working parties. To do so, before the start of its six-month Presidency, it draws up a timetable of the meetings it plans to hold. That timetable must be adjusted in accordance with the progress of proceedings. The second paragraph of Article 21 of the CRP lays down that the Presidency must postpone to a subsequent Coreper meeting any legislative items within the meaning of Article 7 on which the committee or working party has not completed its discussions at least five working days prior to Coreper's meeting, unless considerations of urgency require otherwise.

If a working party reaches agreement on a dossier, the item concerned is included on the agenda of Coreper (Part I) and then in Part 'A' of the Council's agenda. However, the possibility is never ruled out of any of the members of Coreper or the Council, or the Commission, expressing their opinions when those items are being approved and having statements entered in the Council minutes (Article 3(7) of the CRP), or indeed of changing their opinion and requesting a debate or a postponement.

3. The Presidency and the businesslike conduct of discussions (Article 20 of the CRP)

The Presidency is responsible for application of these Rules of Procedure and for ensuring that discussions are conducted properly. It may, unless a decision is

(¹) See Annex III to the Presidency handbook, Part I of this *Council Guide*.

taken to the contrary by the configuration or the body it is chairing, take any suitable measure and in particular:

- restrict the numbers per delegation present in the meeting room, and decide whether to authorise the opening of an overflow room;
- set the order in which items are to be taken and determine the duration of discussions on them;
- organise the time allotted for discussion of a particular item.

Article 20(2) of the CRP also lays down that, without prejudice to its powers and its overall political responsibility, the Presidency is assisted by the representative of the Member State next holding the Presidency. At the Presidency's request and acting on its instructions, the latter replaces it as and when required, relieves it, where necessary, of certain administrative tasks and ensures the continuity of the Council's proceedings.

4. The Secretary-General and the Council General Secretariat (Article 23 of the CRP)

At its first meeting in September 1952, the ECSC Council set up a Secretariat under the direction of a Secretary-General. When the two EC and Euratom Treaties entered into force, the General Secretariat extended its activities accordingly. The Secretariat and the Secretary-General were thus mentioned in the successive versions of the Council's Rules of Procedure until the Treaty on European Union established the role of the Secretary-General/High Representative for the CFSP, assisted by a Deputy Secretary-General, and the General Secretariat in Article 207(2) of the TEC ⁽¹⁾.

Article 23(1) and the first subparagraph of Article 23(2) of the CRP replicate the text of Article 207(2) of the TEC. The principle of the single Council therefore also applies to its General Secretariat, which assists the Council and its preparatory bodies in all their activities, including those provided for under Titles V and VI of the TEU (CFSP and JHA).

A. The Secretary-General/High Representative for the CFSP and the Deputy Secretary-General

Since the Treaty of Amsterdam, the Secretary-General has assumed the role of 'High Representative for the Common Foreign and Security Policy' (Article

⁽¹⁾ The wording of Article 30(2) of the ECSC Treaty and Article 121(2) of the Euratom Treaty is the same.

18(3) of the TEU). As head of the General Secretariat, the Secretary-General/High Representative assists the Council and the Presidency as High Representative for the CFSP by helping to formulate, draw up and implement political decisions and, where appropriate, by conducting political dialogue with third parties on behalf of the Council.

In accordance with the TEU, the Secretary-General/High Representative assists the Council and the Presidency in any matter covered by the common foreign and security policy. He coordinates the work of the special representatives of the European Union. If necessary, he may invite the Presidency to convene a committee or a working party, notably in the common foreign and security policy field, or to enter an item on the agenda of a committee or working party.

In practice, the Secretary-General/High Representative is a spokesman and the 'memory' of the CFSP. He has the benefit of all the resources of the General Secretariat, including the Policy Planning and Early Warning Unit (PPEWU), of which he is in charge. The creation of the Policy Planning and Early Warning Unit was agreed to by Declaration 6, adopted by the conference that prepared the Treaty of Amsterdam ⁽¹⁾.

The Secretary-General/High Representative and the Deputy Secretary-General are in charge of the General Secretariat and, under the Council's authority, take any measures needed to ensure its smooth running.

The Secretary-General of the Council and the Deputy Secretary-General are appointed by the Council unanimously (in general for a renewable period of five years). The duties of Secretary-General and Deputy Secretary-General have been carried out since 18 October 1999 by Mr Javier Solana Madariaga and Mr Pierre de Boissieu respectively.

The Secretary-General/High Representative, who was the Secretary-General of the North Atlantic Treaty Organisation (NATO) from December 1995 to October 1999, has also been the Secretary-General of the Western European Union (WEU) since 25 November 1999.

At the time of the appointment of Mr Ersbøll as Secretary-General in 1980, the Council emphasised in the recitals of its decision ⁽²⁾ the great importance of the office of Secretary-General for the proper functioning of the Council, in addition

⁽¹⁾ See OJ C 340, 10.11.1997, p. 132.

⁽²⁾ Decision 80/918/EEC, Euratom, ECSC of 26 September 1980 (OJ L 261, 4.10.1980, p. 16).

to the necessary contribution of the members of the Council and the Presidency. One of those recitals lists the aspects necessary for such proper functioning and hence the role that the Secretary-General is required to play in this context. It mentions:

- continuity in the work of the Council during successive Presidencies;
- coordination of the work of the Council in its various configurations;
- coherence in the work of the subsidiary bodies of the Council;
- efforts to produce more Council decisions by compromise through preparatory contacts with delegations;
- significant alleviation of the Council's workload by way of preliminary agreement being reached in Coreper on a larger number of issues.

In principle, the Deputy Secretary-General attends all Coreper (Part 2) meetings and all Council meetings prepared by Coreper (Part 2). His role is essentially to ensure the continuity and progress of the Council's work and to advise the Council. Under Article 26(1) of the CRP, the Secretary-General/High Representative, acting on instructions from the Presidency, may represent the Council before European Parliament committees.

The CRP mentions the Secretary-General/High Representative and the Deputy Secretary-General several times. They are depositaries of information or documents (names and functions of officials accompanying Council and Commission members (Article 5(3) of the CRP)) or international conventions (Article 25 of the CRP). They officially forward the documents to the Official Journal for publication (Article 17 of the CRP) or notify them to Member States and the Commission (Article 18 of the CRP). They are signatories, along with the President, to the minutes of Council meetings (Article 13(1) of the CRP).

Finally, the Secretary-General/High Representative or the Deputy Secretary-General is responsible for submitting to the Council in good time every year the draft estimates of the Council's expenditure (Article 23(4) of the CRP).

