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INITIAL CONTRIBUTIONS
BY
THE COMMISSION
TO THE
INTERGOVERNMENTAL CONFERENCE
ON POLITICAL UNION

COMPOSITE WORKING PAPER

- I. This paper contains the initial contributions made by the Commission to the Intergovernmental Conference on Political Union in January, February and March 1991.

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- II. As stated in its opinion of 21 October 1990 on political union (COM(90) 600 final), the Commission reserves the right to send the Conference further contributions concerning inter alia the Community's public finance system, education, the role of the regions, and the Economic and Social Committee.

UNION CITIZENSHIP

Draft text

Title 0

Union citizenship

Article X₁

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

Article X₂

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

Article X₃

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

Article X₄

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

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

Article X₅

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

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

Article X₆

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

Article X₇

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

Article X₈

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

Article X₉

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

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

Article X₁₀

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

Article X₁₁

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

- guarantee every Union citizen's right to equal treatment and equal opportunities and the enjoyment of social rights;
- reflect every Union citizen's obligation to display solidarity with other Union citizens and with nationals of non-member countries resident in the Union; this obligation entails respect for each person's dignity and the rejection of any form of social marginalization;

- guarantee every Union citizen's right to protection of his health and his obligation to safeguard the health of others, especially in his working environment.

Article X₁₂

The Council, acting unanimously on a proposal from the Commission after receiving the assent of the European Parliament, may add rights to those conferred by this Title.

EXPLANATORY MEMORANDUM

Subject: Union citizenship

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

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

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

2. The European Council meeting in Rome on 14 and 15 December 1990 also expressed support for the concept of European citizenship and made a specific reference to civic rights, social and economic rights based on the principle of equal treatment and opportunity for all Community citizens, and the protection of Community citizens outside the Community's borders. It also envisaged the possibility of setting up some form of ombudsman-type machinery for the defence of citizens' rights.

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

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

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

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

- rights which citizens derive directly from the Treaty (such as non-discrimination on grounds of nationality or freedom of movement), where it is simply a question of guaranteeing or facilitating the exercise of such rights, as the case may be, on the basis of the Court's case-law, and, possibly, by improving existing legal provisions;
- rights which require to be put into effect by legislation, together with the necessary detailed rules and conditions (for example, the right to vote, which has already been the subject of a Commission proposal, or rights related to the environment, taken from existing or proposed texts);
- the laying down of objectives for the granting of rights in the future and for defining obligations, especially in the social field.

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

- it is a component factor in the move to strengthen democratic legitimacy in the Community, both supplementing and transcending national citizenship;
- it reflects the aims of the Union, involving as it does an indivisible body of rights and obligations stemming from the gradual and coherent development of the Union's political, economic and social dimension.

4.2. The proposal includes:

- (a) a definition of the concept of citizenship of the Union (Art. X1);
- (b) a reference, in the context of the protection of fundamental rights, to the European Convention on Human Rights, to which the Commission has now proposed the Community should accede (Art. X2);
- (c) a statement of the general principle prohibiting discrimination on the grounds of nationality, modelled on Article 7 (deleted) but extended to cover private persons (Art. X3)¹;
- (d) a list and definition of the rights and corresponding obligations of Union citizens in terms of:
 - . civic rights and obligations: freedom of movement and residence for all citizens, whether or not they pursue a gainful occupation, freedom of political association, right

¹ This does not affect the exception provided for in Article 48(4), as interpreted by the Court, regarding posts involving the exercise of public authority.

to vote and right to stand for election (Art. X4 and X5), along the lines of the Commission's proposal of June 1982¹;

- . wider social rights and obligations: in the social field proper, as defined in the social provisions of the Treaty in the light of the Community Charter of the Fundamental Social Rights of Workers (Art. X11), as well as in the fields of culture (Art. X6) and the environment (Art. X7); these rights and obligations are based in particular on the principles of equal treatment and opportunity, social solidarity and respect for the dignity and diversity of all individuals;

- (e) the principle of equal protection for Union citizens in non-member countries (Art. X8).

4.3. This list of rights and obligations is accompanied by a number of implementing provisions.

Firstly an ombudsman-type function is created in the Member States, with the task of advising citizens of their rights and the courses of action open to them and of promoting the defence of those rights in dealings with the authorities and the courts (Art. X9).

Secondly provision is made for the adoption of measures to facilitate or, as appropriate, give effect to the rights and obligations of citizens (Art. X10). This would cover measures designed solely to guarantee or facilitate the exercise of rights directly conferred by the Treaty (non-discrimination on the grounds of nationality or freedom of movement, for instance) or measures laying down detailed arrangements for giving effect to rights such as the right to vote and stand for election, possibly by gradual stages (Art. X10). Obviously this in no way precludes the possibility of specific provisions in the Treaty laying down and guaranteeing the exercise of particular rights, as proposed in the case of social rights (Art. X11).

Lastly any subsequent extension of the rights of citizens of the Union would involve exacting procedural requirements similar or identical to those provided for in the new Article 235.

¹ Detailed arrangements for the exercise of these rights will have to be laid down in an implementing regulation.

COMMON EXTERNAL POLICY

Draft text

Title Y - COMMON EXTERNAL POLICY

Article Y 0

The common external policy shall cover common foreign and security policy, external economic policy and development cooperation policy as well as external relations in the other areas falling under Union responsibility. In the conduct of this policy, the Union shall seek to promote democracy, the rule of law and respect for human rights.

CHAPTER I: COMMON FOREIGN AND SECURITY POLICY

Article Y 1

The Union shall pursue a common foreign and security policy aimed at maintaining peace and international stability, and developing friendly relations with all countries, without prejudice to the special relations of individual Member States.

This policy shall be governed both by general provisions and by specific provisions on security and defence.

Section 1: General provisions

Article Y 2

Implementation of the common foreign and security policy shall rest on a distinction between matters that are deemed to be of vital interest for the Union and other matters in this sphere.

Article Y 3

1. To ensure that common principles and objectives are formulated and that effective common action is taken by the Union under the common foreign policy, the European Council shall, without prejudice to powers conferred under the other provisions of the Treaties, decide what matters are of vital common interest, acting on the initiative of the Presidency, or of the Commission or of a simple majority of the Member States, after hearing the views of the European Parliament.

When deciding what matters are of vital common interest, the European Council shall specify the conditions under which a Member State may, at its request, be given dispensation from the obligations which common action entails. The Member State concerned shall refrain from taking any measures that may affect the implementation of Union decisions.

2. Except where this Treaty provides otherwise, in matters that have been declared to be of vital common interest, the Council, acting by the majority specified in the second indent of Article 148(2)¹ on the initiative of the Presidency or of the Commission or of a simple majority of the Member States, shall:
 - formulate the principles of the common policy;
 - decide on action to be taken, whether it is to be implemented by the Union or by the Member States.

Article 149(1) shall not apply to Council Decisions under this Article.

Article Y 4

1. In matters that have not been declared to be of vital common interest the Member States and the Commission shall coordinate their positions on any external policy issue of general interest within the Council to ensure that their combined influence is exercised as effectively as possible through concerted deliberation, convergence of positions, and the pursuit of common action. To this end the Member States shall consult each other and the Commission on all national foreign policy measures they intend to take.
2. To enhance their capacity for joint action, the Member States shall work to secure the formulation and progressive development of common principles and objectives.
3. The Member States shall refrain from hindering consensus and joint action that may flow from it.
4. In adopting positions and pursuing national action, each Member State shall take full account of the positions of its partners, shall give due consideration to the importance of adopting and implementing common positions and shall avoid any action that may impair the Union's effectiveness as a cohesive force in international relations and in international organizations. Decisions on common positions shall constitute a point of reference for national policies.

¹ Where the Treaty does not provide for a Commission proposal, this involves an augmented qualified majority, which requires at least eight Member States to vote in favour.

5. If a Member State deems it necessary to act in response to a particularly serious situation or exceptional circumstances, it shall, before taking action, refer the matter to the Council, which shall decide without delay under Article Y 3(2) on whether action by the Union is called for.

Article Y 5

The European Parliament shall be closely involved in the formulation and conduct of the common foreign and security policy. To this end the Council and the Commission shall keep the European Parliament regularly informed of the matters dealt with under the policy and shall make sure that the European Parliament's views are taken into consideration.

Each year the European Parliament shall hold a debate on the common foreign and security policy, during which statements shall be made to it by the Council and the Commission. The Council and the Commission may also appear before European Parliament committees, either at the European Parliament's request or on their own initiative.

Article Y 6

The Council's deliberations and decisions shall be prepared and their implementation monitored by the General Secretariat of the Council in structured cooperation with the Commission.

The Permanent Representatives Committee shall be responsible for preparing the deliberations of the Council under the common foreign and security policy and for carrying out the tasks assigned to it by the Council to this end.

Article Y 7

1. In areas that come under the common foreign and security policy the Union shall be represented in relations with non-member countries and in international organizations and conferences by the Council Presidency and by the Commission, assisted where appropriate by the previous and next Member States to hold the Presidency.¹

The Council, acting by the majority specified in the second indent of Article 148(2) on a proposal from the Commission or from one of the Member States, may entrust one or more Member States with the task of presenting the Union's position in specific instances, for example, before the United Nations Security Council or the organs of the Atlantic Alliance or Western European Union.

2. To ensure that the Union is represented as effectively as possible the Member States and the Commission shall furnish each other with assistance and information to strengthen cooperation between their missions accredited in non-member countries and to international organizations.

1 Following the formula used for the troika, which here becomes a "quadriga", as the Commission is involved as well.

Article Y 8

The foreign policies of the Member States and action by the Union under the other provisions of this Treaty shall be consistent with the common foreign and security policy.

Should the danger of inconsistency arise, the Commission or any Member State may call for the Council to be convened with a view to taking a decision in accordance with the procedure specified in Article Y 3(2).

Article Y 9

Wherever it considers it appropriate, the Union shall organize a political dialogue with non-member countries and regional groupings.

Article Y 10

Articles 164 to 188 of the Treaty shall not apply to this Chapter.¹

Section 2: Common security policy

Article Y 11

The common security policy shall constitute an integral part of the Union's foreign policy. Its purpose shall be to strengthen security in Europe and to maintain peace in the world in accordance with the United Nations Charter. It shall rest on cooperation within the WEU. Its long-term objective shall be to establish a common European defence in full compliance with commitments entered into in the Atlantic Alliance.

Article Y 12

If any of the Member States is the object of an armed attack in Europe, the other Member States shall, in accordance with Article 51 of the United Nations Charter, afford it all the military and other aid and assistance in their power.

Article Y 13

1. Without prejudice to powers conferred under other provisions of this Treaty, in the areas of security and defence the Union shall treat as matters of vital common interest within the meaning of Article Y 3 the control of armaments, disarmament and related questions, security questions related to the CSCE or debated in the United Nations, including peacekeeping operations, economic and technological cooperation in the field of armaments, and coordination of policy on arms exports and non-proliferation.²

Under the common security policy, the Union shall establish an arms research and production policy.

1 This provision is designed to place the policy beyond the jurisdiction of the Court of Justice.

2 As enumerated by the second Rome European Council.

2. The European Council may identify other questions as being of vital common interest.
3. Where other provisions of the Treaty do not apply to questions declared to be of vital common interest, the Council shall:
 - formulate unanimously¹ the principles of common policy and the procedures to be followed when deciding on action to be taken;
 - decide on action to be taken, whether it is to be implemented by the Union or by the Member States.
4. A Member State may be given dispensation under the decisions provided for in paragraphs 2 and 3 from some of the obligations flowing from them, if it so requests for compelling reasons. The Member State concerned shall nevertheless refrain from taking any measures that may affect the implementation of Union decisions.

The Council shall review such dispensations regularly in the light of common policy developments to assess whether they are still compatible with the common interest.

A Member State that has been given dispensation shall not participate in Council deliberations on the matter in question or on the formulation, extension or application of the obligations from which it has been dispensed.

Article Y 14

The Ministers for Foreign Affairs and for Defence and the Commission shall hold a joint meeting at least twice each year to develop cooperation between the Member States in the field of defence. If necessary, they shall meet immediately, should a Member State so request.

Article Y 15

1. When deciding on action to be taken pursuant to Article Y 13(3), the Council shall also decide whether to refer implementation of the guidelines it has established to the WEU Council.
2. For the application of paragraph 1 the Union shall establish with the WEU such arrangements as may be necessary to enable Member States which are not members of the WEU and the Commission to attend meetings of the WEU bodies.
3. Member States which are members of the Atlantic Alliance shall express the Union position there when questions declared to be of vital common interest or questions dealt with by the WEU are discussed.
4. The Union shall endeavour to make use of the provisions of Article XII of the Treaty of Brussels of 17 March 1948 to promote the gradual integration of the WEU into the Union.

1 Abstentions shall not prevent the adoption of decisions.

CHAPTER II: EXTERNAL ECONOMIC POLICY

Article Y 16

External economic action by the Union shall contribute, in the common interest:

- to the harmonious development of the world economy and of world trade;
- to the progressive strengthening of economic relations in Europe and in the world, notably by abolishing barriers to the liberalization of trade;
- to the establishment of fair economic and social conditions in the world.

Article Y 16a

External relations in the areas covered by economic and monetary union shall be governed by the specific provisions of Articles 106b(1) and (3), 108(2) and (3), and 105e(2), and by Article Y 17.

Article Y 17

1. The Union shall pursue a common policy on external economic relations covering:
 - trade, including export credit and credit insurance schemes,
 - economic and commercial measures involving services, capital, intellectual property, investment, establishment and competition.
2. The Union shall have sole power to take measures, autonomous and conventional, in the field of economic and commercial policy as referred to in paragraph 1.
3. The Union may authorize the Member States to take some of the measures referred to in paragraph 2, within limits and subject to conditions which it shall lay down.
4. The autonomous measures referred to in paragraph 2 shall be adopted and the authorizations referred to in paragraph 3 shall be granted by the Commission on the basis of laws enacted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission.
5. The conventional commitments referred to in paragraph 2 shall be entered into in accordance with Article Y 27.
6. In exercising the powers conferred upon it by this Article the Union shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

Article Y 18

Where immediate action is needed to preserve Union interests, the Commission shall adopt the necessary measures. It shall inform the Council and the European Parliament accordingly without delay.

Article Y 19

1. The Union shall have the power to take any economic measures in areas other than those referred to in Article Y 17(1) with a view to achieving the objectives listed in Article Y 16, notably in the context of financial and technical cooperation with one or more non-member countries not covered by Chapter III.
2. On any issues of general interest involving external economic relations the Union shall coordinate the positions of the Member States in relations with non-member countries and in international forums.

CHAPTER III: DEVELOPMENT COOPERATION POLICY¹

Article Y 20

The aim of common policy on development cooperation shall be to promote the economic and social development of the developing countries and their peoples and to help resolve the problems of structural poverty in those countries.

This policy shall seek to achieve a lasting balance between economic objectives, rational management of the environment, and optimum use of natural and human resources.

Article Y 21

The common policy on development cooperation shall cover:

- action by the Union and joint action by the Union and the Member States;
- coordination of other action by the Member States.

Article Y 22

1. Action by the Union shall include:
 - the introduction of special arrangements and measures in the field of commercial policy, without prejudice to the action provided for in Chapter II;

1 Possibly insert an Article on what is to happen to the current arrangements for overseas countries and territories (Part Four of the EEC Treaty), which must in any event be aligned on - or incorporated in - the Chapter on development cooperation policy. One possibility would be a (sole) Article combining Articles 131 (principles) and 136 (procedures), redrafted accordingly.

- measures designed firstly to improve the operation of the international markets in commodities of export interest to developing countries¹ by increasing transparency and efficiency, taking market trends into account,² and secondly to contribute to the stabilization of export earnings from commodities originating in developing countries, in particular in the least-developed countries.
2. Action by the Union and joint action by the Union and the Member States shall cover:
 - financial and technical cooperation;
 - food aid and humanitarian aid;
 - any other instrument likely to encourage development, notably involving establishment and services, movement of capital, and movement of persons, and measures designed to encourage the promotion and protection of investments.
 3. The instances in which joint action is to be taken by the Union and the Member States in the areas referred to in paragraph 2 shall be determined by the Council acting unanimously on a proposal from the Commission after receiving the assent of the European Parliament.
 4. The European Investment Bank shall contribute through its operations to action by the Union and to joint action by the Union and the Member States.

