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INTERGOVERNMENTAL CONFERENCE ON INSTITUTIONAL REFORM

Presidency report
to the Feira European Council

TABLE OF CONTENTS

INTRODUCTION 5

PART I

CONFERENCE PROGRESS REPORT 9

1. THE COMMISSION 11
2. WEIGHTING OF VOTES IN THE COUNCIL 17
3. EXTENSION OF QUALIFIED MAJORITY VOTING 25
4. THE EUROPEAN PARLIAMENT 33
5. THE COURT OF JUSTICE AND THE COURT OF FIRST INSTANCE 39
6. OTHER INSTITUTIONS AND BODIES 45
   A. THE COURT OF AUDITORS 5
   B. THE ECONOMIC AND SOCIAL COMMITTEE 46
   C. THE COMMITTEE OF THE REGIONS 47
7. OTHER ISSUES 49
8. CLOSER COOPERATION 51

PART II

TEXTS, LISTS AND TABLES ANNEXED TO THE PROGRESS REPORT. 57

9. THE COMMISSION 59
10. WEIGHTING OF VOTES IN THE COUNCIL 63
11. EXTENSION OF QUALIFIED MAJORITY VOTING 73
12. THE EUROPEAN PARLIAMENT 91
13. THE COURT OF JUSTICE AND THE COURT OF FIRST INSTANCE 99
14. OTHER INSTITUTIONS AND BODIES 111
15. OTHER ISSUES 115

INTRODUCTION

The origins of this Conference of Representatives of the Governments of the Member States on institutional reform (the "Intergovernmental Conference" or "IGC 2000") lie in the Protocol on the institutions, annexed to the Amsterdam Treaty. As the Amsterdam Treaty was unable to resolve all the institutional issues regarded as prerequisites for enlargement, provision was made for convening a new IGC in order to carry out a comprehensive review, before the European Union had more than twenty members, of the provisions of the Treaties relating to the composition and operation of the institutions.

It was the European Council which decided in Cologne, in June 1999, to convene the IGC with the aim of completing its work by the end of 2000. It specifically stated that the agenda should cover the size and composition of the Commission, the weighting of votes in the Council, the possible extension of qualified majority voting in the Council as well as other necessary amendments to the Treaties arising as regards the European institutions in connection with these three issues and in implementing the Amsterdam Treaty. After confirming that brief the Helsinki European Council called upon the Presidency to examine whether there were grounds for proposing the inclusion of other items on the Conference agenda.

The Conference began on 14 February 2000. Political responsibility for the negotiations was entrusted to the Ministers in the General Affairs Council and the preparatory work was carried out by a group of government representatives, with the participation of a Commission representative and two European Parliament observers. The proceedings were based on documents prepared by the Presidency with a view to shaping the debate and on contributions from Member States, institutions and bodies. The Presidency would like to place emphasis on the importance of the contributions from the Commission and the European Parliament, with the latter having asserted its point of view through its resolutions and statements, through the constructive dialogue with its President and through the full participation of its observers in the discussions. For the sake of transparency, all official documents of the Presidency, the Member States and the other institutions and bodies as well as the other official contributions to the proceedings of the Conference have been made available to the public via the Internet [1].

[1] http://db.consilium.eu.int/cig/

In accordance with the conclusions of the Helsinki European Council, the Presidency has organised meetings with representatives of the applicant countries in order to inform them of progress and to provide them with the opportunity to state their points of view on all the questions discussed by the Conference. Information on the progress of the Conference has also been provided to the Member States of the European Economic Area.

This report, drawn up under the Presidency's responsibility, takes stock of progress to date. It is in two parts. The first summarises progress on all the issues discussed, setting out the major positions emerging from the preliminary discussions and a more accurate definition of the main options open with a view to a final compromise. The second part collates the draft texts, specific suggestions as to paths to be explored and tables setting out certain options. Aware of the political sensitivity of some subjects dealt with in the second part, the Presidency wishes to point out that it merely involves contributions to the discussion, and these cannot under any circumstances be regarded as formal proposals binding on the present or future Presidency or on the other delegations.

It is already clear from the various chapters of the report that there are a number of questions which will have to form part of the final agreement, whilst others warrant more detailed examination before deciding whether or not they should be taken into consideration. Finally, yet other ideas do not appear to have sufficient support, at least thus far, to be taken on board in the present exercise.

It is generally accepted that there cannot be any partial results, since the overall balance can be evaluated only in the context of a comprehensive solution at the end of the negotiations. The result is that this report cannot record formal agreement at this juncture on any of the points under discussion and that some positions are still fairly divergent, since the final deadline is still too far ahead to be a source of pressure. The discussions have, however, made it possible to analyse in depth the main political questions, to outline the parameters for a possible compromise and clearly to define the scope of what is at stake, so that the Conference can enter into the final stage on solid bases that will enable it to finish in December 2000, in line with the timetable laid down.

Faced with the challenge of virtually doubling membership of the Union, it seems indispensable that the Conference adopt at an early date reforms which will, in the future, ensure the efficiency of the institutions of the Union while preserving its legitimacy as a Union of States and peoples and the fundamental balances and originality of an enterprise that has shown its worth over fifty years.

It is also recognised that those reforms should be coupled with some changes to the working methods of all the institutions which do not necessarily require amendment of the Treaties. That internal reform, which is already in hand, should be continued actively beyond the end of the current IGC so that the new Member States can be smoothly incorporated into the Union.

The definition of a common security and defence policy and the preparation of a draft Charter of Fundamental Rights of the European Union are being examined in parallel outwith the IGC fora. The Presidency is submitting to the European Council a separate report on the common European security and defence policy. As regards the draft Charter of Fundamental Rights, the procedure for its preparation and official proclamation will continue in accordance with the Cologne conclusions.

Taking into account the mood gauged in informal discussions on the question of closer cooperation, the Presidency feels that it should put to the European Council a proposal designed to include the question in the future proceedings of the Conference so that the provisions introduced by the Amsterdam Treaty can be re-examined.

It is not the purpose of this Intergovernmental Conference to address, still less to settle, the debate launched elsewhere on the goals of the Union and the future of its institutions, a debate which will no doubt continue over the next few years. However, by opening an in-depth discussion on a number of sensitive issues and trying to find solutions which measure up to the challenges now facing us, this Conference is contributing to the process of constant adaptation of the institutions and the way they operate, without which the Union's immediate future, and, still more, its long-term future would be compromised.

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PART I

CONFERENCE

PROGRESS REPORT

1. THE COMMISSION

1. *The Commission is a lynchpin of the Union's institutional system. It is the guardian of the Treaties, required to act completely independently in the general interest, and as such it has a right of initiative which is exclusive in Community matters, but shared in other areas; its duties include management, mediation and negotiation. On all these counts, there is a general consensus that in an enlarged Union there will be a need to maintain and build upon the Commission's legitimacy and efficiency and its credibility in the eyes of the public, although opinions vary as to how to achieve these ends.*

2. *This Chapter deals with:*

   - *the size of the Commission in an enlarged Union;*
   - *its internal organisation;*
   - *other questions raised during the proceedings, in particular the political accountability of the members of the college (individual or collective).*

A. Size of the Commission in an enlarged Union

3. *The Commission operates on the principle of collective responsibility, with all Members taking collective responsibility for its proposals and decisions – this is in order that Commission action taken in the general interest of the Union should have the full legitimacy required by its important institutional role. The Commission currently consists of 20 Members, including its President, "chosen on the grounds of their general competence and whose independence is beyond doubt". It "must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State"; there are currently two Members from Germany, the United Kingdom, Spain, France and Italy.*

4. *The number of Commissioners is one of the central questions for the Conference, identified in the Protocol on the institutions with the prospect of enlargement, which establishes a link between this issue and the weighting of votes within the Council (see next Chapter). With the exception of the status quo – which is not ruled out in some quarters, should there be disagreement on other matters such as the weighting of votes in Council – there are two different approaches to the problem, each with a number of variants:*

First option: A college made up of one national from each Member State

5. *Most delegations consider that this is the only way of safeguarding the Commission's legitimacy in the eyes of the public. A good way of making sure that Commission initiatives and decisions are acceptable is for Commissioners to be able to highlight the various sensitivities to be taken into consideration when defining the common interest. Furthermore, an increased number of Members is quite compatible with the aim of efficiency if it is borne in mind that the College will have a greater workload and if its internal organisation is rationalised by suitable means.*

6. *Other delegations hold that a Commission made up of one national from each Member State would raise objections of principle, in that it would be contrary to the Commission's very nature, as an independent, collegiate body whose Members do not represent States, and also practical objections, as having too many Members would inevitably detract from the efficiency and consistency of Commission action.*

Second option: A college made up of a limited number of Commissioners, however many Member States there are in the Union

7. *The delegations which argue for this option point out that a Commission with a limited number of Commissioners is the only way of abiding fully by the spirit of the institutions, whereby the Commission is intended as an independent, collegiate body, whilst at the same time ensuring that it can act consistently and effectively, something which would not be possible in a college of thirty-odd members that was more of a debating chamber than an executive body.*

8. *The other delegations pointed out that a Commission which did not have one national from each Member State would find its legitimacy and the acceptability of its decisions seriously undermined, which could not fail to detract from its effectiveness too.*

9. *Without prejudice to these positions of principle, the Conference discussed what arrangements could be made – assuming the second option were adopted – to ensure that Member States were treated equally. This equality might take two forms:*

   – *either in terms of the choice of members, giving responsibility to the Commission President for choosing Commissioners, in particular on merit, while taking care to keep a degree of balance between Member States over time;*

   – *or in terms of actual presence in the college; this would involve laying down the composition of the college for future terms of office in advance, or laying down the principle that the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one.*

   Many felt that the second option was the only way by which the principle of equality could be fully respected.

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10. *It seems difficult to reconcile these two approaches at present. However, it is generally acknowledged that it is important to avoid temporary or partial arrangements that would leave the problem unresolved until a subsequent decision, taken at the end of the enlargement process.*

11. *Some delegations emphasised that any solution to this question would depend on the overall balance of the final compromise covering all the matters dealt with by the Conference, in particular the weighting of votes in Council and the allocation of seats in the European Parliament.*

B. Internal organisation of the Commission

12. In conjunction with the debate on the size of the Commission, the Conference addressed the issue of its organisation and internal structure, which some felt would be a problem in any event, however many Commissioners were finally decided on. The discussions yielded three options, which could also be combined, to help ensure that the Commission worked properly:

(a) increasing the President's powers, for example by giving him particular responsibility for directing the Commission's general policy line and more authority vis-à-vis the other Members (casting vote, allocation of portfolios, etc.);

(b) creating additional posts for Vice-Presidents, in order to bring their number up to 6 or 8 in all, who could coordinate the Commission's activities in given areas;

(c) the possibility of creating Commissioners without portfolio (with the same voting rights as the other Commissioners), who would be assigned coordination tasks or given special responsibilities by the President.

13. Quite apart from delegations' positions of principle on the size of the Commission, the discussions revealed a great willingness to move towards the above types of reform, with some preference for increasing the President's role and creating more Vice-Presidents. However, differences remained on whether these new provisions should be included in the Treaty (and if so, in what degree of detail) or whether it would be preferable to leave the Commission, particularly its President, maximum latitude in deciding these matters for itself when forming the college. In addition, it was pointed out that, if some of the reforms were to accentuate – de facto – the functional hierarchy between Members of the Commission (an increased number of Vice-Presidents or the creation of Commissioners without portfolio), there would need to be appropriate measures to ensure that there was no discrimination between Member States. The majority of delegations felt that the emergence of a hierarchy should not under any circumstances result in two categories of Commissioner being created.

C. Other Commission-related issues raised during the preparatory proceedings

14. Apart from the main issue of the size and composition of the Commission, the Conference considered other possible adjustments to the Treaties, in particular on the accountability of members of the college (individual or collective).

Motion of confidence

15. Following suggestions put forward by some of the delegations in order to strengthen the Commission's political position, the Presidency tabled the draft text in Annex 1.1; this would authorise the President of the Commission, with the support of the college, to ask the European Parliament for a vote of confidence. The suggestion was received with interest, although a number of delegations did not wish to state their final positions until they had considered in more detail how such an innovation would affect the current balance between the institutions; in this connection, some delegations wondered whether the Commission's right to ask for a vote of confidence from the European Parliament should not go hand in hand with a right of dissolution; others pointed out that, in the interests of maintaining the balance between institutions, the Commission should be able to seek a vote of confidence from the European Council.

Individual accountability of Members of the Commission

16. While the Commission, as a college, is accountable to the European Parliament – the Parliament is able to pass a motion of censure – the Treaty does not provide any way of holding individual Members of the Commission to account. It is fairly widely acknowledged that making Members of the Commission individually accountable to the European Parliament, the European Council or the Council is hardly to be reconciled with the principle of collegiality, whereby all the Commissioners are responsible for all decisions adopted by the Commission. The same cannot be said of accountability to the President himself. There was widespread approval of the initiative taken by the current Commission President, who had asked for and obtained a commitment from each Member of the Commission to resign should he ask them to do so. Conversely, delegations were still very divided on whether to include a formal procedure for this purpose in the Treaty.