Under Article 23(5) of the CRP, the Secretary-General/High Representative, assisted by the Deputy Secretary-General, has full responsibility for the management of the appropriations entered in Section II — Council — of the budget of the European Union, and takes all measures necessary to ensure its smooth run-

ning. He implements the appropriations in accordance with the provisions of the financial regulation applicable to the general budget of the EC.

In this connection, the Secretary-General has clarified the criteria, restrictions and terms for refunding the expenses of the Member States' delegations (1).

B. The General Secretariat

It emerges from Article 207(2) of the TEC and Article 23(1) of the CRP that the General Secretariat's main task is to assist the Council and its preparatory bodies in all their activities, including those provided for by Titles V and VI of the TEU (CFSP and JHA) (single General Secretariat). The General Secretariat is at the service of the Council, which decides on its organisation. It is independent and impartial with regard to both the members of the Council and its Presidency.

The General Secretariat is both the Council's 'registrar' (by the drafting of records, material organisation and planning of meetings, production, translation and circulation of documents and their archiving) and its adviser. The Secretariat also assists the Presidency of the Council in its work (first subparagraph of Article 23(3)).

The General Secretariat, which employs approximately 2 600 officials and other staff who are nationals of EU Member States, is divided into nine directorates-general (A to J) in addition to the Secretary-General's and Deputy Secretary-General's private office and the Council Legal Service. The latter has the right and the duty to intervene when it considers it necessary, orally or in writing, both at the level of working parties and committees and at the level of Coreper or the Council. It also represents the Council before the Court of Justice and the Court of First Instance (2).

On 27 July 2000, on the basis of the second subparagraph of Article 23(2) of the CRP, the Secretary-General adopted a decision on measures for the protection of classified information applicable to the General Secretariat of the Council (3). The aim of the decision is to lay down rules governing the arrangements for

(1) Decision concerning the reimbursement of travel expenses of delegates of Council members, Annex IV to the Presidency Handbook, Part I of this *Council Guide*.

(2) Council Decision of 12 June 1989 delegating the power to appoint agents to represent the Council before the Court of Justice.

(3) OJ C 239, 23.8.2000, p. 1. See Annex II.

classifying information processed or prepared at the General Secretariat, enabling information so classified to be protected, whatever its origin, medium or stage of completion.

The classification levels are: 'Tres Secret/Top Secret', 'Secret', 'Confidentiel' and 'Restreint'. A definition of each level is given in the decision. 'Limite' has become the most common classification.

Chapter V — Other provisions

1. Security (Article 24 of the CRP)

Article 24 of the CRP provides that the rules on security shall be adopted by the Council. On that basis the Council adopted a decision on authorisation for access to classified information ⁽¹⁾.

2. Depositary of agreements (Article 25 of the CRP)

As permitted by Articles 77 and 78 of the Vienna Convention on the Law of Treaties, the Secretary-General/High Representative of the Council is sometimes designated as the depositary of treaties, conventions or agreements concluded by the Communities: it is, in fact, the Council, not the Commission, which generally concludes international agreements on behalf of the Communities (see Article 300 of the TEC).

The duties of a depositary of international agreements are laid down both by general texts (United Nations Charter and subsequent texts and Vienna Convention on the Law of Treaties) and by the texts of specific agreements designating depositaries. The latter are either one of the Member States parties to the agreement concerned or the Secretary-General of an international organisation party to the agreement or under the aegis of which the agreement was signed and concluded.

At present, within the Council General Secretariat, the duties of the depositary of agreements are performed mainly by the Agreements Office set up on 15 June 1978, which forms part of the General Coordination Department. Three types of duties are carried out ⁽²⁾:

- that of depositary strictly speaking, i.e. mainly involving the production of the texts of acts to be concluded and certified copies and their forwarding to the parties concerned; the centralisation of all information concerning acts which have been signed (ratifications, notifications, acts of accession, etc.)

⁽¹⁾ Council Decision 98/319/EC of 27 April 1998 relating to the procedures whereby officials and employees of the General Secretariat of the Council may be allowed access to classified information held by the Council (OJ L 140, 12.5.1998, p. 12).

⁽²⁾ Some of the depositary's duties are performed by other departments of the General Secretariat.

and their forwarding to the parties concerned; and registration of all such information;

- duties connected with protocol (in particular at the time of signature);
- printing of the texts.

3. Representation of the Council before the European Parliament (Article 26 of the CRP)

The first sentence of Article 26(1) of the CRP provides that the Council may be represented by the Presidency before the European Parliament. The principle is therefore that of representation by the Presidency at the level to be defined by it. The CRP also provides that the Council may be represented by 'any other of its members'.

However, if the Presidency considers it desirable, it may instruct the Secretary-General/High Representative, Deputy Secretary-General or senior officials of the General Secretariat to represent the Council before the European Parliament and its committees. The instructions do not need to be formal; a clear and precise statement of the Presidency's intention is sufficient.

The Secretary-General/High Representative has issued instructions within the General Secretariat for implementation of that provision. When representing the Council, an official of the General Secretariat must therefore avoid entering into any commitment whatsoever on behalf of the Presidency or the Council unless he/she has clear and explicit instructions to that effect.

In order to comply with the CRP, which restrict the possibility of representation to the Secretary-General/High Representative, Deputy Secretary-General or senior officials, the Council must in principle be represented by the Secretary-General/High Representative, Deputy Secretary-General and/or a director-general (exceptionally a director). The Secretary-General/High Representative himself normally represents the Council. If he is unable to do so, he designates an official for the purpose. If the Presidency requests an official directly, the latter informs the Secretary-General/High Representative as soon as possible through his/her immediate superior in order to obtain the Secretary-General/High Representative's authorisation.

Directorate-General F — Relations with the European Parliament, the Economic and Social Committee and the Committee of the Regions; Institutional Affairs;

Budget and Staff Regulations; Information Policy, Transparency and Public Relations — is informed beforehand of any appearance before the Parliament in order to ensure the best possible coordination and to enable the appearance to be prepared.

When a temporary Committee of Inquiry is set up by the European Parliament under Article 193 of the TEC ⁽¹⁾, the Council may designate an official to appear before it on its behalf (Article 3(3) of the decision of 6 April 1995). The Council may designate an official of the General Secretariat for that purpose. The latter speaks only as instructed by the Council ⁽²⁾.