Article Y 23

1. The general guidelines and multiannual programmes specifying the action to be taken by the Union and the joint action by the Union and the Member States as determined in accordance with Article Y 22(3) shall be adopted in the form of laws enacted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission. Such guidelines and programmes shall specify those implementing measures which are the responsibility of the Member States.
2. The Union, acting in accordance with Article Y 27, shall have sole power to enter into any conventional commitments in the areas subject to action by the Union and to joint action by the Union and the Member States.

In such areas, the Union shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

1 Terminology used for the UNCTAD Integrated Programme, which covers eighteen products (bananas, bauxite, cocoa, coffee, copper, cotton, hard fibres, jute, tea, etc.), oil and gold being, therefore, excluded.

2 As in Article 74 of the fourth Lomé Convention.

Article Y 24

1. In areas not subject to action by the Union or to joint action by the Union and the Member States as referred to in Article Y 22, the Member States and the Commission shall liaise on all issues of general interest in the field of development cooperation policy.
2. To this end the Member States shall inform each other and the Commission in advance of all measures envisaged within the framework of national development cooperation, and in particular of national programmes and draft agreements to be concluded with non-member countries or international organizations.
3. The Member States shall refrain from any initiative likely to impair the consistency and effectiveness of action by the Union or joint action by the Union and the Member States as referred to in Article Y 22. They shall, on the other hand, encourage such action as may usefully complement the above and enable the objectives defined in Article Y 20 to be achieved.
4. In the areas referred to in paragraph 1, the Commission shall coordinate the positions of the Member States in relations with non-member countries and in international forums.
5. For the purposes set out in paragraphs 1 to 4 the Commission shall forward recommendations to the Member States. Where necessary, coordinating measures shall be adopted on the basis of laws enacted in accordance with the procedure specified in Article Y 23(1).

CHAPTER IV: GENERAL PROVISIONS

Section 1: Agreements within the area of common foreign and security policy

Article Y 25

1. Where an agreement with one or more States or with an international organization needs to be negotiated in areas in which Chapter I confers powers on the Union, the Council Presidency and the Commission shall jointly make recommendations to the Council, which, acting by the majority specified in Article Y 3(2) or in accordance with Article Y 13(3), as the case may be, shall authorize them to open the necessary negotiations.

The Presidency and the Commission¹ shall conduct these negotiations within the framework of such directives as the Council may issue to them, in consultation with a special committee appointed by the Council.

1 Duopoly.

2. Agreements of the kind referred to in paragraph 1 shall be concluded by the Council, acting in accordance with the procedures referred to in that paragraph on the initiative of the Presidency or of the Commission, after consulting the European Parliament, whose opinion shall be given within the time limit determined by the Council.

Section 2: Agreements falling within other areas of Union powers

Article Y 26

1. In areas not covered by the common foreign and security policy¹ and in areas where the Union has exclusive powers in external relations expressly conferred on it by this Treaty,² the Union shall enjoy sole power to conclude, under Article Y 27, agreements with one or more States or with international organizations provided it has already exercised those powers internally.

In areas where the Union has the sole power to conclude international agreements, it shall be represented by the Commission in relations with non-member countries and in international organizations and conferences.

2. The Union may also conclude international agreements in accordance with Article Y 27 in areas where powers are conferred on it by Article 3 or by virtue of Article 235 but where it has not yet exercised them.

Where it has not made use of the option provided for in the first subparagraph, the Union shall coordinate the position of the Member States in relations with non-member countries and in international forums.

3. When concluding a multilateral international agreement the performance of which entails administrative and operating expenditure, the Union shall act with the same status and by the same procedure as the signatory States.

Article Y 27

1. Where an agreement with one or more States or with an international organization needs to be negotiated, the Commission shall make recommendations to the Council, which, acting by a qualified majority, shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations within the framework of such directives as the Council may issue to it, after consulting a special committee appointed by the Council.

1 Article Y 25 regulates the conclusion of agreements in the field of common foreign and security policy; all other specific provisions governing that area are to be found in Chapter I.

2 This means external economic relations for areas covered by Article Y 17(1), development cooperation policy for those covered by Article Y 22(1) and EMU provisions where the Union has sole power.

2. The Council, acting by a qualified majority on a proposal from the Commission after receiving the assent of the European Parliament, which shall act by an absolute majority of its members, shall conclude, on behalf of the Union, agreements the content of which:

- involves amendment of a Union law;
- involves amendment of the financial perspective;
- establishes the basis for the Community's multilateral external relations in matters of trade or economic cooperation or the basis for development cooperation;
- establishes an association between the Union and one or more non-member countries or a regional international organization involving durable links, reciprocal rights and obligations, common action and special procedures;¹
- organizes, within a multilateral framework, the protection of human rights and the fundamental rights of workers, or global protection of the atmosphere, water or natural resources,² or defines, within a multilateral framework, the fundamental principles of international law;
- makes provision for accession by the Union to a universal or regional international organization other than an organization set up to administer a multilateral convention;
- makes provision for participation by non-member countries or international organizations in bodies set up by Community law.³

However, the Council shall act unanimously where the agreement covers matters for which unanimity is required at internal level.

3. Other agreements shall be concluded by the Council acting by a qualified majority on a proposal from the Commission after consulting the European Parliament.

4. The Commission shall approve modifications to any agreement which provides for them to be adopted by a simplified procedure or by a body set up by the agreement.

In accordance with the procedure specified in the first subparagraph the Council may authorize the Commission to conclude, on behalf of the Union, certain other agreements or categories of agreement.

5. The provisions set out in paragraphs 1 and 3 shall apply subject to the powers conferred on the Commission by Article Y 30.

1 Criteria set out in Article 238 (which may possibly be modified).

2 This may be expanded if the areas of Community competence are increased (health, culture, etc.) on condition obviously that the agreements in question are "very important"; those not falling within this category will, irrespective of subject matter, be covered by the procedure in paragraph 3.

3 Agencies.

6. The Commission shall administer the agreements concluded by the Union.

Section 3: Agreements in the field of foreign policy and other areas

Article Y 28

1. Where agreements are to be negotiated which would lay durable and structured foundations for political relationships of cooperation or association between the Union and one or more States and which would also have an economic, financial and cultural dimension, the procedure specified in Article Y 25(1) shall apply;¹ however, the Commission shall conduct the negotiations in conjunction with the Council Presidency, after consulting a special committee appointed by the Council.
2. These agreements shall be concluded in accordance with the procedure specified in Article Y 27(2).² However, the Presidency shall also have the right to take the initiative in requesting the Council to conclude an agreement.
3. The Commission shall administer these agreements in the areas referred to in Article Y 26(1).

Section 4: Common provisions

Article Y 29³

1. The European Parliament, the Council, the Commission or a Member State may seek the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.
2. Agreements concluded under these conditions shall be binding on the institutions of the Union and on the Member States.

Article Y 30

The Commission shall maintain all appropriate forms of cooperation with international organizations.

It shall, inter alia, contribute to the development of regional integration organizations.

1 Duopoly.

2 Prior assent of Parliament.

3 Text based on the second subparagraph of Article 228(1) and on Article 228(2).

Article Y 31

Articles 110 to 116, 130n, 130r(5), 223, 224,¹ 228 to 231 and 238 are repealed.

Article Y 32

Title III of the Single Act is repealed.

¹ The question of "serious internal disturbances" referred to in Article 224 is out of place in the Title on common foreign policy.

Explanatory memorandum

Common external policy

One of the foremost prerequisites for the European Union identified by the Commission in its opinion of 21 October 1990 was the emergence of a common foreign policy that would serve, through the osmosis between it and economic, social, and financial and monetary policy, to ensure unity and consistency in the Community's international action.

It concluded that such a policy would have to rest on a firm consensus among the Member States as to the extent of their common ambitions in broadening the international responsibilities of the Union, and should embrace their vital common interests and include security and defence.

The European Parliament, in its Resolution of 22 November 1990 on intergovernmental conferences in the framework of its strategy for European Union, took a stand in favour of a common foreign and security policy.

On 14 and 15 December 1990 the European Council spoke of "the vocation of the Union to deal with aspects of foreign and security policy, in accordance with a sustained evolutive process and in a unitary manner ...". It instructed the Intergovernmental Conference to "address the Union's objectives, the scope of its policies and the means of ... ensuring their ... implementation within an institutional framework."

The Commission, the European Council and the European Parliament agreed on the need for, inter alia, a single decision-making centre (namely the Council), the harmonization of preparatory work, a non-exclusive right of initiative for the Commission, procedures for informing and, as a rule, consulting Parliament - and obtaining its prior approval (in other words, assent) for the conclusion of major agreements - and procedures to ensure that the Union speaks with one voice in international organizations and vis-à-vis non-member countries.

Revision of the Treaty with a view to the creation of the European Union thus involves not only amendments to Articles 2 and 3 on the tasks and scope of the Treaty, the establishment of economic and monetary union, the extension of powers in specific areas and the strengthening of democratic legitimacy and the institutions' effectiveness, but also the incorporation of a new title on a common external policy.

A. THE COMMON EXTERNAL POLICY - GENERAL

The rules governing the common external policy comprise substantive provisions in three broad areas:

- common foreign and security policy (section B);
- external economic policy (section C);
- development cooperation (section D).

They also include procedural provisions for the conclusion by the Union of international agreements (section E) both in these areas and in any field where it already has powers internally (transport, environment and research, for instance), or might acquire them following revision of the Treaty, and within the limits of those powers. The new arrangements formally state that for every power conferred on the Union internally there is a corollary external power and that for any given area this power becomes exclusive once the Union exercises it internally. This constitutes the expression in the Treaty of the principle established by the Court in the AETR case, which is now an established part of the Community legal order.

The overall balance of the external policy provisions thus rests on an approach involving two indissociable elements.

In the areas of new powers (i.e. common foreign and security policy) specific decision-making procedures will apply, giving recognition to the European Council's fundamental role in setting the limits of the Union's powers and to the role of the Council (General Affairs) as the decision-maker on implementation.

Elsewhere, on the other hand, especially in the area of economic integration, the powers of the Union will be confirmed, resting on clear legal bases spelled out in the Treaty. The general use of qualified majority voting for decisions will also serve to secure efficiency and effectiveness.

B. COMMON FOREIGN AND SECURITY POLICY

1. Basic principles

The incorporation of rules on a common foreign and security policy serves a fundamental objective, namely to ensure unity and consistency in the Union's international action by giving it new powers in areas of foreign relations not covered by the present Treaty.

This common policy will centre on the idea of an evolutive process: it would be for the European Council to lay down and extend the Union's powers as the need arises. This approach amounts to application of the principle of subsidiarity, leaving the Member States with full power to act in areas where there is felt to be no need for the Union to take responsibility, subject to intergovernmental cooperation on matters of general interest.

It is clear, then, that a common policy does not mean a single policy. Where Member States enjoy special relationships with certain parts of the world or hold positions rooted in their past history, the aim would be to coordinate national action inside a common framework rather than to replace it by a unitary approach. Here, too, subsidiarity would have to play a part. The essential point is that the Member States fulfil their obligation to act.

The policy would be implemented using the existing institutional framework so as to avoid the emergence of dual structures in the Union that is to take the place of the present Community, while making allowance for adjustments in the role of the institutions where warranted by the subject areas in question and the stage now reached in the process of European integration.

Unlike European Political Cooperation, which is no more than a form of intergovernmental cooperation, the new common foreign and security policy would involve the adoption and implementation of decisions that are binding on the Member States, taken unanimously or by augmented qualified majority, as the case may be, and with some scope for opting out.

2. Rules

Chapter 1 (Common foreign and security policy) encompasses general provisions covering both foreign and security policy (Section 1) as well as specific provisions relating to security, including defence (Section 2).

(a) The implementation of foreign policy, the objectives of which are defined in Article Y 1, rests on a distinction between:

- matters identified as being of "vital common interest" by the European Council, where the Council would decide what common action should be pursued and how it should be implemented, acting by a qualified majority augmented by the requirement that at least eight Member States must vote in favour; the European Council would lay down conditions under which a Member State may, at its request, be granted dispensation from the obligations flowing from common action;
- other matters, where joint action is a matter for intergovernmental cooperation as at present, but with stricter provisions than Article 30 of the Single Act so that abstention by a Member State would not prevent joint action and consistency would be guaranteed between national action and action by the Union.

A provision is also included whereby, in particularly serious or exceptional circumstances, any Member State must refer a matter to the Council to seek a swift decision on possible common action.

- (b) In matters of vital common interest, in other words those falling within the scope of the common foreign and security policy, the right of initiative for Council decisions would be shared between the Member States and the Commission, while responsibility for preparatory work and follow-up would rest on structured cooperation, via Coreper, between the Council's General Secretariat and the Commission. Democratic control would be ensured by the close involvement of the European Parliament in formulating and implementing the common policy. Acts adopted would not be subject to the jurisdiction of the Court of Justice.

In dealings with the outside world, especially in international organizations, the Union would be represented jointly by the Council Presidency and the Commission, the essential aim being that the Union should speak with a single voice.

- (c) Common security policy, the objectives of which are laid down in Article Y 11, involves a number of specific provisions (Section 2).

The scope of the policy would be defined in the Treaty itself and would comprise:

- a guarantee of automatic assistance through the incorporation of Article V of the Brussels Treaty establishing the Western European Union, which would give substantive expression to the will of the Member States to link their destinies in the field of security and defence; in the event of an armed attack on one of the Member States of the Union, the others would provide all the military and other aid and assistance in their power;
- a list of matters of vital common interest in the field of security and defence, as defined by the Rome European Council in December 1990, which the European Council could subsequently expand:
 - arms control and disarmament;
 - security matters covered by the CSCE and the UN;
 - cooperation on the production, export and non-proliferation of arms;
 - the Commission also proposes the establishment of an arms research and production policy, since the present Treaty makes no provision for this although aspects falling under the competition rules, for example, or the common commercial policy are already covered;
- a mechanism for regular meetings of Foreign and Defence Ministers with a view to developing cooperation and making it possible to convene an immediate meeting if necessary, i.e. in the presence of a threat or danger to the Union.

In contrast to decision-making on matters falling under the common foreign policy, responsibility for defining the principles and deciding what action should be pursued under the common security policy would lie with the Council acting unanimously. However, the Council might be able to use other forms of decision-making for implementing certain measures.

A Member State may, if it so requests, be granted dispensation from some of the obligations flowing from such decisions where

there are compelling reasons - i.e. because of its own constitutional provisions or because of international commitments entered into previously; such dispensations would be reexamined periodically by the Council.

Some of these decisions, in particular those relating to defence cooperation, could be implemented, in compliance with Nato commitments, by means of specific arrangements with the WEU, which might act on behalf of the Union with a view to its gradual integration into the Union.

The introduction of a common security policy requires Articles 223 and 224 to be repealed, since their field of application now comes under the new policy.

The general provisions discussed in point (b) above would apply to both security and foreign policy, as would the possibility of dispensation for a Member State from certain obligations.

C. EXTERNAL ECONOMIC POLICY

1. Chapter II on external economic policy, which will replace Articles 110 to 116 of the EEC Treaty, reiterates the Community's current objectives and powers under the common commercial policy, incorporates the external aspects of economic and monetary union, and maintains the applicability of the provisions specific to this area.

Setting as objectives the development of the economy and trade at world and European level means conferring a central role on the Union not only in promoting the prosperity of its Member States, businesses and citizens but also in contributing towards shaping the world economy and in generating momentum for the economic integration of Europe as a whole.

These objectives define the areas in which the Union can act explicitly and comprehensively enough to put an end to the constant controversy surrounding the scope of Article 113 and formally determine the position in accordance with the rulings of the Court of Justice. It should become possible for the Union, among other things, to work towards economic objectives such as reciprocal investment protection, access to production, and the reduction of disparities and imbalances between national legislation relating to capital.

The exclusive competence of the Union in such areas is confirmed, making the Commission, and the Commission alone, responsible for representing the Union on the external scene, notably in dealings with international organizations.

The Union should also be given power, though not necessarily sole power, to take the action needed to attain the objectives of external economic policy, in particular through bilateral and multilateral economic cooperation with non-developing countries:

structural intervention (for example, in the G-24 context), participation in regional development banks (such as the EBRD), and debt relief.

2. The machinery for implementing this policy will be covered, in the case of measures other than international agreements,¹ by the general legislative pattern (law/regulation) to be incorporated in the new Treaty, with the law as the instrument providing the general framework enabling the Commission to adopt the regulations and decisions needed for the day-to-day management of the common policy, the Commission must also be in a position to adopt urgent measures if necessary.