Clarification of Treaty provisions in the event of resignation of Commission Members

17. *The voluntary resignation of the entire college in March 1999 gave rise to a certain amount of debate on the need to clarify the provisions of the Treaty on the resignation of Members of the Commission and their obligations after leaving office. However, the Conference's discussions showed broad agreement that the current provisions of the Treaty had enabled the crisis to be managed without any insurmountable problems, that an event of this type was quite exceptional and that at any rate, it would be difficult, if not impossible, to lay down Treaty provisions to cope with every possible eventuality. In the course of its consideration of this matter the Conference nevertheless found that a number of clarifications, of limited scope, might usefully be added to Article 215 (see Annex 1.2).*

2. WEIGHTING OF VOTES IN THE COUNCIL

1. *Under the current system of weighting of votes, the number of votes of each Council member reflects the relative population size of the relevant Member State, not in absolute, linear terms but in accordance with a formula of highly degressive proportionality resulting from a political agreement, with Member States which have a more or less comparable population size placed in categories which have the same number of votes* [1]. *With each successive enlargement, new Member States have been classified in categories in accordance with that same principle. The necessary threshold to achieve a qualified majority, which has remained virtually unchanged through the years, is in the region of 71% of the total votes.*

2. *The Protocol on the institutions annexed to the Treaty explicitly refers to the possibility of modifying the weighting system, whether by reweighting or by a dual majority. It links this issue to that of Member States giving up the possibility of nominating a second Commissioner (see the previous Chapter). In its conclusions the Cologne European Council meeting specifically referred to these issues as topics for examination by the Conference, as well as the threshold for qualified majority decisions. Declaration No 50 annexed to the Final Act of Amsterdam stated that the "Ioannina compromise"* [2] *would be extended until the entry into force of the first enlargement and that, by that date, a solution for the special case of Spain would be found.*

3. *Declaration No 50 annexed to the Final Act of the Amsterdam Treaty stated that the "Ioannina compromise" would be extended until the entry into force of the first enlargement and that, by that date, a solution would be found for the special case of Spain.*

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1 See the present weighting table of the Union of 15 Member States in Annex 2.1.

2 See page 24 below.

4. *Although delegations' opinions are still divergent on the nature of the solution to be adopted (between a dual majority and reweighting proper), discussions have nevertheless brought to light a degree of convergence on the following:*

   - *any weighting system must reflect the dual nature of the Union, which is both a Union of States and a Union of peoples;*

   - *irrespective of the option chosen, the future system of weighting of votes in the Council must be equitable, transparent, efficient and easily understood by citizens;*

   - *in order to ensure its legitimacy, any qualified majority must comply with a minimum threshold expressed in terms of population, which must in any event be more than 50%, with opinions diverging as to the specific figure to be adopted;*

   - *there is a political link between the weighting of votes and other questions dealt with by the Conference, such as the size of the Commission or the apportionment of European Parliament seats, with the result that a satisfactory outcome to this issue can be attained only under a balanced overall compromise;*

   - *the weighting system should not make it more difficult for a decision to be taken within the Council.*

5. *The Conference discussions on this aspect of the reform brought to light three issues which are analysed below:*

   - *the choice between a dual majority and reweighting;*

   - *the qualified majority threshold;*

   - *the time at which the new method should apply.*

A. Dual-majority system

Principle

6. The dual-majority system involves setting a double threshold expressed as:

- *a number of Member States or weighted votes, and*
- *a percentage of the total population of the Union [1],*

with adoption of any measure being subject to simultaneous compliance with both conditions.

7. Delegations in favour of the dual majority felt that it had the advantage of clearly reflecting the dual nature of the Union, as a Union of States and also a Union of peoples, of being readily comprehensible and of applying to all configurations of the Union, without necessitating adjustments to guarantee the requisite degree of democratic legitimacy every time there was an enlargement. These delegations felt that the presence of a majority of Member States in any qualified majority (which has always been the case so far) was essential for the legitimacy of Council decisions.

8. The other delegations held that the dual-majority system constituted a radical change in relation to the spirit of the original system of the Community, would be difficult to apply in practice and might well complicate decision-making in that a dual condition would have to be met in order to assemble a qualified majority; in this context some delegations took the view that the requirement for any qualified majority to include a majority of Member States was not acceptable in an enlarged Union because it carried an increased risk of deadlock; application of this rule might create a blocking minority that represented only approximately 10% of the population of the Union.

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1 See Annex 2.3 for a reference table for calculating population weight under a dual-majority system.

Variants

9. Three possible variants of the dual-majority system were identified in discussions:

(a) The "simple" dual majority, based on the following two parameters:

- *a minimum number of Member States, which could be half, a majority or a higher figure (for example 60%), as mentioned by certain delegations;*

- *a minimum percentage of the total population of the Union; figures of between 50% and 60% were mentioned during discussions.*

This variant is illustrated in Annex 2.4.

(b) The "weighted" dual majority, involving:

- *maintaining the current weighting scale, to be extrapolated linearly for subsequent accessions in line with the table in Annex 2.2;*

- *verifying that a minimum population threshold, at a level to be defined (between 50% and 60%), was met for each qualified majority.*

This variant is illustrated in Annex 2.5.

(c) The "reweighted" dual majority:

In addition to setting a minimum population threshold, this variant, which is derived from (b), would entail reweighting in favour of Member States with the largest populations, to an extent to be determined.

B. A new weighting of votes

Principle

10. Under a system of vote weighting in the strict sense of the term, the number of votes of each Member State reflects the relative size of its population, not in absolute, linear terms as under a dual-majority system, but using a degressive proportional formula resulting from a political assessment, an arithmetical calculation or a combination of the two.

Variant 1: An essentially political approach derived from the present system

11. For some delegations, maintaining the current system in tandem with substantial reweighting of votes would be the only way of compensating Member States for loss of a second Commissioner while ensuring that the qualified majority respects a minimum population threshold sufficient to halt the erosion of democratic legitimacy of decision-making observed over the years [1].

12. While not opposed to the principle of reweighting, several delegations consider that the operation should be limited in scope and should merely compensate those Member States which waive the possibility of appointing a second Commissioner, in line with the undertaking given in Amsterdam, without calling into question the general balance of the current system. These delegations also highlighted the need to take account of the link between reweighting and co-decision, in that the latter was in itself a form of reweighting because of the relatively greater weight of the more populous Member States in the allocation of seats in Parliament.

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1 The minimum threshold of population represented by a qualified majority was 67,71% in the Union of 6 in 1958, then 70,49% (EU-9 in 1973), 70,14% (EU-10 in 1981), 63,27% (EU-12 in 1986) and 59,83% (EU-12 after German reunification) and currently stands at 58,18%.

13. *The delegations opposed to reweighting pointed to the political difficulties which would inevitably have to be faced in negotiations on scale of the exercise and on any adjustments to the categories of Member States. A majority of delegations also pointed out that beyond a certain reweighting threshold, the qualified majority would no longer include half of the Member States (as had always been the case so far), which to their mind would be damaging to the legitimacy of the Union's decisions and might sideline States with the smallest populations.*

14. *Without prejudice to these basic positions, the Presidency felt that this option could usefully be fleshed out in the form of tables illustrating two possible reweighting models:*

    (a) model 1 (see Annex 2.6), giving a simulation based on an approach suggested by the Presidency during the Amsterdam Treaty negotiations in 1997;

    (b) model 2 (see Annex 2.7), based on the following hypotheses:

    – *doubling the votes of all Member States in order to extend the possibilities for differentiating between Member States should that prove necessary in subsequent negotiations;*

    – *Member States waiving a second Commissioner would be allocated 5 additional votes, thereby maintaining the minimum threshold for a qualified majority expressed in population terms at around the current level.*

Parameters

15. *If a basically political approach were taken to the reweighting of votes, the following parameters would have to be defined by the Conference:*

    (i) the extent of reweighting, which would among other things determine the minimum population weight of any qualified majority. For some, the figure should be set between 50% and 60%. Others stood out for a figure above 60%, as the threshold had been approximately 63% in the Community of 12 in 1986;

    (ii) reweighting to apply only to Member States waiving a second Commissioner's post or not;

    (iii) the extent to which groups of Member States with the same number of votes are homogeneous and the case for reviewing grouping criteria;

    (iv) the minimum number of Member States represented by a qualified majority. The current system entails a qualified majority always involving at least half of the Member States; the question is thus whether that should continue to be the case either as an arithmetical consequence of the system itself or in the form of a rule expressly embodied in the Treaty.

Variant 2: A purely arithmetical approach

16. *Annex 2.8 illustrates an approach giving each Member State a number of votes equal to double the square root of its population expressed in millions of inhabitants, rounded off to the nearest figure. The delegation which put forward this approach said that it would have the advantage of being completely transparent while preserving in practice a system based on groups of Member States and allowing for reweighting in order to maintain a population threshold more or less in line with the current level. It would have the added advantage of adjusting automatically to future Union enlargements.*

C. The qualified majority threshold

17. Under a system based on weighting of votes, the majority threshold determines the ease with which decisions can be taken by the Council. Since the creation of the Community, that threshold has remained at around 71% of votes, although the existence of the Ioannina compromise [1] *since January 1995 and of Declaration No 50 attached to the Final Act of the Amsterdam IGC must be borne in mind.*

18. Initial discussions on this subject have highlighted the concern not to render decision-making more difficult and hence to hold to the current threshold in principle. However, the point was made that the issue should also be seen in the light of the undertakings entered into on all sides in Amsterdam regarding the Ioannina compromise and the specific situation of Spain, on which appropriate action should be taken.

D. Entry into force of any change to the system of vote weighting

19. Some delegations take the view that the effects of reweighting should logically be spread over time in line with successive configurations of the Union. Conversely, others consider that the system of vote weighting should be changed in a single operation – either on the first enlargement or on entry into force of the revised Treaty – by taking into account all applicant States, thereby obviating any further adjustments during later enlargements.

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[1] "If members of the Council representing a total of 23 to 25 votes indicate their intention to oppose the adoption by the Council of a decision by qualified majority, the Council will do all within its power to reach, within a reasonable time and without prejudicing the obligatory time limits laid down by the Treaties and by secondary legislation, such as those in Articles 189b and 189c of the Treaty establishing the European Community, a satisfactory solution that can be adopted by at least 65 votes. During this period, and with full regard for the Rules of Procedure of the Council, the President, with the assistance of the Commission, will undertake any initiatives necessary to facilitate a wider basis of agreement in the Council. The members of the Council will lend him their assistance."

3. EXTENSION OF QUALIFIED MAJORITY VOTING (QMV)

1. *Experience shows that use of qualified majority voting gives impetus to the negotiating process by promoting compromise and ultimately making for easier decision-taking. It is generally accepted that, given the increased number of Member States after the next enlargement, there is cause for examining possible extension of qualified voting to forestall possible blockages, particularly in areas which are essential to the proper operation of the Union. In the opinion of many, this could even be one of the determining factors for the success of the Conference.*

2. *There is a consensus view that any extension of qualified majority voting must be carried out within the limits of the Union's powers, and that it is not the purpose of this Conference to modify those powers. It is also generally accepted that a number of constitutional or quasi-constitutional questions intrinsically call for unanimity and should not come into the qualified majority frame (see Annex 3.7). As a final point, a number of delegations have indicated that the outturn of the extension of qualified majority voting should, as with the other questions submitted to the Conference, respect a certain balance between the varied interests of Member States.*

3. *In the light of the above, the Conference has examined two types of provisions:*

   (i) articles of the Treaty where straightforward transition to qualified majority voting could be considered;

   (ii) articles where straightforward transition to qualified majority is precluded on account of their complexity or political sensitivity, but which contain specific provisions eligible for qualified majority voting subject to rewording of the text. Particular instances are: taxation, social provisions, the environment, certain aspects of external economic relations and certain questions covered to date by Article 308.

A. List of articles to be examined for straightforward transition to qualified majority voting

4. The Presidency has drawn on the ideas adumbrated in the Finnish Presidency's report and endeavoured to develop a pragmatic approach which is a half-way house between case-by-case examination and acceptance of the principle that qualified majority voting will henceforth be the general rule. The approach involves identifying those categories of articles in the Treaty giving good grounds for qualified majority treatment, e.g. the existence of a close link with the internal market or with areas already under qualified majority voting (the budget, for instance). Applying that approach, Annex 3.1 to this Chapter contains a list of thirty-nine provisions which should continue to be given serious consideration for transition to qualified majority treatment, although the Presidency is aware that some of them touch upon areas of great political sensitivity.

5. In the light of the suggestions put forward by the Presidency, discussion revealed three broad trends:

- *while reserving the right to state a final position on details of the list at a later date, a majority of delegations felt that the logical, pragmatic approach suggested by the Presidency formed a sound starting-point for further proceedings;*

- *some delegations regretted that the Presidency had ruled out establishing qualified majority voting (subject to limited exceptions) as the voting rule with the Council; to their mind, the Presidency's approach was somewhat lacking in ambition and had the disadvantage of removing out of hand from the Conference's ambit articles which also merited qualified majority treatment;*

- *others took the opposite view that, although the list drawn up by the Presidency did have the advantage of allowing case-by-case examination, it was over-ambitious in incorporating a number of articles where transition to qualified majority would meet with virtually insurmountable political reluctance. The main difficulty was that, following the series of extensions of the scope of qualified majority voting resulting in it becoming the rule for a large number of Council decisions, those articles still subject to unanimity were naturally the most politically sensitive.*

B. Provisions for which a move to qualified majority voting can be considered only for certain specific, clearly defined aspects

Taxation

6. Because of the particular political sensitivity of the matter, the Presidency suggested a very prudent approach based on a rewording of Article 93 of the TEC (see Annex 3.2) which

- *lays down the principle that unanimity continues to be required for both direct and indirect taxation,*
- *defines a very limited list of specific, precisely-defined measures for which the introduction of qualified majority voting could be considered,*
- *and clearly establishes that measures henceforth subject to qualified majority voting cannot affect, either directly or indirectly, matters which still require unanimity.*

7. The provisions in question are closely linked to the internal market (e.g. measures intended to avoid double taxation or non-taxation of cross-border income, measures to combat fraud and tax avoidance or measures to modernise or simplify existing Community rules). A move to qualified majority voting is also suggested for tax measures whose sole aim is environmental protection.