4. Correspondence (Article 28 of the CRP)

Article 28 of the CRP provides that correspondence to the Council is to be sent to the President at the address of the Council. Correspondence addressed to the Presidency of the Council must be forwarded to all members of the Council. The above decision of 12 December 1992 ⁽³⁾ provides that the seat of the Council is in Brussels and that Council meetings are held in Luxembourg in April, June and October. The Council's address is:

Council of the European Union
Rue de la Loi/Wetstraat 175
B-1048 Brussels

The Council's Internet address is:

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⁽¹⁾ The detailed provisions for which were laid down by the decision of the European Parliament, the Council and the Commission of 6 March 1995 (OJ L 78, 6.4.1995, p. 1).

⁽²⁾ See, for example, the designation of an official of the General Secretariat in September 1996 for the temporary Committee of Inquiry into BSE.

⁽³⁾ See OJ C 341, 23.12.1992, p. 1, quoted above.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 5 June 2000
adopting the Council's Rules of Procedure

(2000/396/EC, ECSC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 207(3), first subparagraph,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30(3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121(3) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Rules of Procedure of the Council of 31 May 1999 (1999/385/EC, ECSC, Euratom) ⁽¹⁾ shall be replaced by the following, which shall enter into force on 6 June 2000.

'RULES OF PROCEDURE OF THE COUNCIL

Article 1

Notice and venue of meetings

1. The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission ⁽²⁾.

2. Seven months before the beginning of its term of office, the Presidency shall make known the dates which it envisages for meetings that the Council will have to hold in order to complete its legislative work or take operational decisions.

At the latest one week before the beginning of its term of office, the Presidency shall establish a six-month programme in the form of indicative provisional agendas for Council meetings, showing the legislative work and operational decisions envisaged. This programme may, where necessary, provide for extra Council meetings, in addition to those previously planned. If during the Presidency any of the meetings in the six-monthly programme proves to be no longer warranted, the Presidency shall not convene it.

⁽¹⁾ OJ L 147, 12.6.1999, p. 13.

⁽²⁾ This paragraph reproduces Article 204 of the EC Treaty.

3. The Council shall have its seat in Brussels. During the months of April, June and October the Council shall hold its meetings in Luxembourg (1).

In exceptional circumstances and for duly substantiated reasons, the Council or the Permanent Representatives Committee (Coreper), acting unanimously, may decide that a Council meeting will be held elsewhere.

Article 2

Configurations of the Council

1. The Council may meet in different configurations according to the subject matter dealt with. The Council, meeting in its General Affairs configuration, shall fix the list of these configurations (2).

No Council configuration not included in the list may be convened unless the Council in its General Affairs configuration so decides.

2. The Council in its General Affairs configuration shall be responsible for the overall coordination of preparatory work for European Council meetings.

Article 3 (3)

Agenda

1. The President shall draw up the provisional agenda for each meeting. The agenda shall be sent to the other members of the Council and to the Commission at least 14 days before the beginning of the meeting.

2. The provisional agenda shall contain the items in respect of which a request for inclusion on the agenda, together with any documents relating thereto, has been received by the General Secretariat from a member of the Council or from the Commission at least 16 days before the beginning of that meeting. The provisional agenda shall also indicate the items on which the Presidency, a member of the Council or the Commission may request a vote.

3. Items relating to the adoption of an act or a common position on a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union shall not be placed on the provisional agenda for a decision until the six-week period provided for in point 3 of the Protocol on the role of national parliaments in the European Union has elapsed.

The Council may unanimously derogate from the six-week period where the entry of an item is subject to the exception on grounds of urgency provided for in point 3 of that Protocol.

4. Only items in respect of which the documents have been sent to the members of the Council and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.

5. The General Secretariat shall transmit to the members of the Council and to the Commission requests for the inclusion of items in the agenda, documents and indications concerning voting relating thereto in respect of which the time limits specified above were not respected.

(1) This paragraph reproduces paragraph (b) of the sole article of the Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol annexed to the Treaties.

(2) See statement (a) set out below.

(a) Article 2

"The list of configurations is currently set out in OJ C 174, 23 June 2000, p. 1."

(3) See statements (b) and (c) set out below:

(b) Article 3(1) and (2)

"The President will endeavour to ensure that, in principle, the provisional agenda for each meeting of the Council dealing with implementation of Title IV of Part Three of the EC Treaty and Title VI of the Treaty on European Union and any documents relating to the items involved reach members of the Council at least 21 days before the beginning of the meeting."

(c) Articles 1 and 3

"Without prejudice to Article 22(2) of the Treaty on European Union, which specifies that an extraordinary Council meeting may be convened at very short notice in cases requiring a rapid decision, the Council is aware of the need for matters relating to the common foreign and security policy to be dealt with swiftly and efficiently. The arrangements in Article 3 shall not prevent this need from being met."

6. The agenda shall be adopted by the Council at the beginning of each meeting. The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Council. Items entered in this way may be put to the vote.

If, by the end of the week preceding the week prior to a Council meeting, Coreper has not completed its examination of legislative items within the meaning of Article 7, the Presidency shall, unless considerations of urgency require otherwise and without prejudice to paragraph 2, remove them from the provisional agenda.

7. The provisional agenda shall be divided into Part A and Part B. Items for which approval by the Council is possible without discussion shall be included in Part A, but this does not exclude the possibility of any member of the Council or of the Commission expressing an opinion at the time of the approval of these items and having statements included in the minutes.

8. However, an "A" item shall be withdrawn from the agenda, unless the Council decides otherwise, if a position on an "A" item might lead to further discussion thereof or if a member of the Council or the Commission so requests.

9. Any request for the inclusion of an "other business" item shall, in principle, be accompanied by an explanatory document.

Article 4

Representation of a Council member unable to attend

Subject to the provisions of Article 11 on the delegation of voting rights, a member of the Council who is prevented from attending a meeting may arrange to be represented.

Article 5

Meetings

1. Meetings of the Council shall not be public except in the cases referred to in Article 8.

2. The Commission shall be invited to take part in meetings of the Council. The same applies to the European Central Bank in cases where it exercises its right of initiative. The Council may, however, decide to deliberate without the presence of the Commission or of the European Central Bank.

3. The members of the Council and of the Commission may be accompanied by officials who assist them. The number of such officials may be laid down by the Council. Their names and functions shall be notified in advance to the Secretary-General/High Representative for the Common Foreign and Security Policy (hereinafter referred to as "the Secretary-General") or the Deputy Secretary-General.

4. Admission to meetings of the Council shall be subject to the production of a pass.

Article 6

Professional secrecy and production of documents in legal proceedings

1. Without prejudice to Articles 8 and 9 and to other applicable provisions, the deliberations of the Council shall be covered by the obligation of professional secrecy, except in so far as the Council decides otherwise.