The specific possibility of authorizing Member States to act in this area, by inter alia concluding international agreements, should help reconcile exclusive Union competence - capable of encompassing national action if necessary - with the desire to leave a certain role for the Member States.

D. DEVELOPMENT COOPERATION POLICY

1. Chapter III will at long last enshrine development cooperation policy in the Treaty; up until now, except in the case of certain forms of association, all action under this policy has had to be based on Article 235 given the absence of any other provision in the Treaty.

It will consequently be possible to state clearly the objectives of development cooperation, and in particular the importance and indeed the priority attached to the concept of poverty and the attention paid to the idea of balanced and durable development, taking account of environmental constraints. These are part of the general objectives of the common external policy, which explicitly refer to the promotion of democracy, the rule of law and respect for human rights.

Moreover, development cooperation policy can be made more consistent and effective, notably by stressing the fact that the powers of the Union complement rather than compete with those retained by the Member States in this area. For this reason both action specific to the Union and joint action by the Union and its Member States will be an integral part of common policy provided that the principle of such joint action has been approved by special procedure, with the Council acting unanimously after receiving the assent of Parliament.

2. The machinery for implementing the common policy will include all the instruments normally used in this area (financial and technical cooperation, humanitarian aid, commercial provisions, and so on) as well as action designed to encourage investment and debt relief measures for the developing countries.

¹ The procedure governing the conclusion of international agreements is set out in Chapter IV of Title Y.

In areas covered by the common policy the action to be undertaken by the Union and the joint action to be implemented by the Union and the Member States will be defined in general guidelines and multiannual programmes adopted in the form of laws enacted under the co-decision procedure by Parliament and the Council, acting on a proposal from the Commission.

The Union, which will have the sole power to conclude international agreements in areas where it acts either alone or jointly with the Member States, would also be so represented as to speak with a single voice in all international forums.

3. In areas not covered by Union action or by joint action by the Union and the Member States, provision will be made for close coordination, under the aegis of the Commission, in order to encourage potential complementarity, to avoid the risk of inconsistency and to demonstrate the specifically European nature of the action in question at international level.

E. GENERAL PROVISIONS

1. The general provisions in Chapter IV of the Treaty (common foreign policy) lay down rules applicable to international agreements concluded by the Union with non-member countries or international organizations.
2. As regards the common foreign and security policy, in accordance with the general scheme of things set out under A above, the Member State holding the Council Presidency and the Commission will have a joint right of initiative - the duopoly - at the various stages - requesting authorization to open negotiations, conducting negotiations and proposing conclusion of the agreement at the end of the negotiations.

Agreements would be concluded by the Council, acting by augmented qualified majority, or unanimously in security matters.

3. Outside the areas covered by the common foreign and security policy, in other words in external economic relations, development cooperation and all other areas where the Treaty confers powers on the Union, the principle of the single procedure would be confirmed and the broad outlines of the current Treaty would be preserved. Thus there would no longer be any need for specific provisions governing the conclusion of international agreements in those parts of the Treaty dealing with specific policies.

The Commission would have a monopoly of the right of initiative regarding the opening and conduct of negotiations and the conclusion of the agreement (after consulting a committee composed of representatives of the Member States); as a rule the Council would conclude the agreement by qualified majority after consulting the European Parliament.

However, the conclusion of important agreements, defined as such exhaustively by the Treaty itself, would require the assent of Parliament, currently required only for association agreements (Article 238 EEC).¹

Lastly, in order to put an end to a situation which provokes controversy and hampers decision-making, it would be provided that the Commission could conclude certain agreements specified in the Treaty (adjustments to existing agreements) or covered by a Council decision empowering it to do so;² it would also be provided that the Commission would administer agreements.

4. A clear indication is also given that where accession to a multilateral convention has a financial impact, the Union will sign the convention on an equal footing with the signatory States.

F. OVERALL CONSISTENCY

1. The fundamental question of ensuring consistency between the Union's common foreign and security policy and its other external policies is dealt with in a general fashion by a clause imposing an obligation to ensure such consistency and providing for a decision to be taken, on the initiative of the Commission or of a Member State, by the Council acting by the same procedure as applies generally to foreign policy questions.

The same procedure will be used to avert the risk of inconsistency between common foreign and security policy and national foreign policies, in addition to the rules governing the coordination of national policies.

There are also specific provisions relating to external economic relations and development policy to ensure that the Member States take a coordinated line on the international scene in matters which are not directly within the Union powers.

2. Provision is made for the case of international agreements with a content covered partly by foreign policy and partly by other external policies.

The procedure is a combination of those applicable to the two categories. Among other things, there is a diluted form of the duopoly of Commission and Council Presidency in the conduct of negotiations.

These agreements, which provide a general framework for relations with non-member countries in all their aspects, are of such a nature that the assent of Parliament should be required in the same way as for important agreements outside the foreign policy context.

1 Most agreements currently concluded under Article 113, for example, would not be within this category, but association agreements under Article 238 and general agreements resulting from GATT rounds would inevitably be within it.

2 The Commission's powers under Article 229 EEC are unchanged.

The Commission would administer agreements in all areas other than foreign policy.

G. CONCLUSION

The changes that would flow from the guidelines set out above would make it possible to remedy the current difficult situation:

- first, the original Treaty was sketchy in its treatment of the external aspect of Community activities (being confined to commercial policy and association agreements); the gaps have had to be filled in by the Court of Justice and controversy and disagreement have always been the order of the day;
- secondly, the Single Act went only part of the way towards solving this by adding specific references to external relations in a few areas (environment, research) while mixing up the two political contexts of intergovernmental political cooperation and decisions by the Community institutions.

COMMENTARY

TITLE Y - COMMON EXTERNAL POLICY

Article Y0

Reflecting the importance which the Union attaches to playing an active part in its own right on the international scene, this Article begins by stating that the Union shall formulate and implement a common external policy. The wording bears witness to the recognition that in every task assigned to the Union by the Treaty, the internal aspect of Union action is necessarily mirrored by a corresponding external aspect. While encompassing the entire range of policies which the Union has to conduct in its relations with non-member countries and their peoples and with international organizations, the common external policy nevertheless has to make allowance for the particular nature of the various fields in which it will have to act. Separate arrangements therefore have to be laid down for:

- foreign and security policy, the conduct of which constitutes one of the principal new tasks assigned to the Union by the Treaty;
- external economic policy, development cooperation policy, and the Union's other areas of external responsibility, including those under EMU: this thus covers every external aspect of Union action. These external policies, though viewed in more global and evolutive terms, correspond more closely to the traditional aspects of action pursued hitherto by the Community; consequently it seems more appropriate to implement common arrangements more in the traditional mould. As regards these policies, then, the new Treaty - besides encompassing the external aspects of the Union's tasks, broadening their perspective and modifying procedures to enhance their effectiveness - serves primarily to confirm and rationalize current practice and the principles hitherto spelled out by the Court of Justice.

As the Article indicates, the common foreign and security policy on the one hand, and external economic policy and development cooperation policy on the other are each governed by a separate chapter.

Chapter I - Common foreign and security policy

Article Y1

The seeds of a common foreign and security policy were already contained in Title III of the Single European Act relating to European Cooperation in the sphere of foreign policy. But there the policy was intended to develop alongside Community activity proper - in the wings, so to speak. Here it is fully incorporated as one of the tasks of the Union as such. The inclusion of foreign and security policy in the sphere of Union action through this Article represents one of the major innovations of the new Treaty on the path towards European Union. The provisions of this Article thus form a bedrock and occupy a place of cardinal importance.

Article Y1, the wording of which is largely based on the fifth point of the Preamble to the Single Act, states that the Union shall conduct a common foreign and security policy and defines the aims and principles it is to pursue. These aims and principles are those to which the Member States of the Union - and every civilized nation - have long subscribed in their relations with other countries and peoples. They are an expression of their fundamental beliefs as to the essential foundations for improved international relations: the preservation of peace and international stability, the development of friendly relations with all countries and the furtherance of democracy, the rule of law and respect for human rights.

Nevertheless, the fact that the Union intends to take its place on the international stage by pursuing a common foreign and security policy does not mean that the Member States themselves cease to have any role in international relations. Due heed must be paid to the legacy of the past so that the fabric of links that each Member State has woven with other nations may be knit together in a rich new tapestry. Article Y1 therefore makes explicit reference to the need for the Union to take account of the special relations of individual Member States.

Equally a common foreign and security policy does not necessarily mean a single policy. Its implementation would involve both action by the Union and individual action by the Member States.

A common foreign and security policy involves two aspects:

- the first concerns the general question of the Union's attitude towards the outside world;
- the second more specifically concerns defence and security and involves the implementation of specific provisions.

This is laid down in the second paragraph of Article Y1.

Section 1: General provisions

Article Y2

Reflecting the gradual process through which the common foreign and security policy is intended to develop and be conducted, this Article defines the components which go to make up that policy:

- common action on matters that have been declared to be of vital common interest in accordance with the procedure laid down in Article Y3;
- foreign policy action which remains in the national domain in principle, but where the Member States are bound to act in close cooperation.

Article Y3

This Article deals with common action by the Union. It is one of the key provisions of this Chapter. It lays down the procedure by which foreign policy matters are defined as falling within the common domain.

A special decision-making procedure is instituted for this purpose, without prejudice to the exercise of the Union's external powers under the other Treaty provisions (Articles Y11 et seq. as regards common security policy; Article Y16 et seq. as regards external economic policy and Article Y20 et seq. as regards development cooperation policy; Article 108(2) and (3) as regards monetary policy; Article Y26 as regards agreements falling under the other fields of Union responsibility referred to in Article 3 of the Treaty).

This mechanism operates in two stages, as proposed by the Commission in its opinion.

(a) Paragraph 1 deals with the method for deciding what matters are to be the subject of common action by the Union. These will be matters that have been declared to be of vital common interest.

To promote the gradual emergence of fields of common action, the Treaty does not specify what matters are of vital common interest. It assigns the task of deciding what these should be to the European Council after hearing the views of the European Parliament. This confirms the role of the European Council in providing impetus and general political guidelines, in line with the Solemn Declaration of Stuttgart of 19 June 1983. When giving political approval for the Treaty, the European Council would be expected to decide on an initial list of such matters, so as to give effect to the provisions of this Chapter. The right of initiative for such decisions is shared between:

- the Presidency;

- the Commission: here, unlike in other areas of Union action, the Commission does not enjoy sole right of initiative;
- a simple majority of the Member States.

In deciding what matters are of vital common interest, the Union must take account of the special relations of the Member States and of the specific aspects of their external action. It could happen that some of the obligations entailed by common action might pose a difficulty for a particular Member State. This has to be avoided. The second subparagraph of paragraph 1 therefore provides that the European Council is to lay down the conditions under which one or more Member States may be granted dispensation from some of the obligations involved in common action at their request. The European Council would, of course, have to make sure that any such dispensation is compatible with the principle of the common action in question and that the Member State(s) concerned come back into line as soon as possible.

Any such dispensation would also involve certain constraints for the Member States to which it is granted. They may not do anything that is likely to affect the implementation of Union decisions.

(b) Once the European Council has decided that a matter is of vital common interest, responsibility for defining the necessary principles for the common policy and the type of action to be pursued in implementation of the policy passes to the Council. Such action may be taken by the Union itself or by the Member States. Paragraph 2 confers the necessary powers on the Council; here too, special procedures apply:

- as under paragraph 1, the initiative for decisions may come from the Member State holding the Presidency or the Commission or a simple majority of the Member States;
- on the procedural side, it is proposed that the Council should act by a qualified majority, but that this should be the augmented majority specified by the second indent of Article 148(2) for Council decisions where there is no proposal from the Commission. This requires fifty-four votes in favour from at least eight Member States. For the sake of realism, where the initiative for a decision comes from the Commission, the last sentence of Article Y3(2) stipulates that Article 149(1) shall not apply; this is the provision whereby, if the Council acts on a proposal from the Commission, unanimity is required for an act constituting an amendment to that proposal. Clearly there is little point in retaining the rule where the Commission does not have the sole right of initiative. The augmented qualified majority specified in the second indent of Article 148(2) would always be sufficient to ensure that the Council reaches a decision.

Article Y4

In contrast with Article Y3, which deals with matters that have been declared to be of vital common interest and therefore involve common action by the Union, Article Y4 concerns the other areas of foreign policy - including security - which have not been declared to be of vital common interest and so remain within the sphere of the individual Member States' foreign policy.

Nevertheless it is important for the Member States to cooperate and endeavour to act in concert even in these matters. The Single Act made provision for such cooperation, most notably in Article 30(2). Article Y4, while largely based on that paragraph, seeks to tighten and make more explicit the Member States' obligation to coordinate their action.

Paragraph 1 broadly follows the wording of Article 30(2)(a) on the obligation to coordinate action on foreign policy matters of general interest. However, it also includes the Commission, alongside the Member States, among those on whom this obligation rests. As specified in Article 30(2), one of the foremost requirements for coordination is prior mutual information regarding planned action. The second subparagraph therefore requires the Member States to inform their partners in the Union and the Commission of any foreign policy measures they intend to take beforehand.

Beyond this, paragraphs 2, 3 and 4 aim to encourage the Member States to pursue common action. Paragraph 2 requires them to ensure the formulation and progressive development of common principles and objectives. However, in matters that remain within the national sphere for the time being at least, the Treaty must allow for the possibility that a Member State might feel unable to abide by the common position and should not force it to do so. In this event, however, the Member State concerned would still have to comply with the obligations entailed by membership of the Union.

A Member State that felt unable to go along with the general position would not be able to make use of its prerogatives in the form of a veto. Under paragraph 3 Member States must refrain from hindering the emergence of consensus and any action that may flow from it.

Paragraph 4 spells out the discipline which the Member States must observe in adopting positions and pursuing national action. They must always bear in mind the need for coordination and cohesion by taking account of the positions of their other partners, by endeavouring to arrive at common positions and treating those agreed as a point of reference for national policies, and by showing loyalty to the Union through compliance with the obligation not to take action which impairs the effectiveness and cohesion of positions taken by the Union in international relations.

Lastly, paragraph 5 makes provision for an eventuality that may arise with the gradual introduction of the common foreign and security policy, especially in the initial stages. A very serious situation may occur in an area that has not yet been declared to be of vital common interest where a particular Member State feels bound by earlier commitments to act or react. The prime requirement is that before taking individual action, the Member State in question should leave room for common action by the Union. Paragraph 5 requires a Member State to refer the matter to the Council before taking action in such an event; the Council would then have to act without delay in accordance with Article Y3(2). This would afford it the opportunity to decide whether action by the Union was called for.

Article Y5

In line with the desire to strengthen the democratic legitimacy of the Union which underlies the entire Treaty, this Article lays down the manner in which the European Parliament, like its national counterparts, is to be closely involved in the definition and conduct of the common foreign and security policy. Besides the right to make its views known before the European Council takes a decision identifying vital common interests, as provided by Article Y3(2), Parliament should enjoy certain specified prerogatives.

The Council and the Commission will be required to keep Parliament regularly informed of the subjects dealt with under the common foreign and security policy and must make sure that its views are duly taken into consideration. The first paragraph is largely based on Article 30(4) of the Single Act, which deals with European foreign policy cooperation.

Going beyond this, the second paragraph enumerates more explicitly the rights needed to ensure the close involvement of the European Parliament. At least once a year Parliament is to hold a debate on the common foreign and security policy, during which the Council and the Commission will have to give explanatory statements. Moreover, in view of the fact that Parliament's committees offer the most appropriate framework for cooperation between Parliament and the executive, especially in foreign policy matters, this Article explicitly recognizes the right of the appropriate Parliament committees to hear the Council or the Commission, either at the initiative of the Council or the Commission or at Parliament's own request.

Article Y6

The Single Act dealt with European foreign policy cooperation separately from other Community activities, and the preparation and implementation of such cooperation rested with separate administrative structures from those of the Community institutions. In particular, the Political Committee and the Secretariat provided for in Article 30(10) of the Single Act operated alongside the Permanent Representatives Committee and the Council's General Secretariat.

With foreign and security policy now coming within the sphere of the Union, it is logical to unify the structures involved in preparing and implementing it.

It is therefore laid down that the General Secretariat of the Council, strengthened if necessary and incorporating the Political Secretariat, will be responsible for preparing the Council's decisions and monitoring their implementation. It will work in close cooperation with the Commission, liaising closely with the Presidency, and exercising full diplomatic discretion initiatives where the traditional preparatory procedures might be inappropriate.