8. The following initial reactions emerged from the discussions:

- *several delegations – while reserving their final position – thought that the Presidency's suggestion went in the right direction because it endeavoured to delimit as precisely as possible and without any ambiguity the areas to which the qualified majority could apply in future; some of them suggested being even more specific in order to preclude any risk of broad interpretation;*

- *some delegations could agree to extending the qualified majority to all or to the bulk of tax provisions because, inter alia, of the close link between taxation and the operation of the internal market;*

- *others emphasised the need to keep unanimity for the entire tax field, both for reasons of principle – inasmuch as taxation reflected the basic policy choices of the national legislator in economic and budgetary matters – and for practical reasons since, no matter how precisely they were formulated, the Presidency's suggestions would not preclude problems of interpretation and thus disputes. These delegations also stressed the difficulties inherent in any attempt to recast the Treaty provisions on taxation while avoiding – as was their aim – any extension of Community powers in this area.*

Social provisions

9. In the social field, the Presidency suggested three amendments for consideration by the Conference (see Annex 3.3):

– *the first would delete Article 144, a suggestion which met with broad agreement;*

- *the second would bring Article 42 of the TEU on freedom of movement for workers under qualified majority voting because of, firstly, the close links with the internal market and, secondly, the particular value of QMV in an area like this which is frequently being adapted; the text in annex also sets out the exact scope of Article 42 by including a reference to self-employed persons;*

– *the third would apply QMV to a limited number of specific measures referred to in Article 137, because of the connection with other provisions on freedom of movement or with provisions on which there is already QMV.*

10. As on all of the chapter, delegations reserved their final positions; however, at this stage:

- *several delegations intimated that they were prepared to examine the Presidency's suggestion in a positive frame of mind, for there was every justification for it at a time when there was a general desire to promote the social dimension of the Union; some were prepared to go even further and move to QMV for the whole of Article 137;*

- *others, however, counselled the greatest caution because of the deep differences between Member States as regards the philosophical, legal and financial conception of their social welfare systems, which made this a matter of particular political sensitivity; some also pointed out that the unanimity requirement was not a real obstacle where the need for Community action was clear, as evidenced by the extensive legislation which already existed in the area.*

Environmental provisions

11. There is fairly general agreement on the need to clarify the wording of the environmental provisions to ensure that the texts do not contain ambiguities or are not open to interpretation (see Annex 3.4). However, some delegations advocated the utmost caution because of the political sensitivity of the matter and wondered whether the suggested amendments would not create more difficulties than they solved. Others, on the contrary, think that the Presidency's suggestions are too limited and that the scope of QMV should be extended to all environmental issues without exception.

12. It was also suggested the taxation aspects of the environment be dealt with in Article 93 (see new wording of Article 93 in Annex 3.2).

External economic relations

(a) Mixed agreements

13. Under current practice an agreement to be concluded with a third State on matters partly within the competence of the Community and partly within the competence of the Member States is the subject of a single "mixed" instrument signed jointly by the Community and the Member States and, before it is concluded, is submitted for ratification under national procedures as regards those provisions which come within the competence of the Member States. This practice has two disadvantages:

– *it means that the qualified majority rule which is often applicable to the bulk of the provisions of a 'mixed' agreement cannot be used as the whole text has to be adopted by common accord;*

– *the failure of one or more Member States to ratify the provisions of the agreement which come within their competence means that the agreement as a whole, including those provisions which are within Community competence, cannot come into force and that such provisions cannot be provisionally applied.*

14. To remedy this situation the Conference examined a solution whereby the Treaty would specify that provisions which fall within Community competence would be the subject of a separate agreement dealing exclusively with these Community matters, with the other provisions appearing in an agreement to be concluded in parallel by the Member States or by the Union in the case of political dialogue (see Annex 3.5). Interest was expressed in this approach by some delegations who see it as a way of making it easier to take decisions in external relations. Others drew attention to the risk that this approach might complicate the negotiation of such agreements, since it would be more difficult to strike a balance between the Community component and the component within the competence of the Member States. Others pointed to the danger that third countries might see it as prejudicial to the coherence of the Union's external action. Lastly, some expressed doubts about the added value of such an approach inasmuch as it is already possible in practice.

(b) European Union participation in the work of the WTO

15. Because issues discussed within the framework of the WTO are partly within the exclusive competence of the Community and partly within the competence of the Member States, the common position of the Union generally has to be adopted by common accord which, as experience shows, involves a risk of deadlock, which can only get worse with future enlargements.

16. To overcome this difficulty the Conference examined two possible solutions:

<u>Option 1</u>

Agree that any decision to transfer competence to the Community to negotiate and conclude international agreements on services and intellectual property will henceforth be taken by qualified majority (see Annex 3.1, point 17). This solution is stoutly defended by several delegations but meets with equally strongly held objections of principle from other delegations, on the grounds in particular that it would involve a transfer of powers to the Community. With regard to the effective application of the qualified majority, the question was raised whether the Treaty could explicitly consolidate the rule arising from the Court of Justice's case-law on AETR.

<u>Option 2</u>

Set out, in a Protocol to the Treaties, clear, simple, transparent and effective rules of procedure so that a common position in the WTO could be established by qualified majority in all cases including areas within the competence of the Member States [1]*. The Conference examined a draft text along these lines (see Annex 3.5) which elicited the interest of some delegations, while others, although they accept the principle that such rules should be established, expressed misgivings about whether they should be incorporated in the Treaty.*

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1 This is not a precedent. Under the Lomé Convention, decisions on the partial suspension of the Convention are taken by qualified majority even in areas involving the competence of the Member States.

17. *It follows from the foregoing that opinions on this issue are still divided. However, the general aim of underpinning the effectiveness of the decision-making process in this area was recognised and there was broad agreement that the Conference should continue to examine the various suggestions on the table – and possibly new suggestions – in order to assess the practical and legal effects.*

Areas currently covered by Article 308 of the TEC

18. *Article 308 of the EC Treaty is used for the adoption of acts or measures within the existing competence of the European Community for which there is no specific legal basis. Experience has shown that in certain areas (in particular the creation of decentralised agencies with legal personality and with a mandate to pursue one of the objectives of the Treaty; economic, financial and technical cooperation with non-DC third States; and the energy sector) frequent use has been made of that Article. The question was raised whether the repeated use of the Article in those areas would not justify the creation of new specific legal bases – without any transfer of competence – for which use of the qualified majority could be envisaged.*

19. *While opinions are still divided on whether new specific legal bases should be established, it was clear from the discussions that there is a degree of willingness to examine this suggestion further, particularly as regards the creation of specialised agencies and economic, financial and technical cooperation with non-DC third States. Draft Articles on these two questions are set out in Annex 3.6 to this Chapter.*

4. THE EUROPEAN PARLIAMENT

1. *Developments in the process of European integration have resulted in the regular increase in the powers of the Parliament linked to a general need to reinforce the democratic legitimacy of the Union. Thus the Maastricht Treaty saw the European Parliament become a co-legislator alongside the Council in important issues, the list of which was further extended by the Amsterdam Treaty, at the same time that the codecision procedure itself was amended so as to place Council and Parliament on an equal footing; the Parliament's role in the nomination and political control of the Commission was also reinforced.*

2. *With the prospect of the next enlargement there is a broad agreement that the effectiveness of the European Parliament should be preserved inter alia by continuing to cap the number of seats while ensuring appropriate representation for the peoples of the Member States. There is also some inclination towards further extending co-decision combined with simplifying and rationalising the legislative process in general so that it retains its effectiveness and is made more readily intelligible to citizens.*

A. Allocation of seats in the European Parliament

3. *There is broad agreement that the number of seats should not exceed 700 and that the allocation between Member States should take account of the dual nature of the Union – both a Union of States and a Union of peoples. However, there are differences of view as to the method to be applied, which can take two forms.*

First approach

4. *The current system of allocation would be extrapolated to the new acceding States and the number of seats given to each Member State would be reduced in linear fashion to remain within the threshold of 700, with a correction to ensure a minimum level of representation for the States with the smallest populations, so that the various political forces are represented (see Annex 4.1). Supporters of this formula stressed that the existing mode of allocation already makes provision for a proportional representation of the population (in degressive form). Some of them said that the introduction of an additional element of proportionality could be justified only if the current IGC pushed the Union a step along the path to integration which went far beyond current ambitions.*

Second approach

5. *This is the method of calculation submitted by the European Parliament, which proposes allocating each of the Member States a minimum of four seats and distributing the remaining seats according to a scale directly proportional to the population of each Member State (see Annex 4.2). Delegations in favour of this approach said that it was the only way to ensure that the penalty which, to their mind, results from the existing system to the detriment of the Member States with the largest populations – already deemed to be excessive – was not further aggravated with the arrival of new Member States.*

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6. *The discussion showed that other variants could be imagined by varying, inter alia, the minimum threshold of Members to be reserved for each Member State. In this connection, several delegations pointed out that the whole problem of the allocation of seats in the Parliament was linked to other questions under discussion in the IGC, in particular the weighting of votes in the Council.*

B. Transitional provisions for the application of the ceiling and the new allocation of seats

7. It is generally accepted that any solution involving withdrawal of a Member's mandate during the term for which he/she was elected must be avoided. In this context two possibilities were examined for adjusting the allocation of seats as and when the enlargements take place:

- *either two successive adjustments in 2004 and 2009, an approach favoured by a majority of delegations, provided that there are two possible variations:*

  – *ex-ante adjustments, in the light of the foreseeable accessions (States that had signed an Accession Treaty), thus avoiding any overrun of the 700-seat threshold;*

  – *ex-post adjustments, in the light of the accessions that had taken place in the meantime, even though this might entail a temporary overrun of the 700-seat threshold, since the possibility of such an overrun is accepted by many delegations.*

- *or a single adjustment:*

  – *in 2004, which would take account of the final composition of the Union in the light of the current applications; this would avoid any overrun of the 700-seat threshold;*

  – *in 2009, on the basis of the accessions that had actually taken place by that date.*

C. Legislative role of the European Parliament

Co-decision procedure

8. There was agreement that the procedure itself, as described in Article 251, should not be amended.

9. As to the scope of co-decision, most delegations - while willing to consider some extension - thought the matter should be examined by the Conference at the same time as the question of the extension of qualified majority voting. It was observed that, while there might be a link between co-decision and the need for qualified majority voting, the reverse (i.e. that qualified majority voting in the Council entailed, ipso facto, a co-decision procedure) was not necessarily true. To assist the discussions, the Presidency has drawn up a list of provisions concerning which a changeover to co-decision could be considered by the Conference in parallel with its discussions on the extension of qualified majority voting and in the light of the outcome of those discussions (see Annex 4.3).

Cooperation procedure

10. In the interests of simplifying and rationalising the Union's decision-making process, a large majority of delegations favoured abolishing the cooperation procedure (Article 252), on the understanding that the choice of a replacement procedure for the four provisions in question (see Annex 4.4) still remained open: many took the view that the cooperation procedure should be replaced by consultation of the European Parliament; others thought the co-decision procedure should be required.

Legislative act

11. The Conference discussed a particular aspect of the general problem of the hierarchy of norms on the basis of a proposal from the Presidency, which envisages the creation of a new category of acts that could be designated "legislative act". After the discussion, the Legal Service was asked for a study paper on this subject, the main points of which are that:

– *the constant increase in the number of co-decision procedures and the workload thereby imposed on the European Parliament and the Council suggest that the concept of legislative act should be clarified, with the emphasis on defining the general principles, basic elements and objectives of Community legislation rather than on technical details that are more appropriate to acts covered by a lighter procedure;*

– *this development would correspond to the institutional and legal practice of all the Member States, where a distinction is made between acts affecting the essential aspects of a subject covered by a cumbersome procedure in which the national parliaments are fully involved and implementing measures covered by a lighter procedure;*

– *retaining the current practice could, with the next enlargement, impair the quality of legislative work owing to the proliferation of procedures and the lack of time; introducing certain hierarchy of acts would have the advantage of ensuring greater comprehensibility of the Treaty and greater transparency of the decision-making procedure for the ordinary citizen;*

– *one of the objections to such an approach has questioned the practical possibility of establishing within the Treaty a line of demarcation between provisions under legislative acts and those that come under the heading of "implementing measures": this objection could be overcome if the Treaty was confined to encouraging the institutions to proceed in that direction without establishing demarcation criteria (these would emerge, case by case, from the legislative debate itself).*

12. *Annex 4.5 contains two suggested amendments to the Treaty (in the form of options) which illustrate this approach. On an initial examination there were slight variations in the reactions to them: several delegations were interested in what they saw as a first step towards clarifying and rationalising the Union's legislative activity, with a certain preference for option 2; others, without underestimating the value of the approach, were concerned that it would come up against practical problems of implementation and affect the institutional balance.*

13. *It was agreed that, because of the importance of the subject and its numerous implications, the discussion should be continued so that all of its practical, legal and institutional aspects could be looked at.*

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5. THE COURT OF JUSTICE AND THE COURT OF FIRST INSTANCE

1. *Since the establishment of the European Communities, the Court of Justice has played an essential role in the development of law. The Community's judicial system has enjoyed considerable success. However, the growing number of cases before the Community courts and the prospect of an enlarged Union mean that changes to the structure and operation of the system are required. This is a generally shared view and so the discussions are concerned with the details and not the principle of the reform.*

2. *This Chapter sets out:*

   – *the guidelines that have been welcomed by all delegations;*

   – *the reform guidelines that might be acceptable after further negotiation;*

   – *some ideas that have aroused the interest of certain delegations but have not led to any final positions;*

   – *a number of matters that have not yet received sufficient study.*

A. Reform guidelines welcomed by all delegations

3. *All delegations agree that it is necessary to provide as of now – during the reforms to be introduced concerning the procedures for amending the provisions governing the Court of Justice (hereafter "CJ") and the Court of First Instance (hereafter "CFI") – for a sufficient degree of flexibility so that, in the future, adjustments can be made to the new circumstances that enlargement will bring, without any need for a cumbersome procedure of amendments to the Treaty. A satisfactory solution would be to give suitable powers to the Council, which would act on the basis of unanimity or qualified majority according to circumstances.*

4. *In line with this way of thinking, the Protocol on the Statute of the CJ, which could be amended by the Council acting unanimously (Article 245(1)), should incorporate the provisions which, by their nature, are out of place among the provisions of the Treaty (cf. the references to the Statute contained in Articles 221, 222, 223, 225, 225a and 236). The Statute should also incorporate Council Decision 88/591/ECSC,EEC,Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities* [1].