2. The Council or Coreper may authorise the production for use in legal proceedings of a copy of or an extract from Council documents which have not already been released to the public pursuant to these Rules or the Council's rules on public access to its documents.

Article 7

Cases where the Council acts in its legislative capacity

The Council acts in its legislative capacity within the meaning of the second subparagraph of Article 207(3) of the EC Treaty when it adopts rules which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts (such as conclusions, recommendations or resolutions).

Where legislative proposals or initiatives are submitted to it the Council shall refrain from adopting acts which are not provided for by the Treaties, such as resolutions or declarations other than those referred to in Article 9.

Article 8

Public debates

1. The Council in its General Affairs and Economic and Financial Affairs configurations shall hold a public policy debate every six months on the work programme of the current Presidency and, if appropriate, on the Commission's annual work programme.

2. On a decision taken by the Council or by Coreper, acting by a qualified majority, the Council shall hold at least one public debate on important new legislative proposals.

The Council or Coreper may decide by a qualified majority on a case-by-case basis that other public debates are to be held on important issues affecting the interests of the Union.

It shall be for the Presidency, any member of the Council, or the Commission to propose issues or specific subjects for such debates.

3. Public debates shall be the subject of public transmission by audiovisual means.

Article 9

Making deliberations public

1. Where the Council acts in its legislative capacity within the meaning of Article 7, the results of votes and explanations of votes by Council members, as well as the statements in the Council minutes and the items in those minutes relating to the adoption of legislative acts, shall be made public.

The results of votes and explanations of votes shall also be made public when the Council adopts a common position pursuant to Article 251 or 252 of the EC Treaty. The same rule shall apply for votes and explanations of votes by members of the Council or their representatives on the Conciliation Committee set up by Article 251 of the EC Treaty.

2. The results of votes and explanations of votes shall also be made public when the Council establishes a convention on the basis of Title VI of the Treaty on European Union. The statements entered in the Council minutes and the items in those minutes relating to adoption of such conventions shall be made public by decision of the Council or Coreper, taken at the request of one of their members.

3. The results of votes shall be made public:

- (a) when the Council acts pursuant to Title V of the Treaty on European Union, by a unanimous Council or Coreper decision taken at the request of one of their members;
- (b) when the Council adopts a common position within the meaning of Title VI of the Treaty on European Union, by a unanimous Council or Coreper decision taken at the request of one of their members;
- (c) in other cases, by Council or Coreper decision taken at the request of one of their members.

When the result of a vote in the Council is made public in accordance with subparagraphs (a), (b) and (c), the explanations of votes made when the vote was taken shall also be made public at the request of the Council members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Council.

Statements entered in the Council minutes and items in those minutes relating to the adoption of the acts referred to in subparagraphs (a), (b) and (c) shall be made public by Council or Coreper decision taken at the request of one of their members.

4. Votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts.

Article 10

Public access to Council documents

The detailed arrangements for public access to Council documents shall be adopted by the Council ⁽¹⁾.

Article 11

Voting arrangements and quorum

1. The Council shall vote on the initiative of its President.

The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the Council or of the Commission, provided that a majority of the Council's members so decides.

2. The members of the Council shall vote in the order of the Member States laid down in Article 203 of the EC Treaty and in the corresponding Articles of the other two Community Treaties, beginning with the member who, according to that order, follows the member holding the office of President.

3. Where a vote is taken, any member of the Council may also act on behalf of not more than one other member ⁽²⁾.

4. The presence of a majority of the members of the Council who are, under the Treaties, entitled to vote is required to enable the Council to vote. When the vote is taken, the President, assisted by the General Secretariat, shall check that there is a quorum.

Article 12 ⁽³⁾

Written procedure

1. Acts of the Council on an urgent matter may be adopted by a written vote where the Council or Coreper unanimously decides to use that procedure. In special circumstances, the President may also propose the use of that procedure; in such a case, written votes may be used where all members of the Council agree to that procedure.

2. Agreement by the Commission to the use of the written procedure shall be required where the written vote is on a matter which the Commission has brought before the Council.

3. A summary of acts adopted by the written procedure shall be drawn up every month by the General Secretariat.

⁽¹⁾ See statement (d) set out below:

(d) Article 10

"The detailed arrangements for public access to Council documents are currently laid down in Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ L 340, 31.12.1993, p. 43), as amended by Decision 96/705/EC (OJ L 325, 14.12.1996, p. 19) and by Decision 2000/23/EC of 6 December 1999 on the improvement of information on the Council's legislative activities and the public register of Council documents (OJ L 9, 13.1.2000, p. 22)."

⁽²⁾ This paragraph reproduces Article 206 of the EC Treaty.

⁽³⁾ See statement (e) set out below:

(e) Article 12

"The Council agrees to consider the advisability of including in the Rules of Procedure the option of using a simplified written procedure when the Council is acting pursuant to Title VI of the Treaty on European Union."

4. On the initiative of the Presidency, the Council may also act for the purpose of implementing the common foreign and security policy by means of the simplified written procedure (CORFU). In that case the proposal shall be deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects ⁽¹⁾.
5. On the initiative of the Presidency, the Council may also act for the purpose of deciding to consult other institutions or bodies by means of a streamlined written procedure wherever such consultation is required by Community law. In that case the decision to consult shall be deemed to be adopted at the end of the period laid down by the Presidency depending on the urgency of the matter, except where a member of the Council objects ⁽²⁾.
6. The General Secretariat shall establish that the written procedures have been completed.

Article 13

Minutes

1. Minutes of each meeting shall be drawn up and, when approved, shall be signed by the President in Office at the time of such approval and by the Secretary-General or the Deputy Secretary-General.

The minutes shall as a general rule indicate in respect of each item on the agenda:

- the documents submitted to the Council,
 - the decisions taken or the conclusions reached by the Council,
 - the statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.
2. The draft minutes shall be drawn up by the General Secretariat within 15 days and submitted to the Council or to Coreper for approval.
3. Prior to such approval any member of the Council, or the Commission, may request that more details be inserted in the minutes regarding any item on the agenda. These requests may be made in Coreper.

Article 14

Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force

1. Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.
2. Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.

⁽¹⁾ See statement (f) set out below:
(f) *Article 12(4)*

"The Council would point out that the COREU network must be used in accordance with the Council conclusions of 12 June 1995 concerning the Council's working methods."

⁽²⁾ See statement (g) set out below:
(g) *Article 12(5)*

"In accordance with the Council's regular practice, the time limit fixed will normally be one week."