In addition, the Permanent Representatives Committee is given responsibility for preparing the ground for the Council's deliberations under the common foreign and security policy, as it does in other areas of Community activity under Article 4 of the Treaty establishing a Single Council and a Single Commission of the European Communities.

Article Y7

The existence of a common policy - for both foreign policy and security issues - implies that the Union must be represented as such on the international scene. Article Y7 makes provision for such representation. Unlike in the other areas of Community responsibility, where the main role is generally played by the Commission, special rules apply here which reflect the particularly sensitive nature of foreign policy and security issues.

In relations with non-member countries and in international organizations and conferences the first subparagraph of paragraph 1 provides for the Union to be represented by a "duopoly" (this also applies for the negotiation and conclusion of agreements coming under the common foreign and security policy - Article Y25), comprising the Council Presidency and the Commission. In order to involve the Member States as closely as possible alongside the institutions, especially in the eyes of the outside world, provision is also made for the "duopoly" to be assisted, where

necessary, by two Member States - the next and previous holders of the Presidency, following the "troika" formula - thus forming what now becomes (with the involvement of the Commission) a "quadriga".

The second subparagraph of paragraph 1 is designed to deal with a difficulty that might arise with certain international organizations or certain organs of such organizations where not all of the Member States are members or have seats (UN Security Council, bodies of the Atlantic Alliance or WEU). It may prove impossible for the Union to be represented in these organizations or bodies under the rules of the first subparagraph. To cover this eventuality, procedural provision is made to enable the Council, acting by an augmented qualified majority on a proposal from the Commission or a Member State, to entrust the task of presenting the Union's position to one or more Member States in those organizations or their organs. Here, too, the essential requirement is for the Community to speak with a single voice.

Paragraph 2 deals with the question of diplomatic representation in non-member countries and at international organizations. The incorporation of foreign and security policy, in so far as matters of vital common interest are concerned, within the sphere of Union responsibility under the Treaty does not mean that the aim is to replace overnight the diplomatic links that the Member States have built up over many years. Far from it. The Member States' missions accredited in non-member countries and to international organizations are not affected. However, they should act in close cooperation and might, where appropriate, pool their resources together with the offices established by the Commission. The Member States and the Commission are required to intensify their cooperation and to furnish each other with all the assistance and information needed to ensure that the Union is represented as effectively as possible.

Article Y8

Article 30(5) of the Single Act was already concerned with the need for consistency between the external policies of the Community and the policies agreed in European Political Cooperation. It conferred special responsibility on the Presidency and the Commission, each within its own sphere of competence, for ensuring that such consistency was sought and maintained.

This requirement is even more imperative once there is a common foreign and security policy. It applies not only to Union action under the other provisions of the Treaty but also to foreign policy action by the individual Member States, especially in areas outside those covered by matters that have been declared to be of vital common interest.

The second paragraph is designed to deal with the potential danger of inconsistency with the common foreign and security policy from two quarters: from action by the Union under other policies, and from intended action by a Member State. It allows the Commission or any Member State, if it considers such a danger exists, to request a meeting of the Council to be convened to discuss the problem and, if necessary, take a decision in accordance with the procedure laid down in Article Y3(2).

Article Y9

Essentially taken over from Article 30(8) of the Single Act, this provision on political dialogue between the Union and non-member countries and regional groupings emphasizes the spirit of openness to the world which should guide the Union's action in foreign and security policy.

Article Y10

Article Y10 places the field covered by this Chapter outside the jurisdiction of the Court of Justice under Articles 164 to 188 of the Treaty, since action taken in pursuance of foreign or security policy is preeminently a matter of political decisions and not, generally speaking, a matter for the judiciary.

Section 2: Common security policy

Article Y11

The Union's foreign policy must also embrace security in the broad sense, including defence. The objectives spelled out are dissociable and the Union has to be given all the necessary powers.

This Article sets out the general purpose of the common security policy, which is to strengthen security in Europe and to maintain peace in the world in accordance with the Charter of the United Nations, which has a recognized security function.

It also defines the relationship between the common policy and the WEU, reflecting the WEU's pivotal role in European integration in security matters.

The Article goes on to describe the long-term objective as being to establish a common European defence in full compliance with commitments entered into in the Atlantic Alliance and NATO.

Europe's specific defence interests were set out in the WEU Platform adopted in The Hague on 27 October 1987, in which nine of the Union's Member States expressed the conviction that security and defence are of central concern to the Union.

Article Y12

This Article determines the general commitment to solidarity which gives practical expression to the will of the Member States to pool their destiny as regards security and defence. It reproduces the commitment made in Article V of the revised 1948 Treaty of Brussels, which established the WEU: if a Member State is the object of an armed attack in Europe, the other Member States must afford it all the military and other aid and assistance in their power.

Reproducing this fundamental WEU Article in the Treaty, without prejudicing the maintenance of the Member States' existing commitments, expresses the identity of Europe in security matters. The assurance of mutual assistance is the least that the Union Treaty can do in the way of a political commitment and gives substance to the Member States' will to link their destinies in the field of security and defence.

Article Y13

This Article introduces an "evolutive" process to enable the common security and defence policy to be established in stages.

Where matters to be dealt with are not covered by other Treaty machinery, this Article takes a specific approach to security questions by providing them with their own decision-making machinery which to some extent derogates from that established by Article Y3. The differences lie, first, in the decision-making procedure, sensitivity and specific importance attached to security and, second, in the fact that vital common interests in this area will have to be determined as soon as the Treaty enters into force.

Paragraph 1 proceeds on the basis of the conclusions of the December 1990 Rome European Council to give the Union an identified security role, specifying forthwith that certain matters are of vital common interest and will fall to be dealt with in the Union context. These are arms control, disarmament and related questions (meaning confidence-building and security measures which are not necessarily considered exclusively in the CSCE), security questions dealt with in the CSCE or the United Nations, the latter to include UN peacekeeping operations and the possibility of joint

intervention forces, cooperation in the field of armaments and policy on arms production and exports, inspired by the non-proliferation concept.

As part of its security policy the Union ought also to establish a research policy, especially for arms technology, and pool efforts in the field of arms production with a view to achieving savings, agreeing standards and avoiding duplication.

This could be implemented under paragraph 3 (generally requiring unanimity) and - bearing in mind, in particular, that it is proposed to delete Article 223 - should be developed so as to complement any action the Union may take in the area of the internal market (opening up government procurement), the common commercial policy (customs tariff) and competition.

Paragraph 2 of this Article, like the general provision in Article Y3, gives the European Council responsibility for progressively identifying other areas of vital common interest.

Paragraph 3, like Article Y3(2), establishes decision-making machinery for the second stage. Within areas declared to be of vital common interest, the guidelines and principles of the common policy have to be formulated and action to implement the policy has to be decided. Given the specific character of security policy, it is provided that guidelines and principles will be adopted unanimously by the Council, though abstentions will not prevent the adoption of decisions. There is no specific provision as to who will have the right of initiative, for it is felt that the greatest latitude should be left here.

While basic decisions are to be taken unanimously, there should be a degree of flexibility as to the procedure for deciding on action to be taken. The Council, therefore, will have to decide unanimously whether to keep the unanimity rule or opt for a less cumbersome procedure.

As under Article Y3, action under the common policy may be implemented either by the Union or by its Member States so as to preserve the possibility of responding to different types of situation.

Paragraph 4 allows the European Council and the Council to dispense Member States who so request from the obligations which flow from common action if they can show cogent reasons based either on their own constitutional requirements or on pre-existing international commitments.

There are three riders on this proviso. First, to ensure that decisions can be effective and that joint action is consistent, the Member State concerned must refrain from taking any measures that may affect the implementation of Union decisions.

The second rider seeks to ensure balance in the exercise of such dispensations. The Council will periodically review them to assess whether the relevant States should continue to be enjoy them. The review will have

regard to common policy developments and should enable a Member State to join in subsequently.

Lastly, a Member State that has been given dispensation will not be allowed to participate in Council deliberations on the scope or application of its partners' obligations.

Article Y14

This Article was drafted in the same spirit as Article Y12 and seeks to give the Union the benefit of progress towards integration of foreign policy and security policy achieved by the WEU, without actually shifting the centre of gravity of the construction of the European identity.

The principle of joint meetings of foreign and defence ministers has already been tested since the WEU Council's Rome Declaration of October 1984; the aim is to provide the Union with a cooperation and decision-making forum combining foreign policy and defence elements and involving the Commission. The scheduling of these meetings - twice yearly and when requested - is the same as for WEU Council meetings and reflects both the permanence of the functions exercised by the relevant ministers and the need to meet quickly in an emergency.

Article Y15

This Article aims to ensure that possibilities of cooperation available in the WEU can be used for the benefit of the common policy. The idea is that the various European security structures should reinforce each other, without prejudice to the differing security commitments of the various Member States.

Paragraph 1 gives the Council the possibility of deciding unanimously, under the procedure of Article Y13(3), to refer a matter to the WEU Council where WEU resources might valuably be used to implement Council guidelines. The WEU then acts on behalf of the Union. This provision adds to the machinery already available under the WEU Treaty and to the specific cooperation facilities available there.

Paragraph 2 reflects the need to ensure consistent action while bearing in mind that there are different forms of security partnership among the Member States; at the same time it follows from the general scheme of the Treaty and from the spirit of the Single Act that the Commission must be given a role. This paragraph consequently provides for Union Member States which are not WEU members and the Commission to be represented where WEU meetings proceed on the basis of a Union initiative. Arrangements will have to be agreed between the Union and the WEU to establish the relationships that are needed if action is to be undertaken on behalf of the Union with a view to gradual integration. The requisite arrangements could be made by means of a Protocol comparable to those governing relations between the WEU and the Atlantic Alliance.

This Article aims to prepare for the gradual formulation of a European common security policy. Paragraph 4 illustrates this option in favour of a gradual approach. The rules set out in paragraphs 1 and 2 preserve the specific character of the Union and of the WEU while highlighting the convergence of their objectives.

Paragraph 3 applies to those Union Member States which are also members of the Atlantic Alliance. The idea is that the Member States will speak with one voice in the Alliance and NATO when questions declared to be of vital common interest by the Union or questions dealt with by the WEU are discussed. This will help strengthen the Atlantic Alliance's European pillar.

Paragraph 4 confirms the long-term objective of integrating the WEU into the Union and for this purpose uses Article XII of the revised 1948 Treaty of Brussels. At the end of the fifty-year time limit set in that Article, the contracting parties each have the right to withdraw, subject to one year's notice. This will give a chance to take stock of security cooperation with a view to the eventual integration of the WEU into the Union. The exercise will begin in 1998.

CHAPTER II: EXTERNAL ECONOMIC POLICY

Article Y 16

1. Article Y 16 lays down the principles governing external economic action by the Union, which - combining the Community's current competences, primarily economic, with the wider powers conferred upon it by the new Treaty - will play an increased international role commensurate with its responsibilities and mission.
2. The conduct of such action pursuant to the legislation and policies which it is designed to implement is geared essentially to the common interest of the Union, in other words to the economic prosperity of its Member States, its businesses and its citizens.

Within this framework it will be for the Union to affirm its presence and to play a key role in the drive to improve the world economy.

3. The aim of such action will basically be threefold:
 - the general improvement of macro-economic structures and the liberalization of world trade; the Union's role here will not only be to represent a powerful factor for economic growth through implementation of its policies in general and completion of the internal market in particular but also, by extension, to contribute towards shaping the world economy, notably through participation in the Western Economic Summit and the OECD and through the increased role it will be called upon to play in the IMF as and when economic and monetary union progresses;

- the progressive strengthening of the links and relations between the different - and increasingly interdependent - countries and economies; this particular aim highlights the Union's key role in generating momentum for European economic integration;
- the establishment of fair economic and social conditions throughout the world through the pursuit of these economic objectives; this concern is clearly reflected not only in development cooperation as such but also in measures to assist the countries of Central and Eastern Europe and in the preferential treatment given to the developing countries in multilateral negotiations (see Part IV of GATT).*

Articles Y 16a and 17

1. Article Y 17, like Article 113, which preceded it, becomes the nucleus of the external economic policy, the basis for the Union's exclusive competence in the area of external economic relations.
2. The proposed amendments have three main aims:
 - the consolidation of the present position by confirming the Union's exclusive competence and the Commission's negotiating role in the areas in question;
 - the codification of the interpretation of the concept of commercial policy in line with the rulings of the Court of Justice and with Community practice and legislation;
 - the introduction of the concept of "common policy on external economic relations" encompassing the exclusive powers conferred on the Union (Article Y 17(1)), the powers conferred on it in the areas covered by economic and monetary union (Article Y 16a), and the powers to take any other external measure needed to achieve the Union's economic objectives (Article Y 19).

(paragraph 1)

3. The new external economic relations policy is primarily a common policy based on experience of the Community's commercial policy and on the way in which it has developed.

* International action in the interests of solidarity not related to development cooperation (e.g. disaster relief) would also be covered by this general aim.

4. This is followed by a list of the areas in which exclusive competence is conferred on the Union, providing what is in effect a legislative codification of the principles established by the rulings of the Court of Justice already applied in practice on numerous occasions. Most of the areas in question are covered by the current Uruguay Round of the GATT negotiations.

5. Even if powers in the field of commercial policy have evolved in a process which will doubtless continue (Court rulings, implicit powers, application of Article 235 EEC), the need for a proper statement of the respective positions of the Union and its Member States brings with it, in particular in the interests of legal clarity, the need to specify in constitutional terms the areas in which exclusive competence is conferred on the Union.

6. The areas covered by the external economic policy include:
 - trade, including export credit and credit insurance schemes: this basically covers the current commercial policy as defined by Article 113(1) and successive Court rulings;
 - economic and commercial measures involving services, capital, investment, establishment, intellectual property and competition.

The aim here is to grant the Union jurisdiction not only in areas directly linked to trade* but also in respect of other economic objectives, whose insertion in the common commercial policy has resulted in divergent interpretations; these include reciprocal investment protection, access to production, the reduction of disparities and imbalances between national legislation relating to capital.

It is essential for the Union to be given sole jurisdiction in such areas in the interests of maximum effectiveness and coherence.

As far as intellectual property is concerned, the absence of harmonized protection for intellectual property on an international scale has highlighted the problems facing the industrialized countries in particular as a result of the increase in industrial piracy and counterfeiting.

On the basis of the GATT experience (TRIP negotiations) the idea is to consolidate and extend Union powers in an area which, given the proliferation of the new technologies (computer software, etc.), is likely to undergo much more

* Already covered by the GATT negotiations: TRIMs, services, etc.

dramatic developments than the more "traditional" problem areas (protection of geographical names). That said, the legal complexities involved, notably the existence of rights and obligations which cannot be fully integrated into the economic dimension (cultural aspects, protection of individual rights, intellectual rights, etc.), militate in favour of restricting exclusive competence in this particular area.

(paragraph 2)

7. States quite clearly that the Union is to have sole power to take measures, autonomous and conventional, in the areas referred to in paragraph 1. It is totally consistent with the Court rulings on Article 113 and complies with the same operational requirements.

(paragraph 3)

8. Keeps open the current option of delegating power to the Member States to adopt specific measures in accordance with the objectives of the Union and subject to its authorization.*

As we are talking here about implementing measures for which the Member States would receive a specific mandate from the Union, this clause in no way prejudices the exclusive competence conferred on the Union, which will grant the necessary authorizations and lay down the requisite limits and conditions. Such measures consequently fall fully within the common policy.

(paragraph 4)

9. Provides the legislative framework for the adoption of ad hoc autonomous measures (anti-dumping, safeguards, management of tariff quotas, etc.) and for the granting of the authorizations referred to in paragraph 3. It will be for the Union acting under the co-decision procedure to lay down the criteria and general conditions for applying such measures, which will subsequently be administered by means of regulations and decisions adopted by the Commission.

(paragraph 5)

10. Refers to the procedures laid down in Article Y 27 governing conventional commitments entered into in areas other than common foreign and security policy.

* This clause could also be used for dealing with outstanding aspects of commercial policy (e.g. coordination of national export credit schemes), as well as for the application of measures - to be specified - adopted in line with the principle of subsidiarity.

(paragraph 6)

11. Establishes the principle of Union representation by the Commission on the external scene in areas covered by the common policy. The aim is to enhance the Union's effectiveness by ensuring that it speaks with a single voice in international organizations on all issues that come under the common policy.