5. *This concern for flexibility also led delegations to accept the qualified majority rule for the Council's approval of the Rules of Procedure of the CJ and of the CFI (Article 245(2) and (3)).*

6. *As to the composition and operation of the CJ and the CFI, there was almost unanimous agreement on the following amendments:*

   – *the number of judges participating in the CJ's plenary session should be limited so that it does not become an assembly (Article 221);*

   – *it should not be compulsory for Advocates-General of the CJ to intervene in all the cases before the CJ; the number of Advocates-General should be stipulated in the CJ Statute (Article 222).*

7. *There was fairly broad agreement that the number of CJ judges should equal the number of Member States (Article 221) so as to ensure that all legal traditions and systems existing within the Union were represented. One delegation reserved its position on this approach.*

8. *Delegations were in favour of creating specialised judicial boards of appeal, particularly for staff matters and for actions arising from the Office for Harmonisation in the Internal Market in Alicante. The Council would be given the power to create them (Articles 225a and 236).*

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1 OJ L 319, 25.11.1998, p. 1. Decision last amended by Council Decision 1999/291/EC, ECSC, Euratom of 26 April 1999, OJ L 114, 1.5.1999, p. 52.

9. There was a consensus on making provision for appeals to the TFI – which could, moreover, change its name – against decisions taken by these Boards of Appeal. The Council should also be given the power to provide for such appeals by means of the procedure for amending the Protocol on the Statute of the Court of Justice (Articles 225a and 236).

B. Reform guidelines that might be acceptable

10. The following guidelines received fairly broad support from most delegations; however, some of them expressed reservations, believing that further negotiation was needed:

- *amendments concerning the powers of the Court of Justice regarding questions submitted for a preliminary ruling in connection with visas, asylum, immigration and other policies relating to the free movement of persons (Article 68);*

- *connection between the various levels of jurisdiction – relationship between the CJ, the CFI and the boards of appeal (Article 220);*

- *determination of cases where the Advocates-General would intervene at both the Court of Justice and the CFI (second paragraph of Article 222);*

- *determination of direct actions or proceedings for which the CFI would have competence (Article 225(1));*

- *the possibility of giving the CFI competence – in clearly specified areas and by way of exception – to hear and determine questions referred for a preliminary ruling (first subparagraph of Article 225(2);*

- *either the introduction of a "preliminary examination" by the Court of Justice of questions for a preliminary ruling on which the CFI would be able to hear and determine, or the introduction of a "corrective mechanism" that would enable the CJ to ensure case-law consistency where the CFI was competent to hear and determine certain questions referred for a preliminary ruling (second subparagraph of Article 225(2);*

– *the Commission's right of initiative in certain procedures – determination of the direct actions and areas of questions referred for a preliminary ruling which are assigned to the CFI (Article 225(3)), creation, composition and operating procedures of the boards of appeal (Article 225a) and amendment of the Statute (Article 245(1));*

– *the rule (unanimity) for adopting certain Council acts – determination of the direct actions and areas of questions referred for a preliminary ruling which are assigned to the CFI (Article 225(3)), creation, composition and operating procedures of the boards of appeal (Article 225a) and composition and operating procedures of the board of appeal for Community staff (second paragraph of Article 236); the last two provisions can be combined in the same Article.*

C. Ideas considered to be of interest

11. A number of ideas put forward by various delegations were deemed to be of interest but did not at this stage gain the support of all delegations. They are as follows:

– *the need for the Treaty to give details of the "Grand Chamber" (Article 221, option B);*

– *the need for the Treaty to give details of the election of presidents of chambers and the duration of their term of office (Article 223(2));*

– *amending Article 230 to give the European Parliament legal capacity on an equal footing with the Council and the Commission;*

– *amending the third paragraph of Article 230 to include the Committee of the Regions and "federal entities with legislative powers";*

– *amending Article 300(6) to enable the European Parliament to ask the CJ for an opinion as to whether an agreement that the Community envisages concluding with a third country is compatible with Community law;*

– *establishment of a legal basis allowing specialised courts to be set up in future, whose decisions would be subject to appeal before the Court of Justice, following the example of the CFI.*

D. Issues for further consideration

12. *Some issues have not yet been discussed but should be considered in future. These include in particular certain aspects relating to the Boards of appeal, such as their composition and how they operate – at least in outline – and the procedure used to adopt their rules of procedure. These aspects are closely linked to the issue of how the various levels of jurisdiction should interact.*

6. OTHER INSTITUTIONS AND BODIES

1. *The Conference discussed the changes that might be made to the other institutions and bodies. The discussion showed that there was overall support for maintaining the status quo, apart from a few adjustments mainly concerning the size of the consultative bodies and, secondarily, their role.*

A. The Court of Auditors

2. *The role of the Court of Auditors is to consider the legality and regularity of the Union's income and expenditure and to ensure its sound financial management. The Court of Auditors consists of 15 members appointed for a renewable term of six years.*

Size, internal organisation and term of office of the members of the Court of Auditors

3. *Most delegations consider that the Court should consist of one national from each Member State in order to facilitate cooperation with the competent national audit bodies. Others do not share this point of view and have spoken in favour of retaining the current figure of 15 members, or indeed of reducing this figure to 12 in order to maintain the efficiency of the Court's proceedings.*

4. *Most delegations were open to the idea of setting up chambers within the Court and enabling the Court to draw up its own rules of procedure, with the exception – some pointed out – of the rules governing languages. Others feel that neither the need to set up chambers within the Court nor the need to change the provisions on drawing up its rules of procedure have been fully demonstrated.*

5. *As regards the length of the term of office of the Court's members, there is overall support for maintaining the status quo, namely a renewable 6-year term. However, a few delegations would be willing to contemplate a non-renewable 9-year term.*

Protecting the Union's financial interests

6. A large majority of delegations considered that the provisions introduced at Amsterdam to protect the Union's financial interests are sufficient and that there is no justification for amending Article 280 in order to establish an independent structure with the task of adjudicating on the financial liability of officials or servants. Other delegations emphasised the importance, in general terms, of providing the Union with every means of ensuring that its financial interests are effectively safeguarded, whilst reserving the right to consider the best way of achieving this objective, including strengthening existing bodies such as OLAF.

B. The Economic and Social Committee

7. The Economic and Social Committee consists of representatives from the various categories of the social and economic sectors. It currently has 222 members (between 6 and 24 for each Member State). No ceiling on the number of members is laid down in the Treaty.

Size

8. Most delegations were in favour of setting an absolute limit on the number of Committee members. Some thought that this should correspond to approximately one half – others approximately one third – of the ceiling for the European Parliament by means of a linear reduction in the number of current members either with or without a set minimum on the number of seats per Member State (see Annex 6.2 for an example of a linear reduction which remains within the ceiling of 250 members). However, a number of delegations were opposed to introducing an absolute limit on the number of Committee members, favouring instead an extrapolation of the number of Committee members based on the key currently used to allocate seats (see Annex 6.1).

Composition

9. Although a more satisfactory and balanced representation of the various socio-professional categories and the different sections of civil society might be desirable, there was no significant support within the Conference at this stage in favour of amending Article 257 along those lines (cf. Annex 6.3).

C. The Committee of the Regions

10. The Committee of the Regions is a consultative committee consisting of representatives of regional and local authorities. At present it has 222 members (between 6 and 24 from each Member State).

Size

11. Several delegations were in favour of an absolute limit on the number of Committee members, which should be calculated to ensure that the various regions of all the Member States are adequately represented. This limit should correspond to approximately one half – or one third – of the ceiling for the European Parliament by means of a linear reduction in the number of members (see Annex 6.2). Other delegations seem to prefer an extrapolation of the number of members based on the current allocation of seats (see Annex 6.1), believing that an extrapolation of this kind would be the only means of ensuring that the regional dimension in each Member State is properly represented, including after the accession of all the applicant countries. The possibility of using the same allocation key as that used to allocate seats in the European Parliament was also mentioned.

Composition

12. The large majority of delegations consider that the members of the Committee of the Regions must hold a regional or local authority electoral mandate or be politically accountable to an elected assembly (draft amendment to Article 263(1) in Annex 6.3). Most delegations share the view that Committee members who lose their electoral mandates should automatically lose their mandates on the Committee of the Regions. A few delegations expressed their reluctance to agree to changes in the composition of the Committee of the Regions.

13. Suggestions were also put forward by one delegation for transforming the Committee of the Regions into an institution and providing it with access to the Court of Justice. These suggestions have so far received only limited support.

D. Date of the entry into force of the changes

14. The large majority of delegations believe that changes with regard to the Court of Auditors, the Economic and Social Committee and the Committee of the Regions should be introduced gradually, as and when applicant States become members of the Union.

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7. OTHER ISSUES

A. Article 7 of the Treaty on European Union

1. The Conference examined proposed amendments mainly involving the addition to Article 7 of a procedure for determining the existence in a Member State of a threatened breach of the principles laid down in Article 6(1). Delegations' initial reactions to these suggestions relate both to the issue of principle and to the procedure for implementing it.

2. As regards the principle, several delegations felt that a provision of this kind satisfied a genuine need in the Union to supplement and to adjust the current arrangements under Article 7 which involve the use of exceptional measures to deal with exceptional circumstances; other delegations, however, remained rather sceptical, contending, on the one hand, that the issue had been thoroughly discussed – and settle – at Amsterdam and that there was thus no need to return to the subject now, and, on the other hand, that it was difficult – indeed impossible –to determine objectively the kind of circumstances in which this provision would be required;

3. As regards the implementing arrangement, given the specific nature of the subject, some felt it would be more logical not to weight Member States' votes; in addition, various opinions were expressed as to which threshold should be set for decision-making (consensus minus one, qualified majority, other kind of majority) and as to whether any provision should be made for adopting measures at all, since what is involved is identifying a slight risk rather than a clear breach of the principles in Article 6.

4. Without disregarding the slight differences between the delegations' positions, there was clearly broad support for closer consideration of this issue; accordingly, the Presidency has drawn up a text (see Annex 7.1) to facilitate further work on the subject which endeavours to take account of the initial points emerging from discussions.

B. Establishment of the Community position in a body which is set up under an agreement with third States and which is required to adopt decisions having legal effect

5. With a view to laying down a coherent procedure for establishing the Community position each time decisions having legal effect have to be adopted by bodies set up under international agreements, broad consensus was recorded on the draft amendment proposed for the second and third subparagraphs of Article 300(2) in Annex 7.2, aligning the procedure on that currently used for association agreements.

C. Presentation/organisation of the Treaties

6. Further to a request from the Commission, the Florence University Institute prepared a draft reorganisation of the Treaties, which was sent to the delegations at the end of May and which will be the subject of a Commission communication in July 2000. This work dovetails with the effort made at the previous IGC, which led to a draft merger of the TEU and the TEC prepared by a group of experts. As there is no Commission evaluation and a shortage of time, the delegations have been unable to adopt a position on that new draft. However, it is already generally agreed that, in view of both the technical nature of the matter and its political sensitivity this work cannot, in any event, be concluded during the current Conference. It is therefore for the next Presidency to propose the necessary provisions, in due course, for the discussion to continue in accordance with suitable arrangements and in an appropriate framework.

D. Other questions raised by the Conference

7. The Conference considered other issues corresponding to general or specific concerns expressed by the Member States and the institutions and bodies of the Union (see Annex 7.3). It is generally agreed that at this stage of the discussions there are neither objective reasons nor sufficient support to justify the inclusion of these issues in the Conference agenda, even if, in some cases, their importance in further institutional discussions after the present IGC is acknowledged.

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8. CLOSER COOPERATION

1. *As a result of the recent informal discussions within the IGC, the subject of "closer cooperation" is now regarded as part of the debate on institutional reform and the Presidency officially proposes that this item be added to the Conference agenda. To assist further discussion of this matter, the Presidency believes that it would be useful to better define the concept of closer cooperation and the different contexts it covers in order to examine, where thought justified, how to facilitate closer cooperation in mutually acceptable conditions.*

A. "Predetermined" closer cooperation

2. *The model of closer cooperation which could be termed "predetermined" (Schengen or EMU type of cooperation) is, at present, the only example of closer cooperation which has actually been realised. It is different from the "enabling clause" insofar as the arrangement that applies (fields and terms) is contained in the Treaty itself, which allows for a "tailor-made solution" according to the desired aim. The counterpart to this facility would be the need to proceed within the framework of the Treaty, i.e. in this case, before the end of this IGC. This raises the question of whether or not the Member States intend to propose using the "predetermined" method of closer cooperation in certain fields during this Conference. The following areas were mentioned during the discussions: security and defence; police and judicial cooperation; industry; research; and the environment (for the promotion of specific projects in the last case). In all these cases, it would also be necessary to identify the aspects of the areas in question, the objectives and the conditions in which closer cooperation would be possible.*

B. Enabling clauses

3. The Treaty of Amsterdam introduced such a clause in the first and third pillars of the Treaty (possible, in the first case, following a proposal from the Commission and, in the second, by the Commission delivering an Opinion). During the discussion, two major trends emerged: some thought that the current system should be maintained while others thought that a certain degree of flexibility should be introduced in the models defined in Amsterdam.