*Article 15***Signing of acts**

The text of the acts adopted by the Council and that of the acts adopted jointly by the European Parliament and the Council shall be signed by the President-in-Office at the time of their adoption and by the Secretary-General or the Deputy Secretary-General. The Secretary-General and the Deputy Secretary-General may delegate their signatures to Directors-General of the General Secretariat.

*Article 16 (1)***Absence of the possibility to participate in the vote**

For the purposes of application of these Rules of Procedure, due account will be taken, in accordance with Annex I, of cases in which, under the Treaties, one or more members of the Council may not participate in the vote.

*Article 17***Publication of acts in the Official Journal**

1. The following shall be published in the Official Journal by the Secretary-General or the Deputy Secretary-General:

- (a) the acts referred to in Article 254(1) and (2) of the EC Treaty;
- (b) the acts referred to in the first paragraph of Article 163 of the Euratom Treaty;
- (c) the common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty, and the reasons underlying those common positions;
- (d) the framework decisions and decisions referred to in Article 34(2) of the Treaty on European Union;
- (e) the conventions established by the Council in accordance with Article 34(2) of the Treaty on European Union.

Reference shall be made in the Official Journal to the entry into force of such conventions;

- (f) the conventions signed between Member States on the basis of Article 293 of the EC Treaty.

Reference shall be made in the Official Journal to the entry into force of such conventions;

- (g) international agreements concluded by the Community or in accordance with Article 24 of the Treaty on European Union.

Reference shall be made in the Official Journal to the entry into force of such agreements.

2. Unless the Council or Coreper decides otherwise, the following shall be published in the Official Journal by the Secretary-General or the Deputy Secretary-General:

- (a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty;
- (b) initiatives presented to the Council by a Member State pursuant to Article 34(2) of the Treaty on European Union;
- (c) the common positions referred to in Article 34(2) of the Treaty on European Union;
- (d) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.

(1) See statement (h) set out below:

(h) *Article 16 and Annex I*

"The Council agrees that the provisions of Article 16 and Annex I apply to acts for the adoption of which some members of the Council are, under the Treaties, not entitled to vote. However, application of Article 7 of the Treaty on European Union is not covered by those provisions.

In the first application of Articles 43 and 44 of the Treaty on European Union, the Council will, in the light of experience acquired in other fields, consider any adaptations necessary to Article 16 of and Annex I to these Rules of Procedure."

3. The Council or Coreper shall decide unanimously, on a case-by-case basis, whether there should be publication in the Official Journal by the Secretary-General or the Deputy Secretary-General of the common strategies, the joint actions and the common positions referred to in Article 12 of the Treaty on European Union.
4. The Council or Coreper shall decide, on a case-by-case basis and taking account of possible publication of the basic act, whether the following should be published in the Official Journal by the Secretary-General or the Deputy Secretary-General:
 - (a) the measures implementing the joint actions referred to in Article 12 of the Treaty on European Union;
 - (b) the joint actions, the common positions or any other decision adopted on the basis of a common strategy, as provided for in the first indent of Article 23(2) of the Treaty on European Union;
 - (c) any measures implementing the decisions referred to in Article 34(2) of the Treaty on European Union and any measures implementing conventions drawn up by the Council in accordance with Article 34(2) of the Treaty on European Union.
5. Where an agreement concluded between the Communities and one or more States or international organisations sets up a body vested with powers of decision, the Council shall decide, when such an agreement is concluded, whether decisions to be taken by that body should be published in the Official Journal.

Article 18

Notification of acts

1. Directives other than those referred to in Article 254(1) and (2) of the EC Treaty and decisions other than those referred to in Article 254(1) of the EC Treaty shall be notified to their addressees by the Secretary-General, the Deputy Secretary-General or a director-general acting on their behalf.
2. When they are not published in the Official Journal, the following acts shall be notified to their addressees by the Secretary-General, the Deputy Secretary-General or a director-general acting on their behalf
 - (a) recommendations;
 - (b) the common strategies, joint actions and common positions referred to in Article 12 of the Treaty on European Union;
 - (c) the common positions referred to in Article 34(2) of the Treaty on European Union;
 - (d) measures implementing the acts adopted on the basis of Articles 12 and 34 of the Treaty on European Union;
3. The Secretary-General, the Deputy Secretary-General or a director-general acting on their behalf shall send to the Governments of the Member States and to the Commission authentic copies of Council directives other than those referred to in Article 254(1) and (2) of the EC Treaty and Council decisions and recommendations.

Article 19 (1)

Coreper, committees and working parties

1. Coreper shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. It shall in any case (?) ensure consistency of the Union's policies and actions and see to it that the following principles and rules are observed:

(1) These provisions are without prejudice to the role of the Economic and Financial Committee as laid down in Article 114 of the EC Treaty and to existing Council Decisions thereon (OJ L 358, 31.12.1998, p. 109 and OJ L 5, 1.1.1999, p. 71).

(?) See statement (i) set out below:

(i) Article 19(1)

"Coreper will ensure consistency and observance of the principles set out in paragraph 1, in particular for matters where substantive preparation is undertaken in other forums."

- (a) the principles of legality, subsidiarity, proportionality and providing reasons for acts;
- (b) rules establishing the powers of Union institutions and bodies;
- (c) budgetary provisions;
- (d) rules on procedure, transparency and the quality of drafting.

2. All items on the agenda for a Council meeting shall be examined in advance by Coreper unless the Council decides otherwise. Coreper shall endeavour to reach agreement at its level to be submitted to the Council for adoption. It shall ensure adequate presentation of the dossiers to the Council and, where appropriate, shall present guidelines, options or suggested solutions. In the event of an emergency, the Council, acting unanimously, may decide to settle the matter without prior examination.

3. Committees or working parties may be set up by, or with the approval of, Coreper with a view to carrying out certain preparatory work or studies defined in advance.

The General Secretariat shall update and publish the list of preparatory bodies. Only the committees and working parties on this list may meet as Council preparatory bodies.

4. Coreper shall be chaired, depending on the items on the agenda, by the Permanent Representative or the Deputy Permanent Representative of the Member State which holds the Presidency of the Council. Unless the Council decides otherwise, the various committees provided for in the Treaties shall also be chaired by a delegate of that Member State. The same shall apply to the committees and working parties referred to in paragraph 2, unless Coreper decides otherwise. For the preparation of meetings of Council configurations meeting once every six months, where held during the first half of this period, the meetings of committees other than Coreper and those of working parties held during the preceding six months may be chaired by a delegate of the Member State whose turn it is to chair the said Council meetings.