12. It is in fact essential to establish quite clearly the principle of single representation wherever the Union has sole power to act, not only in relations with the typically "economic" organizations (GATT, OECD, etc.) but also in dealings with non-economic or "mixed" organizations (United Nations, CSCE, etc.).

Article Y 18

1. This Article introduces a procedure for dealing with unforeseeable circumstances demanding urgent action in the economic and commercial field. The most likely scenarios would be the need to defend the Union's economic interests or to deal with other threats (e.g. to public health) by adopting trade measures similar to those taken at the time of the Chernobyl disaster.

2. Responsibility for assessing whether the circumstances warrant such action will lie with the Commission, which is given the power to adopt the necessary measures. But it has to inform the Council and Parliament of what has been done without delay.

3. Urgent protective measures (e.g. provisional imposition of anti-dumping duties) will be governed by the ad hoc procedures laid down pursuant to Article Y 17(4).

Article Y 19

1. Article Y 19 is designed to meet two basic needs in areas where the Union does not have exclusive competence:
 - the need to confer on the Union concurrent competence to take economic measures in areas other than those referred to in Article Y 17;

 - the need to make provision for general coordination on any issues of general interest involving external economic relations.

(paragraph 1)

2. Geopolitical changes and the development of international economic relations, notably within Europe, have already forced the Community to face up to increased responsibilities within a rigid legal and institutional framework ill-suited to the new challenges.
3. The Union must therefore be given wider powers commensurate with its international responsibilities and geared to a broader range of operations.
4. The clause in question enables the Union to take "atypical" measures with a view to achieving the objectives listed in Article Y 16, in particular through bilateral and multilateral economic cooperation with non-developing countries: structural intervention (for example, in the G-24 context), participation in regional development banks (such as the EBRD), and debt relief.

(paragraph 2)

5. Meets the need to coordinate action by the Member States, particularly in respect of the positions they adopt as members of international organizations (IMF, World Bank, etc.) or as participants at informal international conferences (economic summits, meetings of the Paris Club, etc.).
6. In view of the growing importance for world economic relations of the guidelines produced by all these bodies provision is made for permanent coordination between the Member States and the Commission on economic issues of general interest; this will mean among other things that the position of Union members not represented in all the international organizations will be duly taken into account.

CHAPTER III: DEVELOPMENT COOPERATION POLICY

The importance attached by the European Council to development cooperation policy in the wider context of international action is reflected in the decision to devote a separate chapter to it (Articles Y 20 to Y 24). This also serves to stress that development cooperation policy, albeit a significant component of the common external policy, has specific objectives and characteristics of its own.

The European Council also established the need for a stronger Community identity and more coherent Community action commensurate with the new challenges and responsibilities facing the Community on the international stage.

In the face of the major challenge represented by the need to promote development and to fight poverty, the responsibilities taken on by the Community and its Member States are impressive, both in commercial terms (leading outlet for exports from the developing countries) and in financial terms (European public aid granted on concessionary terms - EEC + Member States - accounts for 42% of world aid, as against 15% in the case of the USA and 17% in the case of Japan) and must not be overlooked.

The main aim of this particular chapter is to provide the common cooperation policy and its objectives, component elements, decision-making procedures and machinery with the legal and political basis which they deserve.

A further aim is to strengthen - through Union action, joint action by the Union and its Member States, and coordination of other action by the Member States - the identity and coherence of Union efforts in this area.

Article Y 20 (Objectives of the common policy on development cooperation)

This Article defines - of necessity in general terms - the main objectives of the common policy. Three points deserve special attention:

- the importance and priority attached to the concept of poverty, whether it be the poverty suffered by the most disadvantaged sections of the population in the countries concerned or the general economic and social poverty suffered by what the international community terms the least-developed countries;
- the attention paid to the idea of balanced and durable development, taking account notably of environmental constraints;
- the place given to respect for human rights and dignity and the promotion of democracy as part of the general objectives of the common external policy.

Article Y 21 (Components of the common policy on development cooperation)

The aim of this Article is to differentiate between the two components of the new common policy: action by the Union and joint action by the Union and the Member States; and coordination of other action by the Member States. The substance and implementing procedures for the former are spelled out in Articles Y 22 and Y 23 and for the latter in Article Y 24.

Article Y 22 (Areas, Instruments and scope of action by the Union and of joint action by the Union and the Member States)

(paragraph 1)

The action falling within the sole jurisdiction of the Union obviously includes measures covered by the common commercial policy. It also includes management of the instruments for the stabilization of export earnings from commodities of export interest to developing countries (Stabex, Compex, Sysmin) as well as measures (at the planning, negotiation or implementation stage) designed to improve the operation of the markets in such products. This particular clause largely enshrines existing competences and takes over the wording already approved by the Community in the fourth Lomé Convention and in the positions adopted at UNCTAD.

(paragraphs 2 and 3)

The list of action by the Union and of joint action by the Union and its Member States is not comprehensive but includes the instruments generally used to back up the development policies undertaken by the developing countries. EIB operations are also included.

(paragraph 3)

The aim of this paragraph is to introduce a procedure for defining the nature and scope of joint action by the Union and the Member States in the areas referred to in paragraph 2. Such joint action is essential to provide the common cooperation policy with the minimum critical mass needed to ensure its credibility and to give it a specific identity in the eyes of its beneficiaries as well as in the eyes of the other donors.

There are two points worth making as things stand at present: first, action by the Community as such (Lomé Convention and other operations funded by the budget) accounts for only just over 10% of the total aid granted by the Member States; and secondly, despite efforts already made to produce overall guidelines in certain areas, bilateral action by the Member States is still virtually uncoordinated.

Hence the procedure introduced by paragraph 3 (decision by the Council acting unanimously on a proposal from the Commission after receiving the assent of Parliament), which should make it possible to identify general objectives and to define joint action for implementation by the Union and the Member States on a significant scale and in an effective and coherent manner. For example, the Council could decide to launch a plan to combat poverty or desertification; or, should the Union and the Member States so wish, it could decide to take action aimed at relieving indebtedness. It would then select which of the instruments listed in paragraph 2 should be used for the purpose.

Article Y 23 (Definition of general guidelines and multiannual programmes specifying action to be taken by the Union and joint action to be taken by the Union and the Member States; conventional commitments; Union representation)

Article Y 22(3) lays down the procedure for defining joint action in the field of development cooperation. The next stage is to translate these relatively broad outlines into specific operations by:

- defining general guidelines to ensure that the action taken by the Commission and the Member States is consistent;
- establishing multiannual programmes specifying what action is to be taken, how, on what scale, and by whom (Commission or the Member States).

(paragraph 1)

This defines the procedure for taking the above decisions: qualified majority, co-decision by Parliament and the Council, proposal from the Commission.

The effectiveness of the cooperation policy is ensured by combining the various operations in a single programme and by constant coordination.

(paragraph 2)

The general provisions governing conventional commitments are set out in Article Y 27. The Union will have sole power to enter into such commitments in areas subject to action by the Union or to joint action by the Union and the Member States as defined in accordance with Article Y 22(3). Given the thinking behind the new Treaty, the Lomé Convention would be covered by this paragraph.

The Commission will represent the Union when these areas come up for discussion by international organizations or at international conferences. This would apply for instance in the case of UNCTAD or FAO discussions, or meetings of the Conference on the Special Action Programme on behalf of the Least-Developed Countries).

Article Y 24 (Coordination)

(paragraphs 1, 2 and 3)

As the Member States will continue to take national action in broad areas of development cooperation not covered by Union action or by

Joint action, provision has to be made for machinery which will ensure consistency and improve effectiveness as a result. This machinery is duly provided for in Article Y 24:

- mutual information on all plans for action at national or Union level in the field of development cooperation policy;
- liaison necessary as a result of such information or in the interests of general consistency.

Paragraph 3 stresses the need for overall consistency between Union cooperation policy as a whole and action by the Member States in a national framework. The action taken by the Union and national action must complement each other. In any event national action must avoid impairing Union cooperation policy.

(paragraph 5)

It will be for the Commission to take any action needed to ensure that the system operates properly, including the sending of recommendations to the Member States.

This does not preclude the adoption of specific and more binding measures by the Council in accordance with the procedures set out in Article Y 23(1) in areas not subject to Union action or joint action but deemed to be of special importance. This could apply for instance in the case of discussions organized at periodic meetings of IMF or World Bank bodies (general assemblies, Development Committee, BIRD/IMF, etc.).

(paragraph 4)

Similarly, the Commission will be responsible for coordinating the positions of the Member States in international forums in areas not specifically covered by the common cooperation policy.

CHAPTER IV - GENERAL PROVISIONS

Section 1

Article Y 25

1. This paragraph transposes the traditional Community mechanism into the new common foreign and security policy but adds a role for the Council Presidency.

Where the Commission already has powers in areas of Community concern, the right of initiative is conferred jointly on the Council Presidency and the Commission as regards requests for authorization to open negotiations and the conduct of negotiations (the "duopoly").

The Council, which decides to open negotiations by augmented qualified majority, or in certain cases¹ unanimously if the agreement relates to security matters, may always issue a negotiating brief to the negotiators, who will be assisted by a special committee appointed by the Council.

2. The initiative in proposing that the agreement be concluded lies with the Council Presidency or the Commission; either of them may make the proposal to the Council.

It is the Council which, after consulting Parliament, concludes the agreements by an augmented qualified majority, or in certain cases¹ unanimously if the agreement relates to security matters.

Section 2

Article Y 26

- 1 and 2. These provisions, which amplify the specific provisions in the chapters on external economic policy and development cooperation policy, specify that the procedure of Article Y 27 will apply to all agreements other than those covered in whole or in part by the common foreign and security policy, which are dealt with by Articles Y 25 and Y 28 respectively. Paragraphs 1 and 2, which expressly refer to those Articles, confer power on the Union to conclude international agreements with non-member countries and international organizations.

1. This paragraph, relating to the exclusive power of the Union, incorporates into the Treaty the principles of the judgment given by the Court of Justice in the AETR case,² which is part of the established body of Community law. The Union, then, is given the sole power to conclude international agreements in cases other than those expressly provided for by the Treaty, meaning part of the EMU agreements, agreements under Articles Y 17(1) relating to external economic policy and agreements under Article Y 22(1) relating to certain development cooperation activities. Following the AETR rule, the Union acquires sole power to act externally as soon as it has exercised its power internally. In other words, if there are internal rules in whatever form in some particular area, the Member States lose their right to enter into commitments vis-à-vis non-member countries or international

1 Where the Council has not exercised its possibility of deciding on a different decision-making procedure as provided in Article Y 13(3).

2 Judgment of 31 March 1971 in Case 22/70 Commission v Council: [1971] ECR 263.

or international organizations since, as the Court has held, these commitments could have an impact on Community provisions or affect their scope.

As a corollary of this exclusive treaty-making power, it is provided that the Union, in areas where it has already exercised its powers internally, is substituted for the Member States in relations with non-member countries and in international organizations and conferences. This will put an end to the development of grey areas which have been a source of confusion and have reduced both the Community's influence on the international scene and the international dimension of its common policies.

2. Paragraph 2 deals with what are known as shared powers and complements paragraph 1. In areas where the Union has not yet exercised its powers internally it may, since it enjoys full status as a subject of international law, conclude international agreements in all areas covered by the Treaty - which means those listed in Article 3 and those added to the Union's area of power by decision under Article 235 because they are necessary for the attainment of a Treaty objective.

This principle was stated clearly by the Court in Opinion No 1/76.¹ The concept here is the concept of potential or latent powers actually exercised by the Union only when the time is felt to be ripe; the exercise of concurrent powers by the Member States is not excluded, provided the Member States do not enter into commitments which conflict with Union objectives.

Where it has not yet exercised its exclusive external power the Union, acting under express provisions of the Treaty or under the AETR rule enshrined in paragraph 1, will coordinate the positions of the Member States in relations with non-member countries and in international forums. This means that the Union can speak with one voice on the international scene in all areas covered by the Treaty and that the Commission can assess on a case-by-case basis whether it should present a recommendation to the Council seeking authorization to open negotiations for an agreement in a given area.

3. The purpose of this paragraph is to make it clear that the Union must have the financial resources needed to meet the obligations flowing from the agreement on an equal footing with signatory States under multilateral agreements. The treaty-making power conferred on the Union must not be restricted by financial constraints.

Article Y 27¹

1. This paragraph broadly takes over Articles 228 and 113(3), applied in practice to all types of agreement concluded by the Community.

It is now, however, provided that the Commission will be the sole negotiator; it will regularly consult the special committee, but the committee will not have to be involved in the actual negotiations.

2. The important novelty is to be found in this paragraph, for certain agreements will require the authorization (assent) of Parliament before they can be concluded by the Council.

This provision relates to the most important agreements, exhaustively defined as such in this paragraph. The categories listed here could be reviewed following the intergovernmental conference in order to add the more important classes of agreement relating to new powers conferred on the Union.

This expansion of Parliament's role in the conclusion of certain international agreements by no means implies that existing practices should be abandoned, particularly as regards the transmission of information to Parliament during negotiations; there is no actual provision for this in the text of the Treaty, but the Commission has given Parliament a commitment, particularly in the February 1990 Code of Conduct.

3. Agreements not falling within the categories set out in paragraph 2 will be concluded by the Council, acting by qualified majority after consulting Parliament.
4. This paragraph provides that the Commission may be authorized to conclude certain agreements, automatically where they modify early agreements, or otherwise by powers delegated case by case by the Council.

This would cover, for instance, standards issued by international organizations such as ILO or the FAO Codex Alimentarius.

1 This Article was already transmitted to the Intergovernmental Conference by letter dated 14 February 1991 (SG(91)D/255) entitled "Provisions extending Parliament's powers in respect of international agreements".

5. This paragraph preserves the Commission's powers under Article 229 of the EEC Treaty, which is substantially repeated in Article Y 30 and covers agreements such as liaison or administrative cooperation agreements with international organizations.
6. This paragraph confirms that the Commission will administer agreements, representing the Union for that purpose. The concept is broader than management in the strict sense and extends to representing the Union in bodies such as joint committees set up by agreements.

Section 3

Article Y 28

This Article deals specifically with "multidimensional" agreements covered partly by common foreign policy and partly by Union external powers under other policies (such as agriculture, transport or the environment). There is a particularly sensitive problem here. The proposed solution is extensively inspired at pre-conclusion stages by the procedure for foreign policy agreements (Article Y 25), conclusion being subject to the procedure for important agreements in other areas of Union power.

The procedure thus combines elements of the procedure applying to the two categories of agreement.

1. The Council Presidency and the Commission will jointly take the initiative in proposing that negotiations be opened, as is the case in the foreign policy area. Negotiations will be conducted by the Commission in conjunction with the Presidency after consultation with a special committee: the formula partly follows the traditional Community set-up but seeks to reflect the dual nature of these agreements. As in the case of foreign policy, conclusion will be proposed jointly by the Presidency and the Commission.

This, then, is a diluted form of the duopoly.

2. These agreements are by definition important agreements establishing general relations with certain of the Union's partners, which means that Parliament's assent will be necessary for their conclusion.
3. The Commission will be responsible for administering these agreements, except those in the foreign policy area, and this will include representing the Union in bodies set up by them.

Section 4

Article Y 29

This reproduces the part of Article 228 which provides for the Court of Justice to be consulted where there is doubt as to whether an agreement is compatible with the Treaty.

Parliament's external relations role has been substantially expanded and the Court has recognized its capacity to bring actions where its prerogatives are at stake; Parliament is consequently added to the institutions which may seek the Court's opinion. This Article is otherwise unchanged.

Article Y 30

Articles 229 to 231 are updated here without changes of substance beyond removing the reference to specific organizations.

The emphasis is placed on support for regional integration organizations as the Union has a family relationship with them.

Articles Y 31 and Y 32

These Articles repeal a series of provisions which are replaced by the new Title on common external policy. This means specific EEC Treaty provisions relating to the common commercial policy (Article 113), to security matters (Articles 223 and 224),¹ to research agreements (Article 130n), to the environment (Article 130r(5)) and to association agreements (Article 238) as well as the Articles on political cooperation in the Single Act.

¹ This is without prejudice to the question of internal disturbances, which are out of place in the foreign policy context.

DEMOCRATIC LEGITIMACY*

Hierarchy of norms

Executive powers

Legislative procedure (co-decision)

* Parliamentary assent to international agreements is covered in the Chapter on Common External Policy.