4. The following arguments were put forward in support of maintaining the existing provisions:

– *since these clauses have never been used and there has never been a concrete proposal to do so, it seems premature, in the absence of any experience, to contemplate amending them at this IGC;*

– *the possible amendments to the system continue to be regarded with considerable apprehension by certain States, in particular the applicant states, where the scope for systematic use of closer cooperation is interpreted as paving the way for future fragmentation of the Union;*

– *the extension of qualified-majority voting introduced by revisions of the Treaties since the Single European Act, including the revision that will result from this Conference, will increasingly reduce the need to avail of closer cooperation, given the scope to adopt acts with all the Member States in accordance with the usual Treaty procedures.*

5. Other delegates saw a need to amend the existing provisions for the following reasons:

– *the conditions for using these clauses are so strict that they preclude their use in practice;*

– *the increasing heterogeneity of an enlarged Union would probably make it increasingly difficult to obtain unanimity among the Member States to engage in closer cooperation;*

– *easier access to closer cooperation is the best way to deal with the temptation which some Member States might have to develop cooperation outside the framework of the Treaty which might compromise the cohesion of the Union's activities.*

– *closer cooperation must not be seen as a factor of fragmentation or dilution but, on the contrary, as a factor of integration insofar as it sets more ambitious objectives to be shared by all members.*

6. *Without prejudice to the diverging opinions, a debate began, primarily during the informal meeting in Sintra, on how the conditions for using the enabling clauses might be relaxed without, however, dispensing with the essential guarantees which ensure the legitimacy of closer cooperation.*

7. *The initial discussions have shown that there are two ways of approaching the relaxation of the current system:*

(i) simplifying the procedure:

- dispensing with any procedure which could be treated as a veto (emergency brake);

- *reducing the minimum number of Member States currently required. Differentiating the procedure in accordance with the number of requesting Member States could also be envisaged, with a stricter procedure when a request was submitted by less than half of the Member States; the possibility of differentiating the procedure according to fields could also be examined;*

- *scope, in certain cases, to postpone the decision to allow a period for further examination.*

(ii) simplifying the conditions in certain fields:

The hazards of closer cooperation for non-participant third parties and for the consistency of EU policies vary according to the area in question. The risk of distortion is real in the case of regulatory activities directly or indirectly related to the internal market; the risks are much lower for areas where the Member States already have a certain degree of autonomy in decision-making or in the case of initiatives devoid of any regulatory content (e.g. action programmes). It is important therefore to ensure, as far as possible, that the authorisation decision is not motivated by pure political expediency but is rather the result of a two-sided debate based on objective elements.

8. It follows from the above that:

- *the conditions set for closer cooperation could be differentiated according to pillars and fields so that rights which the Treaty accords to non-participants, notably in the area of the internal market, are fully preserved, and that no artificial barriers stand in the way of initiatives which, by their nature, cannot affect the interests of non-participating Member States;*

- *the role of the Commission and the general requirement to give reasons should be strengthened in whatever new procedure is adopted and that the open nature of the models should always be preserved, on the basis of transparent and objective catch-up conditions.*

C. Closer cooperation in the field of CFSP

9. Although mentioned on several occasions by different Member States, the issue of closer cooperation under the second pillar was not really discussed at the Conference. The Presidency considers that the problem of closer cooperation does not arise in the same way for the CFSP as it does for the policies falling under the first and third pillars. The value and strength of a common foreign policy is its unity and, on the face of it, the use of enabling clauses which would allow separate initiatives seems somewhat incompatible with the desired result. Moreover, the Treaty already contains provisions which introduce some flexibility where this

might prove necessary, notably:

- *Article 23(1), which offers a solution in a situation where a minority does not want to participate in an EU measure by allowing that minority not to apply a decision, while at the same time accepting that the decision commits the Union (constructive abstention);*

- *Article 17(4) on security/defence, which lays down that the Treaty shall not prevent the development of closer cooperation between two or more Member States, provided such cooperation does not run counter to or impede the cooperation provided for therein.*

10. *The question is whether it is desirable and possible to go beyond these sources of flexibility. If we take as our premise the requisite unity of foreign policy, the Presidency considers that closer cooperation might be conceivable where there is no specific manifestation of the policy of the Union in the form of strategy, action or common positions but only a general obligation to cooperate (pursuant to Article 12, fifth indent); indeed, it is possible to imagine this cooperation, depending on the subjects and the circumstances, concerning only a particular group of Member States without, however, contravening the obligations arising from the Treaty.*

11. *If there is agreement with this analysis, an ad hoc enabling clause could be envisaged in the field of CFSP. That would mean determining the arrangements, aims and guarantees for non-participants. The Presidency believes that the need to maintain the overall consistency of EU policy militates in favour of conferring upon the Commission some sort of special role for closer cooperation in the field of CFSP, e.g. instigation in this area could be subject to its assent. The Commission should also be able to give its opinion, either on its own initiative or at the request of a Member State, on the degree of compliance between the development of closer cooperation and the approved aims.*

D. Other issues

12. *Quite apart from the above points, it would be worth examining two other issues in relation to the general problem of closer cooperation. Firstly, the concept of "acquis" and its status, both of which should be clarified, particularly in the case of predetermined forms of cooperation such as EMU, and secondly, the problem of the institutional framework for closer cooperation which involves fewer than half of the Member States.*

PART II

TEXTS, LISTS AND TABLES

ANNEXED TO THE PROGRESS REPORT [1]

[1] In the Annexes, text in normal font comes from the current Treaty text. **Proposed amendments are in bold.**

ANNEXES TO CHAPTER 1

THE COMMISSION

Annex I ***Motion of confidence***

Annex II ***Clarification of provisions to apply when members of the Commission resign***

Annex 1.1

Commission request for a motion of confidence

Draft new Article 214a

Following a decision by the Commission, the President may ask the European Parliament for a vote of confidence on the basis of a general policy statement. If the European Parliament fails to pass a motion of censure pursuant to Article 201 within four days, the Commission will be deemed to retain Parliament's confidence.

Annex 1.2

Clarification of provisions to apply when members of the Commission resign

Draft amendment to Article 215

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

A vacancy caused **by death or resignation** shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled

In the event of **resignation or death**, the President shall be replaced for the remainder of his term of office. The procedure laid down in **Article** 214(2) shall be applicable for the replacement of the President.

Save in the case of compulsory retirement under **Article** 216, Members of the Commission shall remain in office until they have been replaced **or until the Council has decided not to fill a vacancy as provided for in the second paragraph**.

ANNEXES TO CHAPTER 2

WEIGHTING OF VOTES IN THE COUNCIL

Annex 2.1 ***Table of weighting and population for the existing Union of 15 Member States***

Annex 2.2 [1] ***Extrapolation of the current weighting system***

Annex 2.3 [1] ***Reference table for calculating population weight in a dual majority system***

Annex 2.4 [1] ***Illustration of the "simple" dual majority system***

Annex 2.5 [1] ***Illustration of the "weighted" dual majority system***

Annex 2.6 [1] ***First illustration of possible reweighting in favour of the most populated Member States***

Annex 2.7 [1] ***Second illustration of possible reweighting in favour of the most populated Member States***

Annex 2.8 [1] ***Illustration of possible reweighting based on an arithmetical approach***

[1] These tables show the situation for a Union of 28 (including all the States with applicant status) and for a Union of 27 (including only those applicant States with which accession negotiations have actually begun).

Annex 2.1

Table of weighting and population for the existing Union of 15 Member States

(1999 Eurostat Population Data)

MEMBER STATES	VOTES	POPULATION /000
Germany	10	82 038
United Kingdom	10	59 247
France	10	58 966
Italy	10	57 612
Spain	8	39 394
Netherlands	5	15 760
Greece	5	10 533
Belgium	5	10 213
Portugal	5	9 980
Sweden	4	8 854
Austria	4	8 082
Denmark	3	5 313
Finland	3	5 160
Ireland	3	3 744
Luxembourg	2	429
TOTAL EU	87	375 325

Total Votes = 87	Votes	% Votes	Min. No (and %) of Member States	Min. % of population
Qualified majority	62	71,26%	8 (53%)	58,16%
Blocking minority	26	29,89%	3 (20%)	12,38%

Annex 2.2

Extrapolation of the current weighting system [1]
(1999 Eurostat Population Data)

MEMBER STATES	VOTES	POPULATION /000
Germany	10	82 038
Turkey [2]	10	64 385
United Kingdom	10	59 247
France	10	58 966
Italy	10	57 612
Spain	8	39 394
Poland	8	38 667
Romania	6	22 489
Netherlands	5	15 760
Greece	5	10 533
Czech Republic	5	10 290
Belgium	5	10 213
Hungary	5	10 092
Portugal	5	9 980
Sweden	4	8 854
Bulgaria	4	8 230
Austria	4	8 082
Slovakia	3	5 393
Denmark	3	5 313
Finland	3	5 160
Ireland	3	3 744
Lithuania	3	3 701
Latvia	3	2 439
Slovenia	3	1 978
Estonia	3	1 446
Cyprus	2	752
Luxembourg	2	429
Malta	2	379
TOTAL EU of 28	144	545 566
TOTAL EU of 27 (without Turkey)	134	481 181

Union of 28 Member States

Total Votes = 144	Votes	% Votes	Minimum number (and %) of Member States	Minimum % of population
Qualified majority	102	70,83%	14 (50%)	51,36%
Blocking minority	43	29,86%	5 (17,9%)	10,45%

Union of 27 Member States

Total Votes = 134	Votes	% Votes	Minimum number and (%) of Member States	Minimum % of population
Qulaified majority	96	71,64%	14 (51,85%)	50,20%
Blocking minority	39	29,10%	4 (14,81%)	10,50%

[1] Maintaining and extrapolating the current weighting of votes including all the candidate States.
[2] Estimated figure cited in the Commission's opinion (source: national/IMF).

Annex 2.3

Reference table for calculating population weight in a dual majority system

This table [1] makes it possible to check whether or not the population criterion is met for any variant on the dual majority.

MEMBER STATE	POPULATION WEIGHT (EU-28)	POPULATION WEIGHT (EU-27)
Germany	150	169
Turkey	118	–
United Kingdom	109	123
France	108	123
Italy	106	120
Spain	72	82
Poland	71	80
Romania	41	47
Netherlands	29	33
Greece	19	22
Czech Republic	19	21
Belgium	19	21
Hungary	18	21
Portugal	18	21
Sweden	16	18
Bulgaria	15	17
Austria	15	17
Slovakia	10	11
Denmark	10	11
Finland	9	11
Ireland	7	8
Lithuania	7	8
Latvia	4	5
Slovenia	4	4
Estonia	3	3
Cyprus	1	2
Luxembourg	1	1
Malta	1	1
TOTAL EU	1 000	1 000

[1] The reference figures within the total of 1 000 will change with each enlargement in the light of the percentage of the Union's population represented by each Member State as the configuration of the Union changes, or whenever there is a substantial change in percentage for one or other of the Member States.

Annex 2.4

Illustration of the "simple" dual majority system

In this illustration the *two* conditions *needed* for a qualified majority are:

- **a majority of Member States**
- **a minimum population threshold of 58.2%** [1]

Union of 28 Member States

	Number (and %) of votes		Population weight (Annex 2.3)	Minimum % of population
Qualified majority	**15** (53,57%)	**AND**	**582**	58,2%
Blocking minority	**14** (50,..)	**OR**	**419** [2]	10,45%

Union of 27 Member States

	Number (and %) of votes		Population weight (Annex 2.3)	Minimum % of population
Qualified majority	**14** (51,85%)	**AND**	**582**	58,0%
Blocking minority	**14** (51,85%)	**OR**	**419** [2]	11,62%

[1] i.e. the minimum population currently represented by a qualified majority

[2] A blocking minority could be formed by four Member States.

Annex 2.5

Illustration of the "weighted" dual majority system

In this illustration the *two* conditions *needed* for a qualified majority are:

- **a "weighted" majority of Member States on the basis of an extrapolation of the current weightings, and**

- **a minimum population threshold of 58.2%** [1]

Union of 28 Member States

	Votes (Annex 2.2)		**Population weight (Annex 2.3)**	**% of votes**	**Minimum number (and %) of Member States**	**minimum % of the population**
Qualified majority [2]	**102**	**AND**	**582**	70,83%	14 (50,00%)	58,2%
Blocking minority	**43**	**OR**	**419**	29,86%	4 (14,29%)	10,45%

Union of 27 Member States

	Votes (Annex 2.2)		**Population weight (Annex 2.3)**	**% of votes**	**Minimum (and %) of Member States**	**minimum % of the population**
Qualified majority	**102**	**AND**	**582**	70,83%	14 (50,00%)	58,2%
Blocking minority	**43**	**OR**	**419**	29,86%	4 (14,29%)	10,45%

[1] i.e. the minimum population currently represented by a qualified majority.

[2] In both cases illustrated a qualified majority will always include a majority of Member States.