5. Coreper may adopt the following procedural decisions, provided that the items relating thereto have been included on its provisional agenda at least three working days before the meeting. Unanimity on the part of Coreper shall be required for any derogation from that period⁽¹⁾:

- (a) decision to hold a Council meeting in a place other than Brussels or Luxembourg (Article 1(3));
- (b) authorisation to produce a copy of or an extract from a Council document for use in legal proceedings (Article 6(2));
- (c) decision to hold a public debate in the Council (Article 8(2));
- (d) decision to make the results of votes public in the cases laid down in Article 9(2) and (3);
- (e) decision to use the written procedure (Article 12(1));
- (f) approval or amendment of Council minutes (Article 13(2) and (3));
- (g) decision to publish a text or an act in the Official Journal (Article 17(2), (3) and (4));
- (h) decision to consult an institution or body;
- (i) decision setting or extending a time limit for consultation of an institution or body;
- (j) decision to extend the periods laid down in Article 251(7) of the EC Treaty;
- (k) approval of the wording of a letter to be sent to an institution or body.

⁽¹⁾ See statement (j) set out below:

(j) Article 19(5)

"If a member of the Council considers that a draft procedural decision submitted to Coreper for adoption in accordance with Article 19(5) raises a question of substance, the draft decision will be submitted to the Council."

Article 20

The Presidency and the businesslike conduct of discussions

1. The Presidency shall be responsible for the application of these Rules of Procedure and for ensuring that discussions are conducted in a businesslike manner. It may, unless a decision is taken to the contrary, take any appropriate measure and in particular:

- (a) restrict the numbers per delegation present in the meeting room for discussion of a particular item, and decide whether to authorise the opening of an overflow room;
- (b) set the order in which items are to be taken and determine the duration of discussions on them;
- (c) organise the time allotted for discussion of a particular item.

2. Without prejudice to its powers and its overall political responsibility, the Presidency shall be assisted by the representative of the Member State next holding the Presidency. At the Presidency's request and acting on its instructions, the latter shall replace it as and when required, shall relieve it, where necessary, of certain administrative tasks and shall ensure the continuity of the Council's proceedings.

Article 21 (1) (3)

Reports from committees and working parties

Notwithstanding the other provisions of these Rules of Procedure, the Presidency shall organise the meetings of the various committees and working parties so that their reports are available before the Coreper meetings at which they are to be examined.

Unless considerations of urgency require otherwise, the Presidency shall postpone to a subsequent Coreper meeting any legislative items within the meaning of Article 7 on which the committee or working party has not completed its discussions at least five working days prior to Coreper's meeting.

Article 22

Quality of drafting (1)

1. In order to assist the Council in its task of ensuring the drafting quality of the legislative acts which it adopts, the Legal Service shall be responsible for checking the drafting quality of proposals and draft acts at the appropriate stage, as well as for bringing drafting suggestions to the attention of the Council and its bodies, pursuant to the Interinstitutional Agreement of 22 December 1998.

Throughout the legislative process, those who submit texts in connection with the Council's proceedings shall pay special attention to the quality of the drafting.

(1) These provisions are without prejudice to the role of the Economic and Financial Committee as laid down in Article 114 of the EC Treaty and to existing Council Decisions thereon (OJ L 358, 31.12.1998, p. 109 and OJ L 5, 1.1.1999, p. 71).

(2) See statement (k) set out below:

(k) Article 21

"Reports from working parties and any other documents used as a basis for Coreper's discussions should be sent to delegations in time to allow for their examination."

(3) See statement (l) set out below:

(l) Article 22

"The Council Legal Service has also been instructed to provide assistance to a Member State responsible for an initiative within the meaning of Article 67(1) of the EC Treaty or Article 34(2) of the Treaty on European Union for the purpose, *inter alia*, of checking the quality of drafting of such initiatives if that assistance is requested by the Member State concerned."

See statement (m) set out below:

(m) Article 22

"Members of the Council will comment on proposals for official codification of legislative texts within 30 days of the circulation of such proposals by the General Secretariat.

Members of the Council will ensure that those provisions of a proposal for the recasting of legislative texts which have been taken from the preceding act without substantive amendment are examined in accordance with the principles established for examination of codification proposals."

*Article 23***The Secretary-General and the General Secretariat**

1. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting unanimously.

2. The Council shall decide on the organisation of the General Secretariat ⁽¹⁾.

Under its authority the Secretary-General and the Deputy Secretary-General shall take all the measures necessary to ensure the smooth running of the General Secretariat.

3. The General Secretariat shall be closely and continually involved in organising, coordinating and ensuring the coherence of the Council's work. Under the responsibility and guidance of the Presidency, it shall assist the latter in seeking solutions.

In accordance with the provisions of the Treaty on European Union, the Secretary-General shall assist the Council and the Presidency in matters concerning the common foreign and security policy, including coordination of the work of the Special Representatives.

If appropriate, the Secretary-General may ask the Presidency to convene a committee or working party, in particular in relation to matters concerning the common foreign and security policy, or to place an item on the agenda for a committee or working party.

4. The Secretary-General or the Deputy Secretary-General shall submit to the Council the draft estimate of the expenditure of the Council in sufficient time to ensure that the time limits laid down by the financial provisions are met.

5. The Secretary-General, assisted by the Deputy Secretary-General, shall have full responsibility for administering the appropriations entered in Section II — Council of the budget and shall take all measures necessary to ensure that they are properly managed. He shall implement the appropriations in question in accordance with the provisions of the Financial Regulation applicable to the general budget of the European Communities.

*Article 24***Security**

The rules on security shall be adopted by the Council.

*Article 25***Duties as depositary of agreements and conventions**

In the event of the Secretary-General of the Council being designated as depositary of an agreement concluded in accordance with Article 24 of the Treaty on European Union or concluded by the Community and one or more States or international organisations, of a convention concluded between Member States or of a convention established pursuant to Article 34 of the Treaty on European Union, the acts of ratification, acceptance or approval of those agreements or conventions shall be deposited at the address of the Council.

In such instances the Secretary-General shall perform the duties of a depositary and shall also ensure that the dates of entry into force of such agreements or conventions are published in the Official Journal.

*Article 26***Representation before the European Parliament**

Subject to special procedures, the Council may be represented by the Presidency or by any other of its members before the European Parliament or its committees. The Council may also be represented before those committees by its Secretary-General, its Deputy Secretary-General or senior officials of the General Secretariat, acting on instructions from the Presidency.

The Council may also present its views to the European Parliament by means of a written statement.