Draft text

Hierarchy of norms - Executive powers

- Deletion of Article 145, third indent¹;
- Deletion of Article 149²;
- Article 155:

In order to ensure the proper functioning and development of the Union, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;
 - formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
 - have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
 - adopt, in the manner provided for in Article 189b, the regulations and take the decisions necessary to implement laws, without prejudice to the provisions of Article 189b(1) conferring a power of substitution on the European Parliament and the Council. It shall also adopt the administrative provisions necessary to implement the regulations.
- Article 189:

In order to carry out their task the institutions of the Union shall, in accordance with the provisions of this Treaty, adopt laws and regulations, take decisions, make recommendations or deliver opinions.

A law shall have general application. It shall be binding in its entirety; any provisions which do not call for implementing measures shall be directly applicable in all Member States.

Action to be taken to apply the provisions of this Treaty shall be defined by laws. Laws shall determine the fundamental principles, general guidelines and basic elements of the measures to be taken for their implementation. Laws shall determine inter alia the

1 The delegation of executive powers to the Commission is determined in a general fashion; exceptions cannot be made to it by a law.

2 Since the co-decision procedure takes over from the cooperation procedure this no longer appears in Article 149 (included in a second section, entitled "The Council" in Chapter 1 "The institutions") but in Chapter 2 "Provisions common to several institutions" of Title I of Part Five of the Treaty, Article 189a.

rights and obligations of individuals and firms and the nature of the guarantees they should enjoy in every Member State. Implementation may be entrusted in whole or in part to the Member States, acting in accordance with their own constitutional requirements.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

- Article 189a (new):

(Legislative (co-decision) procedure as set out hereafter).

- Article 189b (new):

1. Where a regulation implements a law, a power of substitution shall be reserved to the European Parliament and the Council in all cases where no provision is made for recourse to one of the procedures referred to in paragraph 2.

The following procedure shall apply:

- the Commission shall adopt the regulation in question and forward it to the European Parliament and the Council;
 - the Commission regulation shall enter into force on expiry of a period of two months reckoned from the date of transmission unless the European Parliament, by a majority of its members, or the Council, acting by a qualified majority, rejects the measure within that period;
 - in that event the Commission may either adopt a new regulation, which shall be subject to the substitution procedure, or submit a proposal for a regulation; in the latter case the procedure laid down in Article 189a shall apply.
2. A law may provide that, in the exercise of the powers referred to in the fourth indent of Article 155, the Commission shall be assisted by an advisory committee composed of representatives of the Member States, whose role shall be to deliver an opinion on the draft of the measures to be taken; where the measure to be taken is a regulation, a law may provide that the Commission shall be assisted by a management committee and that in the event of the Committee delivering a negative opinion by the majority provided for in the first indent of the second subparagraph of Article 148(2), the Council, acting by a qualified majority, may take a different decision within a given period.

For the record

N.B.: Consequential amendments (addition of "laws" and deletion of "directives") must be made to Articles 190 and 191.

Draft text

Legislative procedure (Co-decision)

Article 189a

Where a law is enacted in pursuance of this Treaty, the following procedure shall apply:

1(a) The Council, acting by a qualified majority under the conditions set out in paragraph 5, on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position; the European Parliament shall have a period of four months from transmission of the proposal to give its opinion; if the European Parliament does not react within this period, it shall be deemed to have given a favourable opinion.

(b) If its common position is compatible with the European Parliament's opinion, the Council shall definitively enact the law. If not, the Council's common position shall be transmitted to the European Parliament within a period of four months following delivery of the European Parliament's opinion or, in the absence of an opinion, expiry of the period referred to in point (a). The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

(c) If the Council fails to adopt a common position within the time allowed and if the European Parliament fails to deliver an express opinion, the procedure shall be closed.

If the Council fails to adopt a common position within the time allowed although the European Parliament has delivered an express opinion, the procedure laid down in paragraph 2 shall apply.

2. Within one month of transmission as provided for in paragraph 1(b), the proposal shall be subject to a conciliation procedure within a committee composed of representatives of the European Parliament, the Council and the Commission.

If the conciliation procedure leads to agreement within two months on the drafting of a joint text, this text shall be deemed to be approved on expiry of a period of one month reckoned from the declaration that agreement has been reached unless the European Parliament, acting by an absolute majority of its members, or the Council, acting by a qualified majority, rejects it within that period.

3. If the conciliation procedure does not lead to agreement within a period of two months, the Commission shall re-examine its proposal within one month. The re-examined proposal shall be transmitted to the European Parliament, except where it incorporates Parliament's amendments, and to the Council.

If the European Parliament rejects a re-examined proposal within a period of two months by an absolute majority of its members, the procedure shall be closed.

If the European Parliament approves the re-examined proposal or fails to react within the time allowed, or if there is no need to refer it to the European Parliament pursuant to the first subparagraph, the Council may adopt the re-examined proposal by a qualified majority, amend it unanimously or reject it by a simple majority. If the Council has not acted on expiry of a period of two months reckoned from transmission of the European Parliament's approval or of the re-examined proposal incorporating the European Parliament's amendments, the re-examined proposal as approved by the European Parliament shall be deemed adopted. The declaration to that effect shall be made by the President of the European Parliament.

Where the Council amends the re-examined proposal, it shall be deemed adopted if, within a period of one month from transmission of the amended proposal to the European Parliament, the European Parliament has not rejected it by an absolute majority of its members. The declaration to that effect shall be made by the President of the Council.

4.1¹ Unanimity shall be required for the Council to amend a proposal when adopting a common position or definitively enacting a law.

As long as a law has not been enacted, the Commission may alter its proposal at any time during the procedures provided for in paragraphs 1 to 3.

5. The periods referred to in this Article may be reduced by common accord between the European Parliament, the Council and the Commission. They shall be reduced by half where the European Parliament or the Council exercise their power of substitution in respect of an act adopted by the Commission, pursuant to Article 189b(1).

¹ This paragraph takes over the substance of paragraphs 1 and 3 of Article 149, which is replaced in its entirety by the new Article 189a.

Present text of the cooperation procedure

Article 149(2)

2. Where, in pursuance of this Treaty, the Council acts in cooperation with the European Parliament, the following procedure shall apply:

(a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

(c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

CODECISION PROCEDURE: SECOND READING

COM + EP
+ COUNCIL

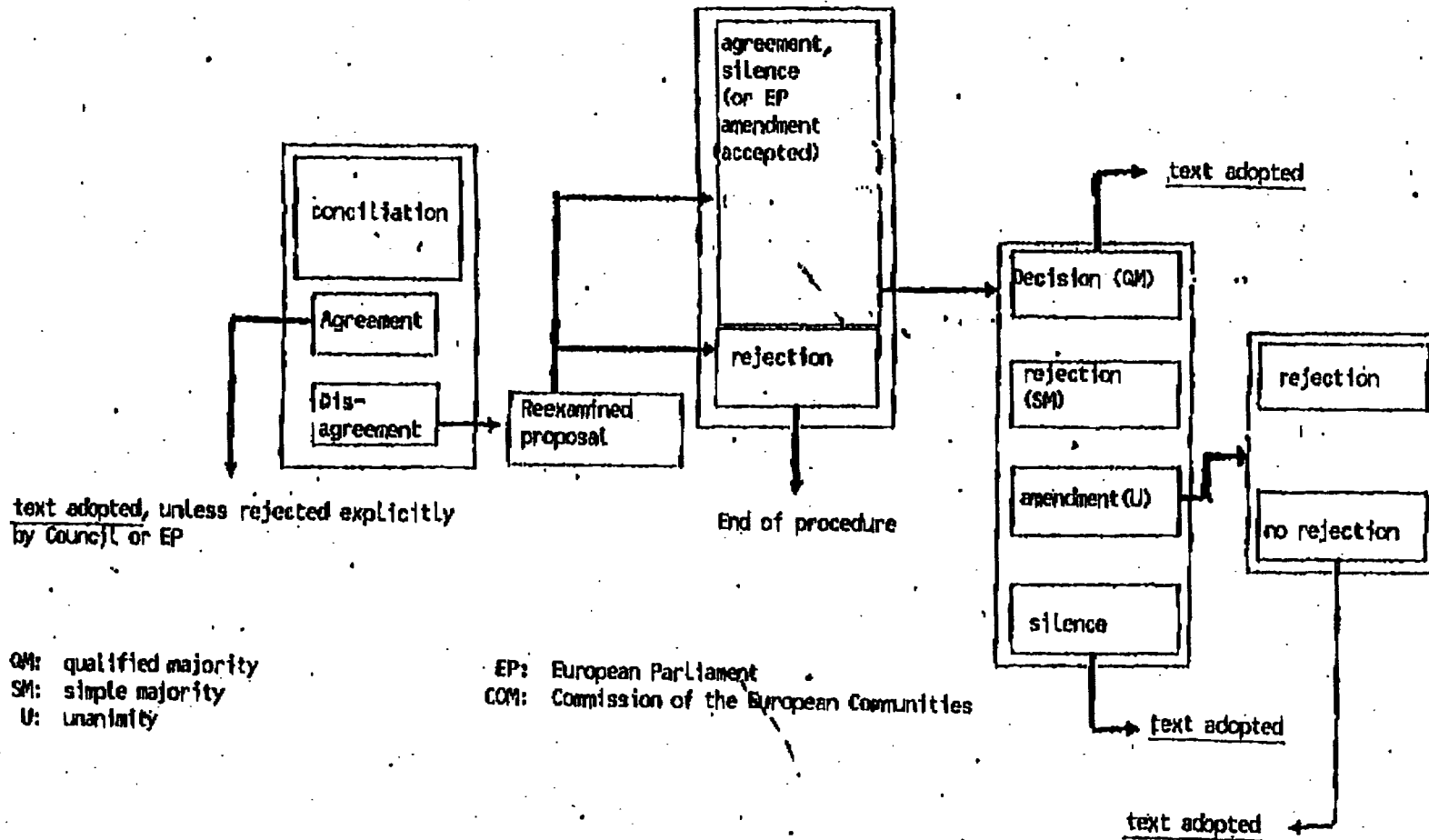
COM

EP

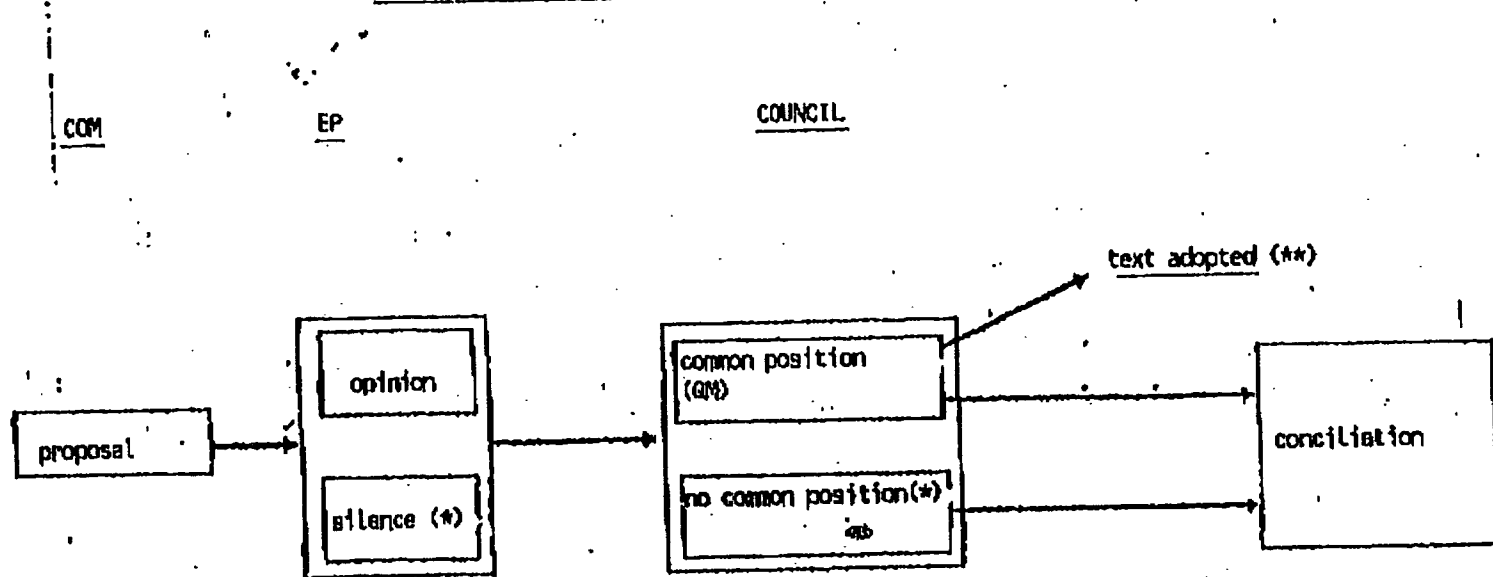
COUNCIL

EP

- 66a -



CODECISION PROCEDURE: FIRST READING



* SILENCE FROM EP AND NO COMMON POSITION = END OF PROCEDURE,

** EP OPINION IF THERE IS A COMMON POSITION

⊗

- QM: qualified majority.
- SM: simple majority
- U: unanimity

EP: European Parliament
COM: Commission of the European Communities

EXPLANATORY MEMORANDUM

Democratic legitimacy: Hierarchy of norms; executive powers; legislative procedure (co-decision)

1. In its opinion of 21 October 1990 the Commission spoke in favour of strengthening democratic legitimacy, particularly by giving the European Parliament greater powers:
 - in the legislative process, by making changes to the cooperation procedure to introduce powers of co-decision, albeit confined to legislative acts; deadlines would be added to guarantee effectiveness and the scope of the procedure would be widened;
 - by requiring Parliament's assent to the conclusion of major international agreements, with provision for informing and consulting Parliament in the new area of foreign and security policy;
 - in the budget procedure and in relation to own resources;
 - in relation to the investiture of the President and Members of the Commission.

2. Parliament's resolution of 22 November 1990 on the Intergovernmental Conferences and the conclusions of the Rome European Council of 15 December 1990 adopted what is essentially the same line, adding that Parliament should play a greater part in monitoring the application of Community policies and that the rights of petition and inquiry should be consolidated. The European Council advocated, inter alia, the development of a co-decision procedure for legislative acts in the hierarchy of Community acts, and Parliament is currently considering this question.

This paper deals solely with Parliament's powers in relation to the adoption of legislative acts.

The same approach has been adopted for internal legislation and international acts, viz. increasing Parliament's role in relation to legislative acts in the strict sense and major international agreements. This increased involvement in the adoption of essential Community acts presupposes less cumbersome procedures for secondary or implementing legislation.

3.1. As far as legislation is concerned, it is clear that, if democratic legitimacy is to be strengthened while enhancing the effectiveness of Community decision-making, the following conditions must be met:

- the Parliament/Council co-decision procedure must be confined to the adoption of primary legislation, the laws of the Union; implementation of these laws would be a matter for national governments or the Commission; however, as the Commission indicated in its 21 October 1990 opinion, the Council would continue to be central to the institutional system in the context of the overall balance of the revised Treaty, which would provide for a significant increase in its powers in relation to economic and monetary union and a common foreign policy;
- the co-decision procedure must facilitate decisions and promote dialogue between the three institutions involved in decision-making.

3.2.1 Hierarchy of norms

A hierarchy of norms, already existing in the legal systems of most Member States, must be introduced: Treaty, law, national implementing measures or Community regulations, and administrative implementing provisions.

3.2.2 The revised version of Article 189 defines a law as an act covered by the co-decision procedure, meaning that the procedure can be applied in every field of Community activity, but only in relation to the basic elements of the matter to be dealt with. It therefore introduces the principle of a hierarchy of norms.

This distinction should make it easier to adapt to the foreseeable pattern of Community legislative activity. This is expected to decline somewhat from 1993 onwards and the nature of Community legislation will change, basic regulations gradually becoming as permanent and fundamental as national legislation. It should also make it possible:

- to give Parliament a greater part to play in the exercise of what is one of its natural functions, the legislative function in the proper sense, by removing technical questions and matters of detail from its agenda;
- to ensure that the principle of subsidiarity is adhered to, by providing an opportunity, as a general rule, for the adoption of national implementing measures, to be laid down in each law on a case-by-case basis;

- to place relations between the institutions on a rational, balanced footing and thereby increase the overall effectiveness of the Community's decision-making process;
- to simplify and clarify the system of Community acts, thereby making it easier for national parliaments and authorities to take them into consideration; in particular, it should make it possible to do away with the directive, currently a hybrid instrument of ambiguous status.