Annex 2.6

First illustration of possible reweighting in favour of the most populated Member States

The assumptions on which this illustration is based are described in Chapter 2, page22

MEMBER STATE	VOTES
Germany	25
Turkey	25
United Kingdom	25
France	25
Italy	25
Spain	20
Poland	20
Romania	12
Netherlands	12
Greece	10
Czech Republic	10
Belgium	10
Hungary	10
Portugal	10
Sweden	8
Bulgaria	8
Austria	8
Slovakia	6
Denmark	6
Finland	6
Ireland	6
Lithuania	6
Latvia	3
Slovenia	3
Estonia	3
Cyprus	3
Luxembourg	3
Malta	3
TOTAL EU of 28	311
TOTAL EU OF 27 (without Turkey)	286

Union of 28 Member States

Total votes = 311	Votes	% votes	Minimum number (and %) of Member States	Minimum % of population
Qualified majority	222	71,38%	13 (46,42%)	58,18%
Blocking minority	90	28,94%	4 (14,29%)	13,93%

Union of 27 Member States

Total votes = 286	Votes	% votes	Minimum No (and %) of Member States	Minimum % of population
Qualified majority	204	71,33%	11 (40,74%)	57,26%
Blocking minority	83	29,02%	4 (14,81%)	13,95%

Annex 2.7

Second illustration of possible reweighting in favour of the most populated Member States

The assumptions on which this illustration is based are described in Chapter 2, page22

MEMBER STATE	VOTES
Germany	25
Turkey	25
United Kingdom	25
France	25
Italy	25
Spain	21
Poland	21
Romania	12
Netherlands	10
Greece	10
Czech Republic	10
Belgium	10
Hungary	10
Portugal	10
Sweden	8
Bulgaria	8
Austria	8
Slovakia	6
Denmark	6
Finland	6
Ireland	6
Lithuania	6
Latvia	6
Slovenia	6
Estonia	6
Cyprus	4
Luxembourg	4
Malta	4
TOTAL EU of 28	323
TOTAL EU of 27 (without Turkey)	298

Union of 28 Member States

Total votes = 323	Votes	% votes	Minimum number (and %) of Member States	Minimum % of population
Qualified majority	231	71,52%	11 (39,28%)	58,04%
Blocking minority	93	28,79%	4 (14,29%)	12,08%

Union of 27 Member States

Total votes = 298	Votes	% votes	Minimum No (and %) of Member States	Minimum % of population
Qualified majority	214	71,81%	14 (51,85%)	56,54%
Blocking minority	85	28,52%	4 (14,81%)	11,85%

Annex 2.8

Illustration of possible reweighting based on an arithmetical approach

The assumptions on which this illustration is based are described in Chapter 2, page 22

MEMBER STATE	VOTES
Germany	18
Turkey	16
United Kingdom	15
France	15
Italy	15
Spain	13
Poland	12
Romania	9
Netherlands	8
Greece	6
Czech Republic	6
Belgium	6
Hungary	6
Portugal	6
Sweden	6
Bulgaria	6
Austria	6
Slovakia	5
Denmark	5
Finland	5
Ireland	4
Lithuania	4
Latvia	3
Slovenia	3
Estonia	2
Cyprus	2
Luxembourg	1
Malta	1
TOTAL EU of 28	204
TOTAL EU of 27 (without Turkey)	**188**

Union of 28 Member States

Total votes = 204	Votes	% votes	Minimum number (and %) of Member States	Minimum % of population
Qualified majority	146	71,57%	14 (50%)	58,18%
Blocking minority	59	28.92%	4 (14,29%)	12,08%

Union of 27 Member States

Total votes = 188	Votes	% votes	Minimum number (and %) of Member States	Minimum % of population
Qualified majority	134	71,28%	14 (51,85%)	56,19%
Blocking minority	55	29,26%	4 (14,81%)	12,91%

ANNEXES TO CHAPTER 3

EXTENSION OF QUALIFIED MAJORITY VOTING

Annex 3.1	***Provisions worth examining with a view to a possible move to qualified majority voting***
Annex 3.2	***Tax provisions***
Annex 3.3	***Social provisions***
Annex 3.4	***Environment provisions***
Annex 3.5	***External economic relations*** – ***Mixed agreements*** – ***European Union participation in WTO proceedings***
Annex 3.6	***Provisions in areas currently covered by Article 308 TEC*** – ***Economic, financial and technical cooperation with non-developing third countries*** – ***Establishment of decentralised agencies***
Annex 3.7	***Constitutional, quasi-constitutional or organic provisions for which unanimity is required in the Council***

Annex 3.1

Provisions worth examining with a view to a possible move to qualified majority voting

A. Provisions which could be considered for qualified majority voting as they stand

1. Appointment of CFSP special representatives **(Article 23 TEU)**

2. Conclusion of CFSP international agreements in areas in which a joint action has been adopted by a qualified majority **(Article 24 TEU)**

3. Anti-discrimination measures **(Article 13 TEC)**

4. Provisions facilitating the exercise of the right of citizens of the Union to move and reside within the territory of the Member States **(Article 18(2) TEC)**

5. The taking-up of and pursuit of activities as self-employed persons; the amendment in one or more Member States of the existing principles laid down by law governing the professions **(Article 47(2) TEC)**

6. The procedures and conditions for issuing visas by Member States and rules on a uniform visa (Article 62(2)(ii) and (iv) TEC)

7. Measures on asylum **(Article 63(1)(a), (b), (c) and (d) TEC)**

16. Measures on refugees and displaced persons **(Article 63(2)(a) and (b) TEC)**

17. Measures on immigration policy **(Article 63(3)(a) and (b) TEC)**

18. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States **(Article 63(4) TEC)**

19. Measures in the field of judicial cooperation in civil matters having cross-border implications, and insofar as necessary for the proper functioning of the internal market **(Article 65 TEC)**

20. Measures to ensure cooperation between the relevant departments of the administrations of the Member States, and between those departments and the Commission, in the areas covered by Title IV **(Article 66 TEC)**

21. Derogations from the normal procedure when the application of the principles of the regulatory system for transport is liable to have a serious effect on the standard of living and employment in certain areas and on the operation of transport facilities **(Articles 71(2) and 80(2), second subparagraph, TEC, concerning sea and air transport)**

22. Directives for the approximation of laws, regulations or administrative provisions of the Member States which directly affect the establishment or functioning of the common market **(Article 94 TEC)** [1]

23. The economic measures to be taken in the case of difficulties in the supply of certain products **(Article 100(1) TEC)**

24. Community financial assistance, under certain conditions, to a Member State which is in difficulties or is seriously threatened with severe difficulties caused by exceptional occurrences beyond its control **(Article 100(2) TEC)**

25. Conclusion of international agreements on intellectual property and services **(Article 133(5) TEC)** [2]

26. Incentive measures, excluding harmonisation, in the cultural field **(Article 151(5) TEC)** [3]

27. Measures supporting the action of Member States in the industrial sphere **(Article 157(3) TEC)**

28. Specific action for economic and social cohesion other than through the Structural Funds **(Article 159, third paragraph, TEC)**

29. Rules applicable to the Structural Funds and to the Cohesion Fund **(Article 161 TEC)**

30. Association of the overseas countries and territories **(Article 187 TEC)**

31. Approving the adoption of the statute for Members of the European Parliament **(Article 190(5) TEC)**

32. Appointment of the Secretary-General of the Council **(Article 207(2) TEC)**

33. Appointment of the Deputy Secretary-General of the Council **(Article 207(2) TEC)**

34. The Rules of Procedure of the Court of First Instance **(Article 225(4) TEC)** [4]

35. The Rules of Procedure of the Court of Justice **(Article 245(3) TEC)** [4]

36. Appointment of members of the Court of Auditors (**Article 247(3) TEC**)

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[1] If all the tax aspects are to be covered by Article 93 (see Annex 3.2 below). Deletion of this Article could also be considered.

[2] See also Chapter 3 of Part I, page 30, and Annex 3.5 below.

[3] One delegation has made a drafting suggestion for this Article (see CONFER 4742/00).

[4] Subject to the transfer of certain sensitive material from the Rules of Procedure to the Statute of the Court of Justice and the Court of First Instance (see Chapter 5 of this report).

37. Financial Regulation **(Article 279 TEC)**

38. Compilation of the list of dual-use goods **(Article 296(2) TEC)**

39. Association agreements **(Article 310 TEC)** covering areas in which internal rules must be adopted by a qualified majority

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B. Provisions for which a move to qualified majority voting could be considered only for certain specific aspects (see Annexes below)

40. Establishment of decentralised agencies **(new Article 7(3) TEC)** [1]

41. Measures necessary to provide freedom of movement for workers and self-employed workers (**Article 42 TEC)** [2]

42. Certain clearly circumscribed tax measures **(Article 93(2) TEC)** [3]

43. Measures necessary for mutual assistance and cooperation between tax authorities **(Article 93(4) TEC)** [3]

44. Certain specific provisions on social matters **(Article 137(1) TEC)** [2]

45. Economic, financial and technical cooperation with non-developing third countries **(new Article 181a TEC)** [1]

46. Conclusion of mixed agreements **(new Article 300(8) TEC)** [4]

47. Arrangements for participation by the European Union in WTO proceedings **(new Protocol)** [4]

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The corresponding provisions of the ECSC and EAEC Treaties would be amended accordingly.

[1] See Annex 3.6 below.
[2] See Annex 3.3 below.
[3] See Annex 3.2 below.
[4] See Annex 3.5 below.

Annex 3.2

Tax provisions

Draft amendment to Article 93 [1]

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

2. By way of derogation from paragraph 1 and without prejudice to paragraph 3, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt:

- **measures concerning value added tax, excise duties and capital duty which modernise or simplify existing Community rules or ensure uniform, simple and transparent application of such existing rules;**

- **measures concerning indirect taxation for the sole purpose of preventing fraud, tax evasion and circumvention of existing rules;**

- **measures which have protection of the environment as their sole objective.**

[1] If Article 93 is to contain all the tax provisions, a move to QMV could be considered for Article 94 (see Annex 3.1, point 14).

3. The measures referred to in the first and second indents of paragraph 2 shall not affect:

– in the case of value added tax, rules concerning the location of transactions, the reallocation of VAT revenue between Member States, the determination of rates and rules which do not in themselves constitute an obstacle to the functioning of the internal market;

– in the case of excise duties, rules concerning the place of taxation or the fixing of rates.

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt provisions necessary for mutual assistance and cooperation between tax authorities within the Community with a view in particular to combating fraud and tax evasion and to recovery of tax claims.

Annex 3.3

Social provisions

Article 42

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

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

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

[Sentence deleted]

Article 137

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:

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

– working conditions;

– the information and consultation of workers;

– **representation and collective defence of the interests of workers and employers;**

– the integration of persons excluded from the labour market, without prejudice to Article 150;

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

– **the conditions for granting unemployment benefit where an employment contract is terminated;**

– **financial contributions for promotion of employment and job creation, without prejudice to the provisions relating to the Social Fund.**

Draft declaration to be adopted by the Conference

"It is to be understood that any expenditure incurred by virtue of the last indent of Article 137(1) of the Treaty establishing the European Community will be charged to heading 3 of the financial perspective."

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

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

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

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

   – social security and social protection of workers;

   – protection of workers where their employment contract is terminated**, without prejudice to the seventh indent of paragraph 1**;

   – ***[phrase deleted]*** **co-determination** ***[phrase deleted]*****;**

   – conditions of employment for third-country nationals legally residing in Community territory; [1]

   [indent deleted]

[1] The question arose of whether, for the sake of consistency, this indent should not be transferred to Article 63(3) as subparagraph (c), if appropriate, with its wording adjusted.

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

   In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

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

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

Article 144

[Deleted]

Annex 3.4

Environment provisions

Article 175(2)

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt measures **significantly affecting**:

[indent deleted] [1]

– town and country planning, management of **the quantitative aspects of** water resources and land use with the exception of waste management ***[phrase deleted]***;

– a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

[1] See Annex 3.2 – Article 93(2), 3rd indent.

Annex 3.5

External economic relations

Mixed agreements

Draft new paragraph 8 of Article 300 TEC

8. Where it is planned to conclude an agreement in which only some provisions come within the Community's powers, those provisions shall form a separate agreement, concluded on the basis of the relevant provisions of this Treaty.

European Union participation in WTO proceedings

Draft Protocol on arrangements for participation by the European Union (European Community and Member States) in WTO proceedings

Article 1

Participation by the European Union (European Community and Member States) in WTO proceedings shall be governed by the rules in this Protocol.

Article 2

A single procedure shall apply in all cases, whether involving the exercise of Community powers, the exercise of Member States' powers or the exercise of powers shared between the Community and the Member States.

Article 3

1. **The Commission shall act as the European Union's spokesman and sole negotiator and shall present the Union's common position as established in accordance with this Protocol.**

2. **In negotiations, the Commission shall act on the basis of prior authority from the Council. The Council may at any time give the Commission negotiating directives.**

3. **For the purposes of paragraph 2, the Council shall act by a qualified majority.**

Article 4

1. Member States may participate in all WTO meetings either directly or through the Council Presidency, which shall be assisted by the General Secretariat of the Council.

2. The Commission shall ensure that the Member States and the Council Presidency are informed in sufficient time of all WTO meetings to be held.

3. The Commission shall forward all documents available to it to the Member States and the Council Presidency without delay.

4. The Commission shall at all times agree to a request by any Member State for consultation on a position stated or to be stated on behalf of the Community and the Member States. If need be, the Commission shall ask to have the meeting adjourned in order to meet such a request.

Article 5

1. The common position to be stated by the Commission at the WTO on behalf of the European Union shall be established by the Council.

2. Notwithstanding paragraph 1, the common position to be stated by the Commission at the WTO on behalf of the European Union shall be established by the Committee referred to in Article 133 of the Treaty where its purpose is to comment on WTO texts which will not have any legal effect for the Community or for the Member States and no delegation has asked for the matter to be referred to the Council.

Article 6

The European Union common positions referred to in Article 5 shall be established by a qualified majority.

Article 7

1. If a dispute settlement procedure is initiated at the WTO against one or more Member States, the unity of the Union's representation must be upheld.

2. The Member State or Member States concerned shall be represented by the Commission in the procedure, including before the Appellate Body. The defence shall be prepared by the Commission, in close cooperation with the States in question, with the Council and the Committee referred to in Article 133 of the Treaty being kept fully informed.