⁽¹⁾ Paragraphs 1 and 2 reproduce Article 207(2) of the EC Treaty.

*Article 27***Provisions concerning the form of acts**

The provisions concerning the form of acts are set out in Annex II.

*Article 28***Correspondence addressed to the Council**

Correspondence to the Council shall be sent to the President at the following address of the Council:

Council of the European Union
Rue de la Loi/Weistraat 175
B-1048 Brussels

ANNEX I

1. In application of the following provisions of these Rules of Procedure and for decisions in respect of which, under the Treaties, members of the Council or of Coreper may not participate in the vote, account is not to be taken of votes by such members:
 - (a) Article 1(3), second subparagraph (holding of a meeting in a place other than Brussels or Luxembourg);
 - (b) Article 3(6) (inclusion on the agenda of an item other than those appearing on the provisional agenda);
 - (c) Article 3(8) (maintaining as a "B" item on the agenda an "A" item which would otherwise have had to be withdrawn from the agenda);
 - (d) Article 5(2), as regards the presence of the European Central Bank only (deliberation without the presence of the European Central Bank);
 - (e) Article 9(2) and (3), first subparagraph, points (b) and (c), second and third subparagraphs (making public the statements in the Council minutes and items in those minutes relating to the adoption of conventions established on the basis of Title VI of the Treaty on European Union; making public the results of votes, explanations of votes, statements in the Council minutes and items in those minutes relating to the adoption of a common position under Title VI of the Treaty on European Union; making public the results of votes, explanations of votes, statements in the Council minutes and items in those minutes relating to cases other than those referred to in paragraph 3);
 - (f) Article 11(1), second subparagraph (opening of a voting procedure);
 - (g) Article 12(1) (use of the written procedure);
 - (h) Article 14(1) (decision to deliberate and take decisions exceptionally on the basis of documents and drafts not drawn up in all the languages)⁽¹⁾;
 - (i) Article 17(2)(a) and (b) (non-publication in the Official Journal of an initiative presented by a Member State pursuant to Article 67(1) of the EC Treaty or Article 34(2) of the Treaty on European Union);
 - (j) Article 17(2)(c) and (d) (non-publication in the Official Journal of a common position adopted on the basis of Article 34 of the Treaty on European Union or certain directives, decisions, recommendations and opinions);
 - (k) Article 17(4)(c) (publication in the Official Journal of any measures implementing decisions or conventions referred to in Article 34(2) of the Treaty on European Union);
 - (l) Article 17(5) (whether to publish in the Official Journal decisions taken by a body set up under an international agreement).
2. A member of the Council or of Coreper may not make use of the following provisions of these Rules of Procedure in connection with decisions on which, under the Treaties, that member may not participate in the vote:
 - (a) Article 3(8) (possibility of a member of the Council requesting withdrawal of an "A" item from the agenda);
 - (b) Article 11(1), second subparagraph (possibility of a member of the Council requesting the opening of a voting procedure);
 - (c) Article 11(3) (possibility of a member of the Council acting on behalf of another in a vote);
 - (d) Article 14(2) (possibility for any member of the Council to oppose discussion if the texts of any proposed amendments are not drawn up in the language he or she has specified).

⁽¹⁾ See statement (n) set out below.

(n) Article 14 in Annex I

"The Council confirms that present practice whereby the texts serving as a basis for its deliberations are drawn up in all the languages will continue to apply."

ANNEX II

PROVISIONS CONCERNING THE FORM OF ACTS

A. Form of regulations

1. Regulations adopted jointly by the European Parliament and the Council, and Council regulations shall include:
 - (a) in their title the word "Regulation", followed by a serial number, the date of their adoption and an indication of their subject matter;
 - (b) the words "The European Parliament and the Council of the European Union" or "The Council of the European Union", as appropriate;
 - (c) a reference to the provisions under which the regulation is adopted, preceded by the words "Having regard to";
 - (d) a citation containing a reference to proposals submitted and to opinions obtained and consultations held;
 - (e) a statement of the reasons on which the regulation is based, preceded by the word "Whereas"; the recitals being numbered;
 - (f) the words "have adopted this Regulation" or "has adopted this Regulation", as appropriate, followed by the enacting terms of the regulation.
2. Regulations shall be divided into Articles, if appropriate, grouped into chapters and sections.
3. The final article of a regulation shall fix the date of entry into force, where that date is before or after the 20th day following publication.
4. The final article of a regulation shall be followed by:
 - (a) (i) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States." or
 - (ii) the words "This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community", in any cases in which an act is not applicable to, and in, all Member States⁽¹⁾;
 - (b) the words "Done at," followed by the date on which the regulation was adopted, and
 - (c) in the case of
 - (i) a regulation adopted jointly by the European Parliament and the Council, the formula:

"For the European Parliament
The President

For the Council
The President"

followed by the name of the President of the European Parliament and of the President-in-Office of the Council at the time when the Regulation is adopted;

- (ii) a Council regulation, the formula:

"For the Council
The President"

followed by the name of the President-in-Office of the Council at the time when the regulation is adopted.

⁽¹⁾ See statement (a) set out below:
(a) Annex II A

"The Council would point out that, in the cases provided for in the Treaties where an act is not applicable to or in all Member States, it is necessary to make clear its territorial application in the reasons given for and content of the act concerned."

B. Form of directives, decisions, recommendations and opinions (EC Treaty)

1. Directives and decisions adopted jointly by the European Parliament and the Council, and directives and decisions of the Council, shall include in their titles the word "Directive" or "Decision".
2. Recommendations and opinions issued by the Council shall include in their titles the word "Recommendation" or "Opinion".
3. The provisions relating to regulations set out in A above shall apply *mutatis mutandis*, subject to the relevant provisions of the EC Treaty, to directives and decisions.

C. Form of common strategies of the European Council, joint actions and common positions referred to in Article 12 of the Treaty on European Union

Common strategies, joint actions and common positions within the meaning of Article 12 of the Treaty on European Union shall bear one of the following headings, as appropriate:

- (a) "European Council Common Strategy", a serial number (year/number/CFSP), the date of adoption and the subject matter;
- (b) "Council Joint Action", a serial number (year/number/CFSP), the date of adoption and the subject matter;
- (c) "Council Common Position", a serial number (year/number/CFSP), the date of adoption and the subject matter.