As a new category of Community act, the law would be at the pinnacle of the hierarchy of secondary legislation:

- from the formal, organic point of view, a law would be an act of the Community's legislature, i.e. Parliament and the Council acting in accordance with the co-decision procedure; its intervention would be confined to the adoption of laws;
- a law would be defined first and foremost by reference to its content; in the words used by the Court of Justice in its judgment on the Köster case, the sole purpose of a law would be to determine principles and general guidelines and "the basic elements of the matter to be dealt with"; this means that the basic principles would have to be determined by a law in all sectors; furthermore, certain rules would have to be enshrined in a law because of their intrinsic legal value; the rule could be, for instance, that provisions creating new obligations and liabilities to be borne by private individuals or businesses and determining the guarantees the latter should enjoy in any Member State should be laid down in a law; there would therefore be a double (cumulative) criterion for defining matters to be dealt with by a law: the "basic elements" in all cases plus sufficiently detailed rules in the case of provisions affecting the rights and obligations of those subject to the law; by contrast, all measures, even those of general and permanent effect, covered by the notion of implementation would not be covered by a law;
- as for its effects, a law should be of the same kind and scope in the Community's legal order (it should be binding, enjoy primacy and be directly applicable), irrespective of whether it is implemented by the Member States or by the institutions.

3.2.3 Another key feature of the proposed reform is that a law could be implemented in whole or in part by Member States.

In this way the essence of the directive would be retained, and the instrument restored to its initial status. Since a law would deal with the basic elements rather than with the detail of an issue, Member States would have considerable discretion in the choice

of the method to be used to achieve the objective set out in the law. It goes without saying that these objectives would retain all their significance and that the Commission would continue, as at present, to ensure that Member States complied with the provisions of Community law.

Similarly, the principle of subsidiarity would be respected in full since each law would specify, on a case-by-case basis, the division of tasks between the Member States on the one hand and the Community's institutions on the other (see 3.2.4 below). The subsidiarity principle states that what cannot be done better at Community level at the implementation stage should be left to the national authorities. It would therefore be for the Commission in its proposals, and for Parliament and the Council in their amendments to them, to bear this in mind.

The main criteria applicable to this division of tasks will be the extent of the need for uniformity given the objective to be achieved to comply with a law - that is to say, the requirements of non-discrimination and legal certainty - and the relative complexity of the matter being dealt with.

- 3.2.4 In the absence of a specific reference to implementation at national level, implementation would be a matter for the Community's institutions, an approach which is close to the arrangement for regulations at present.

Executive powers would be vested in the Commission by the Treaty, in the case of both regulatory measures and administrative provisions. A law could not depart from this general rule. This confirms¹ the principle already recognized in Article 145, third indent, of the EEC Treaty, doing away with the option now open to the Council of reserving the right to exercise implementing powers itself in "specific cases", in other words, with no clear or verifiable limit, or using committee procedures which are either too cumbersome or provide no guarantee that a decision will be taken.

One consequence is that a law could only stipulate that the Commission be assisted by an advisory committee or a management committee, the latter being possible only in the case of regulations (see (new) Article 189b(2)).

- 3.2.5.1 However, in all cases where no provision is made for a committee procedure, a substitution mechanism would be introduced for secondary legislation (regulations) adopted by the Commission pursuant to primary legislation (laws).

Parliament and the Council could avail themselves of the substitution mechanism at the stage preceding entry into force of a Commission regulation. If the legislature considered that the Commission was exceeding its powers or straying from the guidelines laid down in a law, or indeed for reasons of expediency, this mechanism would allow it to act in place of the Commission. The relevant procedure is defined in Article 189b(1). It stipulates that, following adoption of a regulation, the Commission would

¹ See Article 155, fourth indent.

forward the text to Parliament and the Council. Entry into force would be suspended for two months. During this interval both Parliament (by a majority of its members) and the Council (by a qualified majority) could challenge the measures adopted by the Commission. If either institution exercised this option the Commission, depending on individual circumstances, could either adopt a new regulation (which would again be subject to the substitution mechanism) or present a proposal for a regulation. As an exception to the general rule that only a law is subject to the co-decision procedure, this proposal would be subject to the full legislative process. This solution would come into play above all in cases of a wide divergence of opinion between Parliament and the Council, or between one of these institutions and the Commission.

This would not exclude the possibility, in certain areas, of the Commission informing Parliament and the Council of its rules and regulations either in advance (in the case of agriculture for instance) or after the event (in the case of research for instance).

3.2.5.2 The substitution mechanism would be in addition to the possibility already open to each of the institutions (Parliament, Council and Commission) of asking the Court to annul an act of another institution on grounds of illegality, particularly where that institution has acted ultra vires (Article 173, first paragraph).

3.2.5.3 The right to challenge regulatory acts could also be made more widely, indeed generally, available to private individuals, provided they could invoke a sufficiently flagrant infringement of a higher legal provision designed to protect them.¹ This would not only safeguard the principle of legality, which is the basis of any democratic legal order, but also guarantee the effectiveness of the Community's decision-making process.

3.3.1 The co-decision procedure

The object here is to move on from the cooperation procedure introduced by the Single Act to genuine joint decision-making by the two branches of the legislature, Parliament and the Council.

3.3.2 The co-decision procedure described in Article 189a (new), applicable to the enactment of a law, is therefore based on the existing cooperation procedure, a device which has proved its

¹ This solution would entail amending Article 173, under which private individuals may institute proceedings for annulment only in respect of acts which are "of direct and individual concern" to them, in other words usually measures applicable solely to an individual.

worth.¹ Two key elements of interinstitutional dialogue are retained, namely the Commission's right to amend its proposal at any time and the rule stipulating that the Council may only amend a Commission proposal by unanimous vote (paragraph 4).

But this legislative procedure would involve genuine joint decision-making, that is to say, express power of rejection by both Parliament and the Council at the final stage of the procedure, which would prevent an act being adopted (see Article 189a(3), second, third and fourth paragraphs).

This means that Parliament could exercise its power of amendment (or an equivalent power) at two points: on first reading - as is now the case under the cooperation procedure - and in the context of the conciliation procedure (see 3.3.3(b) below), where it could influence the content of the text on equal terms with the Council and the Commission. In certain circumstances, therefore, Parliament would "have the last word", whereas under the present system the final say always rests with the Council.²

However, the entire procedure has been designed to facilitate agreement and avoid rejection. The danger of deadlock has been reduced to a minimum and effectiveness increased. In the first place, binding time limits have been fixed for each stage of the procedure. These will be adhered to because failure to do so will have precise consequences, making it impossible for the offending institution to make its views known at that stage of the procedure. Time limits could be reduced by agreement between the institutions: an interinstitutional agreement will be needed to settle the problem of emergencies and cases where minor amendments have to be made to a law. Time limits would be automatically reduced by half in the event of substitution (paragraph 5).

In addition, there is provision at the second stage for a conciliation procedure in the event of Parliament and the Council failing to reach complete agreement (Article 189a(2)). This if successful will lead to tacit approval of the act (rejection by contrast would have to be explicit) (see 3.3.3(b) below).

It follows that, even with the introduction of a conciliation procedure, there would be no danger of making the procedure longer than it is at present. The existing cooperation procedure imposes no time limits for the successive stages. Even assuming the worst scenario - i.e. conciliation fails and the Council amends a re-examined proposal at the end of that stage - the co-decision

1 The text of Article 149(2), which codifies the cooperation procedure, is reproduced after the (new) Article 189a.

2 In Member States with bicameral parliaments, the final say does not always rest with one of the two chambers.

procedure would be shorter on average than the cooperation procedure.¹ Thus the decision-making process becomes more effective and gains increased legitimacy at one stroke.

3.3.3 The co-decision procedure would operate as follows:

- (a) In essence the first reading would be the same as under the cooperation procedure, except that the Council would be entitled to enact a law immediately by qualified majority, or by unanimous vote if it amends a Commission proposal, provided it is entirely in conformity with Parliament's opinion (paragraph 1(b)).

However, the fixing of binding time limits as early as the first reading stage (paragraph 1(a) and (b)) means that arrangements need to be made for dealing with the consequences of any failure to adhere to time limits.

If neither Parliament nor the Council acts before the time limit expires, the procedure will be regarded as closed (paragraph 1(c), first subparagraph).

If only Parliament fails to act, it will be deemed to have delivered a favourable opinion (paragraph 1(a)), whereupon the Council can adopt its common position and proceed to the next stage of the interinstitutional dialogue, the conciliation procedure.²

If only the Council fails to meet the deadline, the same applies (paragraph 1(c), second paragraph).

- (b) At this stage a conciliation process will be initiated in a tripartite committee (representing Parliament, the Council and the Commission).³ A time limit will apply to this procedure (paragraph 2).

Contrary to the recommendations of the Martin report, the Commission would be represented at the conciliation stage and could therefore exercise its right of initiative, including the right to amend its proposal, throughout the procedure to facilitate a consensus. In the Commission's view the conciliation procedure

1 The cooperation procedure takes 20 months on average. In exceptional cases (German unification for instance) it takes much less time. But in others there is still no outcome several years after the initial proposals were submitted (cf. two 1986 proposals on insurance (annual accounts - liquidation) and two 1988 proposals on intellectual property (protection for computer programs and biotechnology products)).

2 Where the common position is in line with Parliament's opinion (or the Commission's proposal where Parliament does not deliver an opinion), the Council could enact the law at this point (paragraph 1(a)).

3 The exact composition of the conciliation committee will have to be enshrined in an interinstitutional agreement.

should minimize the danger of deadlock or outright rejection. It provides a better guarantee than a bipolar Parliament/Council relationship of protecting the interests of all the Member States.

Within the conciliation committee the Council would be able to take immediate account of Parliament's amendments, it being understood that the Commission would retain the right to withdraw its proposal.

It should be noted that there is no provision for a decision or a vote by the conciliation committee. The aim here is to promote the emergence of a consensus between the three institutions and do away with any problem of the representativeness of members.

If conciliation succeeded within the tripartite committee the only course left open to Parliament and the Council would be to reject the resulting text by a given deadline (silence being taken to signify approval) (second subparagraph of paragraph 2). Constitutional law requires that the text while "favourably viewed" within the committee should at least be given official tacit approval by the institutions themselves.

If conciliation failed (paragraph 3), the final stage of the existing cooperation procedure, updated in line with the Tindemans-Delors proposal, would be combined with the proposal set out in the Belgian Government's memorandum, i.e. Parliament could reject the Council's final text. In this way the Council would no longer be the only institution with a final say.

Under the existing cooperation procedure, following the second reading, the re-examined proposal, whether or not it takes account of some or all of Parliament's amendments, can be adopted by the Council acting by a qualified majority, or amended by unanimous vote; if no decision is taken within the time limit, the procedure is closed. Under the new co-decision procedure, the Council could take a decision on a re-examined proposal only if it incorporated all Parliament's amendments or if the proposal, having been referred to Parliament again, was not rejected by an absolute majority of its members. Contrary to the present arrangement, the procedure would be closed if Parliament rejected a proposal at this stage.

If the proposal was not rejected, the Council could either adopt it by a qualified majority, amend it by unanimous vote or reject it by a simple majority. If the Council amended the revised proposal, Parliament would have a further opportunity to reject it by an absolute majority of its members.

**THE SOCIAL DIMENSION AND THE
DEVELOPMENT OF HUMAN RESOURCES**

Draft text

**TITLE III: THE SOCIAL DIMENSION AND THE
DEVELOPMENT OF HUMAN RESOURCES**

Chapter 1: Social provisions

The provisions of Chapter 1 of Title III of Part Three of the Treaty are replaced by the following Articles.

Article 117

The Union's objectives shall be to improve living and working conditions, to guarantee fair social protection, to encourage the dialogue between management and labour, to develop human resources and to combat social marginalization.

These objectives shall be pursued through the completion of the internal market and Economic and Monetary Union. They shall also be implemented through structural policies, the adoption of common rules and through agreements concluded between management and labour.

In pursuing these objectives, the Union shall have regard to the competitiveness of companies and the diversity of national practices, especially in the area of contractual relations.

Article 118

1. In order to attain the objectives set out in Article 117, the Union shall complement and support the action of the Member States in the following areas:
 - the working environment and protection of the health and safety of workers;
 - living and working conditions, so as to ensure the protection of basic rights of workers;
 - basic and advanced vocational training;
 - levels of skills;

- information for and consultation and participation of workers;
 - the functioning of the labour market, in so far as this is made possible by economic convergence and the approximation of social practices in the Member States.
2. To this end the Council and the European Parliament, acting on a proposal from the Commission in accordance with the co-decision procedure and after consulting the Economic and Social Committee, shall adopt, by means of laws, minimum requirements applicable in each Member State.
 3. Before presenting proposals in accordance with paragraph 2, the Commission shall consult ... on the possibility of attaining the objectives set out in paragraph 1 through framework agreements in accordance with Article 118b. Where the Commission establishes that a framework agreement is possible, it shall take the initiative of initiating the procedure provided for in Article 118b.¹

If such an agreement cannot be reached within a reasonable time, the procedure provided for in paragraph 2 shall apply.

4. Where a law is not to be implemented by the Member States, the Commission shall be assisted by a ...² acting as a management committee within the meaning of Article 189b(2) in respect of such implementing regulations as it is to adopt.

A law may, however, in the first instance, leave the responsibility for implementation of all or some of its provisions to management and labour.

5. Provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.
6. This Article shall not apply to measures regarding the harmonization of social security systems, the right of association or the conditions governing the right to strike, nor to provisions regarding access to employment for nationals of non-member countries.

Measures in these areas shall be adopted in accordance with the procedure provided for in Article 235.

1 The Commission may adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

- the outcome of discussions in the ad hoc Group on Social Dialogue;
- the involvement in the procedure of a consultative body, the nature of which remains to be determined.

2 A consultative organ of a type to be determined.

Article 118b¹

1. The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreements, including [framework] agreements applying throughout a trade or industry at European level.
2. At the request of the parties concerned, [framework] agreements may be the subject of a Commission recommendation or of a decision taken by the Council, acting by a qualified majority on a proposal from the Commission after consulting the European Parliament and the Economic and Social Committee, and addressed to the Member States so as to make them mandatory for the duration of their validity.

Article 119

1. Each Member State shall ensure equality of treatment between men and women at work. In particular, it shall ensure the application of the principle that men and women should receive equal pay for equal work and enjoy equal opportunities on the labour market.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement,
- (b) that pay for work at time rates shall be the same for the same job.

¹ The Commission may adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

- the outcome of discussions in the ad hoc Group on Social Dialogue;
- the involvement in the procedure of a consultative body, the nature of which remains to be determined.

3. Measures to facilitate the implementation of the principles laid down in paragraph 1 shall be taken in the form of laws adopted in accordance with the co-decision procedure by the Council and the European Parliament, acting on a proposal from the Commission after consulting the Economic and Social Committee.

Article 120

A law adopted in accordance with the co-decision procedure by the Council and the European Parliament, acting on a proposal from the Commission after consulting the Economic and Social Committee, shall define the conditions in which actions to promote the attainment of the objectives set out in Article 117, (especially) through exchanges of information and experience, may be launched in the framework of multiannual programmes.

Article 121

The Commission shall each year make a report on the evolution of the social situation in the Union. It shall transmit this report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on specific problems concerning the social situation.

EXPLANATORY MEMORANDUM

The social dimension and the development of human resources

The objectives of social policy, which is inseparable from economic policy, are to ensure a high level of employment, to improve living and working conditions with a view to harmonizing them while maintaining the improvement, to develop human resources, to enhance solidarity and to combat all forms of social marginalization. These objectives are sacrosanct.

OBJECT AND METHODS OF SOCIAL REGULATION: CHANGES AND PERMANENT FEATURES

However, in recent years the circumstances in which social policy is conducted have changed considerably and deep-set trends, common to all the Member States, have become apparent. In all likelihood, these trends will continue over the next few decades.

(a) In broad terms, the trends can be described as follows:

- The internationalization of economies, in some cases even their globalization, has intensified. In the Community, the removal of internal frontiers will lead to substantial transnational integration of firms and increased workforce mobility. Indeed, this is already well under way.
- In this context, improvement of the competitiveness of firms by keeping costs under control and seeking greater flexibility in working conditions and the organization of work is now a generally recognized imperative. This is to be perceived as the result of the acceptance of economic constraints by all those involved. The introduction of new technologies is of major significance here.
- The quest for competitiveness is being pursued along specifically national lines. But it entails major changes in all the Member States, with considerable qualitative and quantitative effects on employment and labour relations.