3. The Member States concerned and the Commission shall make every effort to ensure that WTO procedures do not result in the calling into question of advantages enjoyed by the Community or by other Member States.

Article 8

1. Where a dispute settlement procedure is to be initiated against a third country belonging to the WTO, the Commission shall, after consulting the Committee referred to in Article 133 of the Treaty, hold the consultations provided for in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

2. A decision to request that the WTO establish a panel or to appeal against the report of such a panel shall be taken by the Committee referred to in Article 133 of the Treaty, in accordance with the procedure laid down in Article 6.

3. In a field coming within the powers of the Member States, if it is not possible to establish a common position in accordance with Article 6 in order to request the establishment of a panel at the WTO, a Member State may so request on its own behalf, save where the Council has decided by a qualified majority against such a request.

Annex 3.6

Areas currently covered by Article 308 TEC

Economic, financial and technical cooperation with non-developing third countries

Draft new Title XXI – Relations with third countries

Draft new Article 181a

1. Without prejudice to the provisions of Title XX, the Community shall carry out economic, financial et technical cooperation measures with third countries and shall adopt, if necessary, measures to assist the balance of payments.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, shall adopt the measures required for implementation of paragraph 1.

3. The procedures for the cooperation referred to in paragraph 1 may be the subject of agreements between the Community and the third countries concerned, which shall be negotiated and concluded in accordance with Article 300.

Establishment of decentralised agencies

Draft new paragraph 3 to be added to Article 7 TEC

3. Where this appears necessary in order to carry out any of the activities provided for in Article 3, the Council, acting in accordance with the procedure laid down in Article 251, shall establish an agency having legal personality and determine the rules applicable thereto.

Annex 3.7

Constitutional, quasi-constitutional or organic provisions for which unanimity is required in the Council

1. Provisions in respect of which the Treaties expressly provide for the adoption of a decision by the Member States in accordance with their respective constitutional rules:

- *Common defence (Article 17(1), first subparagraph, TEU)*
- *Integration of the WEU (Article 17(1), second subparagraph, TEU)*
- *Establishment of PJC Conventions (Article 34(2) TEU)*
- *Communitarisation of PJC areas (Article 42 TEU)*
- *Revision of the Treaties (Article 48 TEU)*
- *Accession of a new Member State (Article 49 TEU)*
- *Additional rights of citizenship (Article 22 TEC)*
- *Uniform electoral procedure (Article 190(4) TEC)*
- *Own resources (Article 269 TEC)*

2. Provisions which, in view of the *sui generis* character of the European Union, may be considered "quasi-constitutional":

- *Replacement of the provisions of the Protocol on the excessive deficit procedure (Article 104(14) TEC)*
- *Amendment of the Statute of the ESCB without a proposal from the ECB (Article 107(5) TEC)*
- *Committee procedure (Article 202 TEC)*
- *Decision on the order of the Presidency of the Council (Article 203 TEC)*
- *Alteration of the number of Members of the Commission (Article 213(1) TEC)*
- *Number of Judges and Advocates-General (Articles 221(4), 222(3) and 223(1) TEC)*
- *New classes of action before the CFI (Article 225 TEC)*
- *Statute of the Court of Justice (Article 245(2) TEC)*
- *Amendment of Commission proposal (Article 250(1) TEC); Second co-decision reading after a negative opinion from the Commission (Article 251(3) TEC); Commission's prerogatives*
- *Language rules (Article 290 TEC)*

3. Provisions allowing derogations from normal Treaty rules:

- *Not charging CFSP and JHA operational expenditure to the EC budget (Articles 28(3) and 41(3) TEU)*
- *Measures constituting a step back as regards the liberalisation of the movement of capital to or from third countries (Article 57 TEC)*
- *Measures constituting a step back as regards transport (Article 72 TEC)*

4. Provisions in respect of which the rule of unanimity ensures consistency between internal and external decisions:

- *Conclusion of international agreements unanimously in areas which have been the subject of a joint action adopted unanimously (Article 24 TEU)*
- *Conclusion of international agreements unanimously in areas in which unanimity is required for the adoption of internal rules (Article 300(2) TEC)*

ANNEXES TO CHAPTER 4

THE EUROPEAN PARLIAMENT

Annex 4.1 ***Table showing allocation of seats based on a linear reduction of the current model*** [1]

Annex 4.2 ***Table showing allocation of seats based on the European Parliament method of calculation*** [1]

Annex 4.3 ***List of legislative provisions which might be considered for extending co-decision***

Annex 4.4 List of provisions currently specifying the cooperation procedure, to be replaced by the simple consultation procedure or by co-decision

Annex 4.5 ***Introduction into the Treaty of the notion of "legislative act"***

[1] These tables show the situation for a Union of 28 (including all the States with applicant status) and for a Union of 27 (including only those applicant States with which accession negotiations have actually begun).

Annex 4.1

Table showing allocation of seats based on a straightforward linear reduction [1]

MEMBER STATES	POPULATION /000	EP SEATS EU of 28	EP SEATS EU of 27
Germany	82 038	71	77
Turkey [2]	64 385	64	–
United Kingdom	59 247	62	69
France	58 966	62	69
Italy	57 612	62	69
Spain	39 394	46	51
Poland	38 667	46	51
Romania	22 489	32	35
Netherlands	15 760	23	25
Greece	10 533	18	20
Czech Republic	10 290	18	20
Belgium	10 213	18	20
Hungary	10 092	18	20
Portugal	9 980	18	20
Sweden	8 854	16	18
Bulgaria	8 230	15	17
Austria	8 082	15	17
Slovakia	5 393	12	13
Denmark	5 313	12	13
Finland	5 160	12	13
Ireland	3 744	11	12
Lithuania	3 701	11	12
Latvia	2 439	7	8
Slovenia	1 978	7	7
Estonia	1 446	6	6
Cyprus	752	6	6
Luxembourg	429	6	6
Malta	379	6	6
TOTAL EU of 28	**545 566**	**700**	**-**
TOTAL EU of 27	**481 181**		**700**

[1] Reducing by 1/3 the seats allocated to each Member State and allocating additional seats (between 1 and 5) to Member States, according to the number of inhabitants above 3 million.

[2] Estimated figures cited in the Commission's opinion (source: national/IMF).

Annex 4.2

Table showing allocation of seats in a Union of 28, based on the European Parliament method of calculation

MEMBER STATES	POPULATION /000	EP SEATS EU of 28	EP SEATS EU of 27
Germany	82 038	92	104
Turkey[1]	64 385	73	–
United Kingdom	59 247	68	77
France	58 966	68	77
Italy	57 612	66	75
Spain	39 394	46	52
Poland	38 667	46	51
Romania	22 489	28	32
Netherlands	15 760	21	23
Greece	10 533	15	17
Czech Republic	10 290	15	17
Belgium	10 213	15	17
Hungary	10 092	15	16
Portugal	9 980	15	16
Sweden	8 854	14	15
Bulgaria	8 230	13	14
Austria	8 082	13	14
Slovakia	5 393	10	11
Denmark	5 313	10	11
Finland	5 160	10	10
Ireland	3 744	8	9
Lithuania	3 701	8	9
Latvia	2 439	7	7
Slovenia	1 978	6	6
Estonia	1 446	6	6
Cyprus	752	4	5
Luxembourg	429	4	5
Malta	379	4	4
TOTAL EU of 28	**545 566**	**700**	**-**
TOTAL EU of 27	**481 181**		**700**

[1] Estimated figures cited in the Commission's opinion (source: national/IMF).

Annex 4.3

List of TEC legislative provisions which might be considered for extending co-decision [1]

Asterisks denote provisions which are being considered by the Conference with a view to a possible move to QMV

1. Establishment of decentralised agencies (draft new paragraph 3 to be added to Article 7 TEC) *****

2. Action to combat discrimination **(Article 13 TEC) ***

3. Guidelines and conditions necessary to ensure balanced progress in all sectors of the internal market **(Article 14(3) TEC)**

4. Extension of provisions on services to nationals of a third country who provide services and who are established within the Community **(Article 49 TEC)**

5. Directives in order to achieve the liberalisation of a specific service **(Article 52(1) TEC)**

6. Measures on the movement of capital to or from third countries, involving direct investment, establishment, the provision of financial services or the admission of securities to capital markets **(Article 57(2) TEC)**

7. The procedures and conditions for issuing visas by Member States and rules on a uniform visa **(Article 62(2)(b)(ii) and (iv) TEC) ***

8. Measures on asylum **(Article 63(1)(a), (b), (c) and (d) TEC) ***

9. Measures on refugees and displaced persons **(Article 63(2)(a) and (b) TEC) ***

10. Measures on immigration policy **(Article 63(3)(a) and (b) TEC) ***

11. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States **(Article 63(4) TEC) ***

[1] It should be noted that a move to QMV in the Council is being suggested for the three provisions where co-decision currently applies in conjunction with unanimity in the Council (Articles 18(2), 47(2) and 151(5)) (see Annex 3.1).

12. Measures in the field of judicial cooperation in civil matters having cross-border implications, insofar as necessary for the proper functioning of the internal market **(Article 65 TEC) ***

13. Measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission, in the areas covered by Title IV **(Article 66 TEC) ***

14. Derogation from the normal procedure where the application of principles for the regulatory system for transport would be liable to have a serious effect on the standard of living and employment in certain areas and on the operation of transport facilities **(Articles 71(2) and 80(2) TEC) ***

15. Certain specific measures on taxation **(draft new paragraph 2 to be added to Article 93 TEC) ***

16. Provisions necessary for mutual assistance, cooperation and exchange of information between tax authorities within the Community with a view to combating fraud and tax evasion or avoidance **(draft new paragraph 4 to be added to Article 93 TEC) ***

17. Directives for the approximation of laws, regulations or administrative provisions of the Member States which directly affect the establishment or functioning of the common market **(Article 94 TEC)** [1] *****

18. Minimum requirements regarding the representation and collective defence of the interests of workers and employers, conditions for granting unemployment benefit and financial contributions promoting employment and job creation **(draft new provisions to be added to Article 137(1) TEC) ***

19. Specific measures in support of action taken by Member States in the industry sector **(Article 157(3) TEC) ***

20. Specific measures for economic and social cohesion outside the Structural Funds **(third paragraph of Article 159 TEC) ***

21. Rules governing the Structural Funds and the Cohesion Fund **(Article 161 TEC) ***

[1] If all the tax aspects are to be covered by Article 93 (see Annex 3.2).

Annex 4.4

List of TEC provisions currently specifying the cooperation procedure, to be replaced by the simple consultation procedure or by co-decision

22. Adoption of detailed rules for the multilateral surveillance procedure **(Article 99(5) TEC)**

23. Prohibition on privileged access to financial institutions **(Article 102(2) TEC)**

24. Specifying definitions for the application of the prohibitions referred to in Article 101 and in Article 103(1) **(Article 103(2) TEC)**

25. Harmonising the denominations and technical specifications of coins intended for circulation **(Article 106(2) TEC)**

Article 252

[Deleted]

Annex 4.5

Introduction into the Treaty of the notion of "legislative act"

Option 1

Draft amendment to Article 249 TEC

In order to carry out their task and in accordance with the provisions of this Treaty**:**

– the European Parliament acting jointly with the Council **shall adopt legislative acts under the procedure referred to in Article 251;**

– the Council and the Commission shall make regulations, issue directives, take decisions, make recommendations or deliver opinions.

A legislative act shall have general application. Without prejudice to specific provisions in this Treaty, it shall contain binding provisions which may either be binding in their entirety and directly applicable in all Member States or be binding on the Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods. Except where justified by the nature of the subject matter, it shall be confined to defining the general principles, the objectives to be achieved and the essential elements of the measures to be taken. Where appropriate, and without prejudice to Article 202, the legislative act shall provide that the principles, objectives and essential elements it has defined will be set out in greater detail in acts adopted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

[Remainder unchanged]

Draft amendment to Article 251(1)

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply; **the acts adopted in accordance with this procedure shall be legislative acts as defined in Article 249.**

Draft addition to the beginning of Article 253 and to the beginning of the first two paragraphs of Article 254

Legislative acts, *[remainder unchanged]*

Draft amendment to Article 207(3) [1]

3. The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it **is adopting legislative acts** with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council **adopts legislative acts,** the results of votes and explanations of vote as well as statements in the minutes shall be made public.

Option 2

Draft amendment to Article 251(1)

1. Where reference is made in this Treat to this Article for the adoption of an act, **the latter shall, save where special provisions of this Treaty or the nature of the measures to be taken so justify, be restricted to defining the general principles, the objectives to be attained and the essential elements of the measures to be taken. It shall be adopted** in accordance with the following procedure.

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1 If option 1 were adopted similar amendments would have to be made to other Treaty provisions, to replace "legislative" by "normative" (see in particular the Protocol on the role of national Parliaments in the European Union).

ANNEXES TO CHAPTER 5

THE COURT OF JUSTICE AND

THE COURT OF FIRST INSTANCE

Annex 5.1	***Possible amendments to be made to the Treaty provisions relating to the Court of Justice and the Court of First Instance***
Annex 5.2	***Possible amendments to be made to the Statute of the Court of Justice***
Annex 5.3	***Possible amendments to be made to the language provisions relating to the Court of Justice and the Court of First Instance***
Annex 5.4	***Other amendments resulting from the removal of the Decision of 24 October 1988 (88/591/ECSC, EEC, EURATOM)***

Annex 5.1

Possible amendments to be made to the Treaty provisions relating to the Court of Justice and the Court of First Instance

Draft amendment to Article 68

Article 234 shall apply to this Title. However, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1), relating to the maintenance of law and order and the safeguarding of internal security.