D. Form of common positions, framework decisions, decisions and conventions referred to in Article 34(2) of the Treaty on European Union

Common positions, framework decisions, decisions and conventions within the meaning of Article 34(2) of the Treaty on European Union shall bear one of the following headings, as appropriate:

- (a) "Council Common Position", a serial number (year/number/JHA), the date of adoption and the subject matter;
- (b) "Council framework Decision", a serial number (year/number/JHA), the date of adoption and the subject matter;
- (c) "Council Decision", a serial number (year/number/JHA), the date of adoption and the subject matter;
- (d) "Convention established by the Council in accordance with Article 34 of the Treaty on European Union" and the subject matter.

Done at Luxembourg, 5 June 2000.

For the Council
The President
J. PINA MOURA

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 August 2000

amending Decision 93/731/EC on public access to Council documents and Council Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents

(2000/527/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 207 thereof,

Having regard to its Rules of Procedure, and in particular Article 10 thereof,

Whereas:

- (1) The European Council, meeting in Helsinki in December 1999, provided political impetus for the development of the European Union's means for military and non-military crisis management within the framework of a strengthened European security and defence policy.
- (2) In this context, the Council must introduce rules guaranteeing effective protection of documents concerning these matters disclosure of which could harm the essential interests of the Union or of one or more of its Member States. For this reason, under the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council ⁽¹⁾, such documents must be classified as TRÈS SECRET/TOP SECRET or SECRET or CONFIDENTIEL.
- (3) The seriousness of the consequences of disclosure of such documents, in particular with regard to the prospective development of the new strengthened European security and defence policy, and the necessary confidence which those involved must be able to have at a crucial moment in the development of this policy, justify the exclusion of such documents from the scope

of the rules on public access to Council documents until such time as they are declassified, or declassified in accordance with the rules referred to in recital 2 concerning classification of documents.

- (4) The exchange of information in the particularly sensitive areas referred to in recital 1, which is one of the features of the development of this new policy, will work only if the originator of such information can be confident that no information put out by him will be disclosed against his will. It is therefore necessary to provide that a Council document from which conclusions may be drawn regarding the content of classified information put out by a natural or legal person, a Member State, another Community institution or body or any other national or international body may be made available to the public only with the prior written consent of the author of the information in question.
- (5) With the same objective of reinforcing protection of the confidentiality of information when scrutinising documents to which access has been requested, it should be provided that measures are taken to ensure compliance with the principle that access to classified documents must be reserved for those persons who are authorised to take cognisance thereof.
- (6) Since the security and defence of the Union or of one or more of its Member States or military and non-military crisis management represent public interests which Decision 93/731/EC ⁽²⁾ is intended to protect, this should be specifically mentioned among the reasons justifying refusal of access to a document.

⁽¹⁾ OJ C 239, 23.8.2000, p. 1.

⁽²⁾ OJ L 340, 31.12.1993, p. 43. Decision amended by Decision 96/705/Euratom, ECSC, EC (OJ L 325, 14.12.1996, p. 19).

HAS DECIDED AS FOLLOWS:

Article 1

The provisions of Decision 93/731/EC is hereby amended as follows:

1. Article 1(1) shall be replaced by the following:

'1. The public shall have access to Council documents, except for documents classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIEL within the meaning of the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council, on matters concerning the security and defence of the Union or of one or more of its Member States or on military or non-military crisis management, under the conditions laid down in this Decision.

Where a request for access refers to a classified document within the meaning of the first subparagraph, the applicant shall be informed that the document does not fall within the scope of this Decision.'

2. The following paragraph shall be added to Article 2:

'3. Without prejudice to Article 1(1), no Council document on matters concerning the security and defence of the Union or of one or more of its Member States or on military or non-military crisis management which enables conclusions to be drawn regarding the content of classified information from one of the sources referred to in paragraph 2 may be made available to the public except with the prior written consent of the author of the information in question.

Where access to a document is refused pursuant to this paragraph, the applicant shall be informed thereof.'

3. Article 3(1) shall be replaced by the following:

'1. The applicant shall have access to a Council document either by consulting it on the spot or by having a copy sent at his own expense. The fee shall be set by the Secretary-General/High Representative for Common Foreign and Security Policy (hereinafter referred to as the "Secretary-General").'

4. The first indent of Article 4(1) shall be replaced by the following:

'— the protection of the public interest (public security, the security and defence of the Union or of one or more of its Member States, military or non-military crisis management, international relations, monetary stability, court proceedings, inspections and investigations),'

5. The following sentence shall be added at the end of Article 5:

'The Permanent Representatives Committee shall see to it that the necessary measures are taken to ensure that the preparation of such decisions is entrusted to persons authorised to take cognisance of the documents concerned.'

6. In Article 7(3), the references to Articles 138e and 173 of the Treaty establishing the European Community shall be replaced by references to Articles 195 and 230 of the Treaty establishing the European Community.

7. The following sentence shall be added at the end of Article 7(5):

'The extension may be for two months where it is necessary to consult a source other than the Council, as provided in Article 2(3).'

Article 2

Decision 2000/23/EC (*) is hereby amended as follows:

1. The following shall be added as the second subparagraph of Article 2:

'The public register of Council documents contains no reference to documents classified TRÈS SECRET/TOP SECRET or SECRET or CONFIDENTIEL within the meaning of the Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 27 July 2000 on measures for the protection of classified information applicable to the General Secretariat of the Council, on matters concerning the security and defence of the Union or of one or more of its Member States or on military or non-military crisis management.'

2. The first indent of Article 2 shall be replaced by the following:

'— the protection of the public interest (public security, the security and defence of the Union or one of its Member States, military or non-military crisis management, international relations, monetary stability, court proceedings, inspections and investigations),'

Article 3

The Secretary-General of the Council shall take necessary measures to ensure the implementation of this Decision.

Article 4

This Decision shall take effect as from the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 14 August 2000.

For the Council

The President

H. VÉDRINE

(*) OJ L 9, 13.1.2000, p. 22.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 19 March 2001
amending the Council Rules of Procedure
(2001/216/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 207(3) thereof,
Whereas it is appropriate to amend Article 24 of the Council Rules of Procedure⁽¹⁾,

HAS DECIDED AS FOLLOWS:

Sole Article

As from 13 March 2001, Article 24 of the Council Rules of Procedure shall be replaced by the following:

Article 24

Security

The rules on security shall be adopted by the Council acting by a qualified majority.

Done at Brussels, 19 March 2001.

For the Council
The President
A. LINDH

⁽¹⁾ OJ L 149, 23.6.2000, p. 21.

European Union – Council

Council Guide – II. Comments on the Council's Rules of Procedure

Luxembourg: Office for Official Publications of the European Communities

2002 – VII, 73 pp. – 14.8 x 21 cm

ISBN 92-824-2077-9