Draft amendment to Article 220

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

A Court *[of First Instance]* shall be established alongside the Court of Justice.

***[Autonomous]* Boards of Appeal shall exercise judicial functions in certain specific areas.**

Draft amendment to Article 221

Option A

The Court of Justice shall consist **of a number of judges equal to the number of Member States**.

The Court of Justice shall sit in plenary session or in chambers in accordance with the rules laid down for that purpose in the Statute of the Court of Justice [1].

Option B

The Court of Justice shall consist **of a number of judges equal to the number of Member States.**

Except in cases where the Statute requires a plenary session, the Court of Justice shall sit in one Grand Chamber, consisting of 13 judges, or in chambers. The composition of the chambers and the respective competence of these chambers and the Grand Chamber shall be determined by the Statute. In any event, the Grand Chamber shall sit whenever the President deems it necessary or at the request of any Member State or Community institution party to the proceedings.

[1] It is understood that the Statute of the Court of Justice would have to provide henceforth for the formation of chambers of 3 to 7 judges (or more). There would also be a "Grand Chamber", which would consist of 11 to 15 judges and which would sit, inter alia, at the request of a Member State or an institution. Furthermore, the same exercise should be carried out to identify in the Statute those cases in which it would be appropriate for the plenary assembly of judges to take decisions.

Draft amendment to Article 222

The Court of Justice and the Court *of [First Instance]* shall be assisted by Advocates-General, whose number shall be determined in the Statute.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make [1] reasoned submissions on certain cases brought before the Court of **Justice or the Court *[of First Instance]***,

[in accordance with the conditions laid down by the Statute of the Court of Justice in order to assist these bodies in the performance of their task.]

or

[which in the opinion of the Court of Justice or, if appropriate, the Court [of First Instance] require their involvement.]

[1] The question of public access to the conclusions of Advocates-General could be settled in the Statute, as is already the case for judgments (see Article 34 of the Statute).

Draft amendment to Article 223

1. The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

   Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute.

   Retiring Judges and Advocates-General shall be eligible for reappointment.

2. The Judges shall elect the President of the Court of Justice ***[and the presidents of the*** **five/seven** ***judge chambers]*** from among their number for a term of three years. The President of the Court of Justice may be re-elected.

3. The members of the Court *[of First Instance]* shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment. The Statute shall determine the composition of the Court *[of First Instance]*.

Draft amendment to Article 225

26. The Court *[of First Instance]* shall be competent to hear and determine at first instance

[classes of action or proceeding defined in accordance with the conditions laid down in paragraph 3.]

or

[classes of direct action or proceeding referred to in this Treaty, with the exception of those that the Council, acting in accordance with the procedure set out in paragraph 3, reserves for the exclusive competence of the Court of Justice* [1]*].

Decisions given by the Court *[of First Instance]* on such actions or proceedings may be subject to a right of appeal to the Court of Justice on points of law only, within the limits and under the conditions laid down by the Statute.

The Court *[of First Instance]* shall be competent to hear and determine questions referred for a preliminary ruling under Article 234, in matters to be defined *[in certain specific fields]*.

[In respect of those matters, the Court of Justice shall first consider whether a question referred for a preliminary ruling raises an issue of general application or importance or involves the unity and coherence of Community law. If so, the Court of Justice shall itself give the ruling. Where a question does not raise such an issue, the President of the Court of Justice shall transfer it to the Court [of First Instance] to give the ruling.]

or

[Decisions given by the Court [of First Instance] by way of preliminary ruling may be subject to review by the Court of Justice, within the limits and under the conditions laid down by the Statute].

3.[2] The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, ***[or at the request of the Commission and after consulting the European Parliament and the Court of Justice]***, shall determine the classes of action or proceeding referred to in paragraph 1 **and the matter(s) referred to in paragraph 2.**

Unless otherwise specified, the provisions of this Treaty relating to the Court of Justice shall apply to the Court *[of First Instance]* and to the Boards of Appeal.

4. [Paragraph deleted, provisions inserted into Article 245.]

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[1] This alternative requires that a list now be drawn up to identify the actions and proceedings reserved for the exclusive competence of the Court of Justice.

[2] The current provisions of Article 225(3) have been inserted into Article 223.

Draft new Article 225a

When, in specific fields, there is a sufficiently large amount of litigation, the Council may, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, create judicial Boards of Appeal for particular subjects.

Following the same procedure, the Council shall determine the composition of those judicial Boards of Appeal and the way in which they function.

Decisions given by the Boards of Appeal may be subject to appeal before the Court *[of First Instance]* on points of law only, within the limits and under the conditions laid down by the Statute.

Draft amendment to Article 236 [1]

A judicial Board of Appeal shall have jurisdiction in any dispute between the Community and its servants under the conditions laid down in the Staff Regulations of Officials or the Conditions of Employment of other servants.

The composition and the operating procedures of that Board of Appeal shall be determined by the Council, acting unanimously at the request of the Court of Justice *[or of the Commission]* and after consulting the other institutions *[and bodies]* concerned.

The decisions of the Board may be subject to appeal to the Court *[of First Instance]* on points of law only, within the limits and under the conditions laid down by the Statute of the Court of Justice.

[1] Some delegations raised the question of merging the provisions of this draft Article 236 and those of Article 225a in a single Article.

Draft amendment to Article 245

1. The Statute of the Court of Justice is laid down in a separate Protocol.

   The Council may, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, ***[or at the request of the Commission and after consulting the European Parliament and the Court of Justice]***, amend **the provisions of the Statute, with the exception of Title I thereof.**

2. The Court of Justice shall adopt its Rules of Procedure. Those rules shall require the approval of the Council **acting by a qualified majority after consulting the European Parliament and the Commission**.

3. **The Court *[of First Instance]* shall adopt its Rules of Procedure. Those rules shall require the approval of the Council acting by a qualified majority after consulting the European Parliament and the Commission.**

Draft amendment to Article 290

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the **Statute** of the Court of Justice, be determined by the Council, acting unanimously.

Annex 5.2

Possible amendments to be made to the Statute of the Court of Justice

1. **Languages:**

   (a) Articles 29 and 30 of the CJEC Rules of Procedure
   Transfer to the Statute

   (b) Article 104(1) of the CJEC Rules of Procedure
   Transfer to the Statute

   (c) Article 131 of the Rules of Procedure of the CFI
   Transfer to the Statute

2. **Article 46(1)**

   Delete "with the exception of Article 20"

3. **Include a new Article 44 relating to the CFI**

   Aim: remove Decision of 24/10/1998 (88/591/ECSC, EEC, Euratom), Article 2

4. **Include a new Article 45a relating to the CFI**

   Aim : remove Decision of 24/10/1998 (88/591/ECSC, EEC, Euratom), Article 3

Annex 5.3

Possible amendments to be made to the language provisions relating to the Court of Justice and the Court of First Instance

1. **EC Treaty – Article 290 (rules governing languages)**

   Include the reference to the Statute by adding:

   "(…), without prejudice to the provisions laid down in the Statute of the Court of Justice, (…)"

2. **Articles 29 and 30 of the Rules of Procedure of the Court of Justice**

   Transfer to the Statute (authorised languages of all proceedings)

   (Remove Articles 35 and 36 from the Rules of Procedure of the CFI)

3. **Article 104(1) of the Rules of Procedure of the Court of Justice**

   Transfer to the Statute (authorised languages for referrals for a preliminary ruling)

4. **Article 131 of the Rules of Procedure of the Court of First Instance**

   Transfer to the Statute (authorised languages of litigation on intellectual property, trademarks and plant varieties)

Annex 5.4

Other amendments resulting from the removal of the Decision of 24 October 1988 (88/591/ECSC, EEC, EURATOM)

1. **Protocol on the Privileges and Immunities of the European Communities – Article 21**

   Add: "(…) and to the members and the Registrar of the Court of First Instance".

2. **EC Treaty – Article 210 (salaries, allowances and pensions)**

   Add: "(…) of the Registrar of the Court of Justice and the Registrar of the Court of First Instance".

ANNEXES TO CHAPTER 6

OTHER INSTITUTIONS AND BODIES

Annex 6.1 [1]	***Linear extrapolation based on the current system of allocating seats on the Economic and Social Committee and the Committee of the Regions***
Annex 6.2 [1]	***Linear reduction in the number of members of the Economic and Social Committee and the Committee of the Regions to comply with a maximum limit of 250 members***
Annex 6.3	***Composition of the Economic and Social Committee and the Committee of the Regions***

[1] These tables show the situation for a Union of 28 (including all the States with applicant status) and for a Union of 27 (including only those applicant States with which accession negotiations have actually begun).

Annex 6.1

Linear extrapolation based on the current system of allocating seats on the Economic and Social Committee and the Committee of the Regions

MEMBER STATES	POPULATION/ 000	SEATS
Germany	82 038	24
Turkey	64 385	24
United Kingdom	59 247	24
France	58 966	24
Italy	57 612	24
Spain	39 394	21
Poland	38 667	21
Romania	22 489	15
The Netherlands	15 760	12
Greece	10 533	12
Czech Republic	10 290	12
Belgium	10 213	12
Hungary	10 092	12
Portugal	9 980	12
Sweden	8 854	12
Bulgaria	8 230	12
Austria	8 082	12
Slovakia	5 393	9
Denmark	5 313	9
Finland	5 160	9
Ireland	3 744	9
Lithuania	3 701	9
Latvia	2 439	8
Slovenia	1 978	8
Estonia	1 446	8
Cyprus	752	6
Luxembourg	429	6
Malta	379	6
TOTAL EU of 28	**545 566**	**372**
TOTAL EU of 27	**481 181**	**348**

Annex 6.2

Linear reduction in the number of members of the Economic and Social Committee and the Committee of the Regions to comply with a maximum limit of 250 members

MEMBER STATES	POPULATION/ 000	SEATS EU of 28	SEATS EU of 27
Germany	82 038	16	17
Turkey	64 385	16	-
United Kingdom	59 247	16	17
France	58 966	16	17
Italy	57 612	16	17
Spain	39 394	14	15
Poland	38 667	14	15
Romania	22 489	10	11
Netherlands	15 760	8	9
Greece	10 533	8	9
Czech Republic	10 290	8	9
Belgium	10 213	8	9
Hungary	10 092	8	9
Portugal	9 980	8	9
Sweden	8 854	8	9
Bulgaria	8 230	8	9
Austria	8 082	8	9
Slovakia	5 393	6	6
Denmark	5 313	6	6
Finland	5 160	6	6
Ireland	3 744	6	6
Lithuania	3 701	6	6
Latvia	2 439	5	6
Slovenia	1 978	5	6
Estonia	1 446	5	6
Cyprus	752	4	4
Luxembourg	429	4	4
Malta	379	4	4
TOTAL EU of 28	**545 566**	**247**	**-**
TOTAL EU of 27	**481 181**	**-**	**250**

Annex 6.3

Composition of the Economic and Social Committee

Draft amendment to Article 257

An Economic and Social Committee is hereby established. It shall have advisory status.

The Committee shall consist of representatives of the various **economic and social components of organised civil society.**

Its composition must take account of the need to ensure adequate representation of the various categories and the public interest.

Composition of the Committee of the Regions

Draft amendment to Article 263

A Committee consisting of representatives of regional and local bodies **who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly,** hereinafter referred to as "the Committee of the Regions", is hereby established with advisory status.

The number of members of the Committee of the Regions shall be as follows: (…)

The members of the Committee and an equal number of alternate members shall be appointed for four years by the Council acting ***[by a qualified majority]*** on proposals from the respective Member States. **When the mandate on the basis of which they were proposed comes to an end, their term of office on the Committee shall automatically terminate and they shall be replaced for the remaining term under the same procedure.**

Their term of office shall be renewable. No member of the Committee shall at the same time be a Member of the European Parliament.

[Fourth paragraph unchanged]

ANNEXES TO CHAPTER 7

OTHER ISSUES

Annex 7.1 ***Draft new paragraph to be added at the beginning of Article 7 of the Treaty on European Union***

Annex 7.2 ***Establishment of the Community position in a body set up by an agreement with a third country which is called upon to adopt decisions having legal effects***

Annex 7.3 ***Other issues examined by the Conference***

Annex 7.1

Draft new paragraph to be added at the beginning of Article 7 of the TEU

x. In order to prevent a breach by a Member State of the principles mentioned in Article 6(1), the Council, acting by a majority of nine tenths [1] of its members on a proposal by one third of the Member States or by the Commission may, after obtaining the assent of the European Parliament, determine the existence of the threat of such a breach in a Member State and make an appropriate recommendation to the Member State in question, after inviting the Government of that Member State to submit its observations on the subject.

[Remainder unchanged]

[1] In a Union comprising up to 20 Member States, this voting rule is equivalent to unanimity less 2 (including the Member State concerned) and, in a Union comprising 21 States or more, to unanimity less 3 (including the Member State concerned).

Annex 7.2

Establishment of the Community position in a body set up by an agreement with a third country which is called upon to adopt decisions having legal effects

Draft amendment to the second and third subparagraphs of Article 300(2) TEC

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement ***[phrase deleted]***, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement ***[phrase deleted]***.

Annex 7.3

Other issues examined by the Conference

- Simplification of the Treaties

Allocation of powers between the Union/Community and the Member States

- Endowing the Union with legal personality

- Accession of the Union or of the Community to the Council of Europe's European Convention on Human Rights

- Creation of a legal basis establishing a European prosecutor responsible for the investigation and prosecution of fraud offences at Community level

- Provisions to intensify the fight against fraud and protection of the Community's financial interests

- The question of the expiry of the ECSC Treaty in 2002

- Development of certain Community policies more directly connected to European citizens' interests

- The general problem of the hierarchy of norms