Indeed, all the principal variables in the world of employment have altered as a result: the proportion of the labour force accounted for by the tertiary sector and by women has increased; forms of employment and methods of remuneration have become more diverse; the organization of work and working time has become more flexible; recognition has been given to the fundamental role of training, both initial and continuing; the mix of qualifications required is changing; geographical and occupational mobility is on the increase, and so on.

- At the same time, the aspirations of workers - in fact, of the public at large - have also altered and diversified. In this way, the needs of firms and the aspirations of individuals have found new areas of convergence (e.g. new forms of employment).

- (b) A basic feature of European patterns of change and of Europe's social model is that, in most cases, these developments have been kept under control and in balance by bargaining between the two sides of industry. Of course, this has caused adjustments to be made in the way in which developments are handled.

The main change has been a clear move to decentralize the handling of problems and in particular a shift towards negotiation at firm level. In some cases, direct relations (dialogue, participation) have been established between employers and workers.

In practice, decentralization takes the form of a new interplay between levels of negotiation: a wider range of issues is dealt with at firm level, though the higher levels are not abandoned. The role of the latter is developing: for example, framework or coordination agreements, which are essential for the development and harmonious application of company agreements, are tending to be worked out at interoccupational or industry level (e.g. the May 1990 agreement on working time in the German metal-working industry or the Italian labour costs agreement of January 1990).

At the same time, in several Member States central government has intervened, using a variety of methods, to change the rules and mechanisms of industrial relations (in France the Auroux Act of 1982; in Spain the Representation of Trade Unions and Employers Act of 1984; in the United Kingdom the 1984 Trade Union Act) or to regulate wage bargaining (indexation relaxed or dropped altogether in Belgium, Denmark, France, Italy and the Netherlands).

- (c) Despite these developments and regardless of all the specifically national considerations, the fact remains that the autonomy of the two sides of industry - an autonomy conceded by the public authorities - has been maintained: negotiation at different levels has remained a basic component of regulation in all the Member States, which is something specific to the industrial relations field. The reasons why this is still the case are as much political as social or economic. As one of the recitals to the Charter states, "the social consensus contributes to the strengthening of the competitiveness of undertakings, of the economy as a whole and to the creation of employment; ... in this respect it is an essential condition for ensuring sustained economic development".

Furthermore, in the attempt to keep change under control and to make structures and human resources more adaptable, the field covered by industrial agreements has been extended - to take in matters which had previously been dealt with separately (e.g. negotiations on flexibility) and to go beyond the limited context

of the firm to encompass certain fundamental social values: for instance, anticipating social problems (particularly connected with employment) caused by decisions to invest or disinvest; the environment; lifestyles and family life; equal opportunities, solidarity and measures to combat social deprivation.

Over and above national initiatives and practices, the Community most certainly has a role to play in serving the purposes of social policy and in regulating certain changes.

But it has to adjust to developments, to changed circumstances, both in its own legislation and in encouraging regulation based on agreement. In other words, the Community's social policy has to provide the appropriate framework for the shared and balanced control of change while also helping to consolidate and improve the European social model.

THE GROUNDS FOR REVISION

With this in view, there are a number of arguments which plead in favour of modifying and extending the scope of the Community's social policy.

- (a) First, there is the very nature of the process of European integration: the establishment of a single economic and social area in which economic and social advances are made in step. We need to keep up the momentum provided by the European Councils of Hannover (June 1988) and Madrid (June 1989: "the same importance must be given to social aspects as to economic aspects and they should consequently be developed in a balanced fashion").
- (b) The Community Charter of the Fundamental Social Rights of Workers adopted by the Strasbourg European Council reflects the urge to establish and build upon a platform of fundamental rights shared by all the Member States. This solemn declaration voices two ambitions:
 - It is a proclamation of European identity, reaffirming the plan to secure the harmonious development of the Community on the basis of social progress, underlining the imperative need for increased solidarity and a refusal to allow changes to result in more and more people with outdated skills;
 - It is an expression of the determination to combat social dumping.

The enforcement of these rights - through the introduction of minimum provisions, for instance - is partly a matter for the Community, as far as its powers extend. The implementation of the social action programme to give effect to the Charter has shown how inconsistent and inappropriate (e.g. legal basis for the proposal for a Directive on non-standard forms of employment), how anachronistic (Articles 120 and 122) or how incomplete (Article 119) the Treaty is.

- (c) Completion of the internal market and economic integration have clearly shown the need (given the transnational nature of the

problems involved) for Community action in areas which have hitherto not been very sensitive or whose importance has been disputed, such as:

- . the protection of workers' rights in the case of transfrontier operations (company mergers, takeover bids, bankruptcies, collective redundancies);
 - . information/consultation, or even participation (industrial democracy and/or financial participation) of employees in transnational businesses;
 - . new obstacles to mobility within the Community (supplementary pensions etc.).
- (d) In addition, steps must be taken to ensure that the economy of the internal market develops without any distortion of competition (examples of sensitive variables: health and safety, non-standard forms of employment, social security, equal treatment), and this calls for greater vigilance.
- (e) More generally, at microeconomic level, consideration for the social dimension is increasingly becoming an integral part of management, and this contributes to added value and to competitiveness.
- (f) The extension and/or redefinition of the Community's powers in the social field is/are not incompatible with the current trends towards decentralization of collective bargaining to be seen in the Member States (see above). The need to determine a Community framework for tackling the problems we have referred to remains.

Consequently, the wide gap between the powers available under the current legal bases and the ambitions set out in the Charter and the new constraints arising from completion of the internal market warrant a revision of the social provisions of the Treaty.

Assigning new powers to the Community in the social field is hardly an adventurous undertaking. Indeed it should be stressed that in those very fields in which new powers have been accorded by the Single Act, regulation at Community level has worked satisfactorily, has operated largely by consensus and has proceeded at a steady rate (e.g. application of Article 188a, health and safety for workers).

It is true, none the less, that the method and principles underlying any modification and extension of the Community's powers have to be clearly defined.

PRINCIPLES AND METHOD

- (a) There are three principles which should underpin the new Community social framework :

- Subsidiarity, with due regard for the specific nature of social matters.

First of all, the application of this principle lies not so much in choosing between social issues, distinguishing those for which Community jurisdiction is recognized, as in suggesting what, in the light of the needs identified and the potential value added by Community action, is the most appropriate in each case - harmonization, coordination, convergence, cooperation etc.

It is true that the Community has means and resources other than regulation for pursuing social policy objectives. For example, completion of the internal market, backed up by the structural policies, is "the most effective means of creating employment and ensuring maximum well-being" (Charter).

Secondly, it has to be borne in mind that social issues are resolved not only by means of legislation but also on the basis of collective bargaining - through the autonomy of the two sides of industry, recognized by the public authorities. In social matters, then, there is a "dual subsidiarity", requiring a choice to be made:

- . between Community action and national (or infranational) action; and
- . between legislation and collective bargaining.

At Community level, then, the two sides of industry must be given the widest possible room for manoeuvre and precedence must be given to settlement by collective agreement.

- Respect for the diversity of national systems, cultures and practices - provided this is constructive, i.e. consistent with the requirements of completing the single market and with the fundamental rights enshrined in the Charter. Constructive diversity is something to be exploited, making the various national models better known, tracing similarities between them and in some cases drawing inspiration from them.
- Care to refrain from impairing the competitiveness of firms and to safeguard flexibility by reconciling economic and social considerations: whatever is done, there is a balance to be sought and found.

If, then, it is to conform as closely as possible to the new realities which condition the approach to social matters, the Community will have to show great discernment in selecting from the whole range of functions and instruments available to it, whether they be mandatory or act as incentives, by choosing between Community level and national level on the one hand and between legislation and collective agreement on the other.

(b) The involvement of the two sides of industry in Community social regulation could take two forms:

- One was already proposed by the Commission in 1990 in connection with the implementation of the action programme - for example, with the proposal for a Directive on non-standard forms of employment (based on Article 100a). This would allow Member States to entrust the task of achieving the objectives of a binding instrument adopted by the Council primarily to the two sides of industry.

- The other would stipulate that certain objectives of the Treaty might be attained via framework agreements drawn up directly at European level.

(c) Lastly, qualified majority voting should be extended to certain fields, notably some of those covered by the Charter, with the proviso that other particularly sensitive areas - with too diverse an organization and with too varied national practices - will still be subject to unanimous voting (harmonization of social security systems, access to employment for nationals of non-member countries).

There are two main, connected reasons which militate in favour of qualified majority voting:

- a concern for effectiveness - to ensure that the economic and the social actually do move ahead in step;

- the desire to secure consistency and balance within the Treaty itself by ensuring that a fundamental area such as the social field is not treated any differently from other fields.

THE NEW ARTICLES

Modernizing the legal framework along the lines sketched out above entails substantial amendment of the Treaty Articles that already exist, the incorporation of new Articles and the removal of obsolete or inadequate Articles. This can be done within the basic structure of the existing Chapter, which will help to make matters clearer.

Inspiration has been drawn from three sources:

- certain provisions of the Community Charter of the Fundamental Social Rights of Workers;

- the Commission opinion on Political Union;

- the results of the social dialogue, chiefly in the form of joint opinions on the introduction of new technology, the organization

of work and the adaptability of the labour market.

The following basic structure is therefore proposed:

- (a) The objectives set out in Article 117 would be updated in conformity with the far-reaching transformation of the social field.
- (b) A new version of Article 118 would expand the potential offered by the existing Article 118a, in accordance with the guidelines in the Commission opinion of 21 October 1990; this could provide a basis for most of the provisions needed to implement the Charter and control the process of economic and social change.¹

This new legal basis has been drafted in such a way as to fully respect subsidiarity in relation to the Member States and the two sides of industry, and is confined to those areas which really are suitable for the co-decision procedure.

- (c) Additional text in Article 118b provides a framework for collective bargaining at European level and for the approval of the resultant agreements, thus providing legal backing for the autonomy enjoyed by the two sides of industry in this respect.¹

It is provided that, before submitting its proposals, the Commission would consult a consultative body, whose nature remains to be determined, on the prospect of attaining the objectives by means of a framework agreement between management and labour as provided in the new Article.

The Union would act by means of legislation only if it were not found possible to achieve results through collective bargaining.

- (d) Article 119 is rewritten for two purposes:
 - to establish a legal basis for legislation to guarantee equal treatment for women and men;
 - to extend its scope to cover all aspects of equal opportunities on the labour market.

The new Article is largely inspired by the old one so as to preserve the practical benefits of the extensive body of Court of Justice case-law.

- (e) A new Article 120 would provide a foundation and a framework for operational activities (multiannual programmes) as an alternative or a supplement to legislative measures.

¹ The wording of this Article may have to be changed in the light of the outcome of discussions in the ad hoc Group on Social Dialogue.

¹ The wording of this Article may have to be changed in the light of the outcome of discussions in the ad hoc Group on Social Dialogue.

- (f) The existing Article 122 becomes Article 121. Its aim is to ensure broader dissemination of information on the social situation.
- (g) The existing Articles 118, 120 and 121 would be repealed since they would have no purpose in the new context.

The Commission reserves the right to adjust the proposed provisions of Articles 118(3) and 118b(2) in the light of:

- the outcome of discussions in the ad hoc Group on Social Dialogue;
- the involvement in the procedure of a consultative body, the nature of which remains to be determined.

ECONOMIC AND SOCIAL COHESION

Draft text

PART THREE, TITLE V

ECONOMIC AND SOCIAL COHESION

The provisions of Part Three, Title V, of the Treaty are replaced by the following articles.

Articles 123 to 127 of the Treaty shall remain in force until application of Article 130d.

Article 130a

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular the Union shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions.

Article 130b

Member States shall conduct and coordinate their economic policies in such a way as to attain the objectives set out in Article 130a. The implementation of the common policies and the internal market shall take into account the objectives set out in Article 130a and Article 130c and shall contribute to their attainment. The Union shall support the attainment of these objectives by the action it takes through the structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund), the European Investment Bank and the other financial instruments.

The Union and the Member States shall work together to promote harmonious development of the regions, in particular through the structural policies - based on Fund operations in the less-favoured regions and areas - major trans-European networks and joint action.

The Commission shall report to the Council every five years on progress towards the achievement of economic and social cohesion.

The Council, acting by a qualified majority on a proposal from the Commission after consulting the European Parliament and the Economic and Social Committee, shall define the guidelines and conditions necessary for balanced progress.

Article 130c

The structural Funds shall contribute to the attainment of the objectives set out in Article 130a and shall, without prejudice to the application of Article 130d, pursue the following priority objectives in the context of their specific tasks for the purpose of promoting:

- 1) the development and structural adjustment of regions whose development is lagging behind;
- 2) the conversion of industrial regions and urban areas in decline;

- 3) employment, the geographical and occupational mobility of workers, initial and continuing training and the integration into employment of those excluded from the working world;
- 4) rural development.

Article 130d

A law adopted under the co-decision procedure by the European Parliament and the Council on a proposal from the Commission, after consulting the Economic and Social Committee, shall:

- a) make such amendments as are necessary to clarify and rationalize the tasks of the structural Funds in order to contribute to the attainment of the objectives set out in Article 130a and Article 130c, to increase their efficiency and to ensure coordination between the Funds and between them and the financial instruments;
- b) create new structural Funds or amalgamate existing Funds.

Article 130

The following is added at the end of the Article:

In its task the Bank shall facilitate the financing of programmes in conjunction with the operations of the structural Funds and the Community's financial instruments.

EXPLANATORY MEMORANDUM

Economic and social cohesion

1. The Rome European Council on 14 and 15 December 1990 instructed the Intergovernmental Conference on Political Union to take "economic and social cohesion between the Member States" into account in the context of the "extension and strengthening of Community action".

In the context of revision of the Treaty, cohesion must be seen first and foremost in terms of the effectiveness of our structural policy. But because Article 130b links it to the conduct of economic policy by the Member States, structural policy is viewed by a number of delegations as an element of Economic and Monetary Union with an eye in particular to increased funding from the Community budget to support steps taken to adapt their economies. The Commission tried to provide an initial response by suggesting a shock-absorbing mechanism to support the adjustment process.

It is essential therefore to make a clear methodological distinction between the question of amending Treaty provisions on cohesion and the question of increased funding for these policies, which would require an agreement along the lines of that of February 1988 (Delors package).

For the time being the Commission intends to contribute to the debate within the Intergovernmental Conference on Political Union on amendment of the articles introduced by the Single Act with a view to increasing the effectiveness of policies designed to promote cohesion.

2. A complete balance sheet of the achievements of the structural policies will not be available until the end of 1991. It is therefore premature to envisage any radical change in the philosophy or the principles underlying the structural policies.

On the contrary, the principles underlying these policies, as set out in the basic 1988 regulation rather than the Treaty - that is to say concentration, programming, additionality, partnership etc. - are being implemented more or less correctly by the Member States.

However, cohesion goes far beyond the scope of action under the structural policies even if it is too often regarded as synonymous with assistance from the Funds.

The problem is not the concise definition of cohesion in Article 130a. There is no need to rewrite the provision, but it could be expanded to make it clear that cohesion must be seen in the much broader context of the harmonious development of the Community. To this end it is proposed that the concept of balanced development of the regions be introduced, to be promoted not only by assistance from the structural Funds, in particular in the less favoured regions and areas, but also by major infrastructure networks and joint action (such as improvement of the environment or vocational training).

Care will also have to be taken to see that the promotion of cohesion is incorporated in the list of basic aims of the Union in Articles 2 and 3 of the Treaty, bearing in mind that objectives such as sustainable development and guarantee of a sound environment will be proposed.

3. One of the main difficulties in applying the Single Act stems from the fact that the express provision of Article 130b to the effect that the objectives of economic and social cohesion be taken into account in the implementation of common policies and the internal market is not fully complied with. We need to decide whether and how the Treaty can provide a better guarantee that cohesion will be taken into account in other Community policies.

Responsibility for this lies with the institutions in the day-to-day conduct of Community business. The Commission has a particular responsibility, firstly by drafting proposals to take account of the diversity of situations (for example, varying the time allowed for adjustment to uniform application of Community rules), and secondly by exercising its management powers.

It is difficult to see how the Treaty itself could introduce monitoring machinery to ensure that each policy takes cohesion into account. This could open the door to repeated applications for further intervention by a given Fund and, in the event of assistance being refused, to requests for exceptional treatment.

The Treaty could however make provision for regular reviews to produce a detailed balance sheet of progress towards cohesion. It is therefore proposed that the Treaty should require the Commission to report every five years on progress towards the achievement of economic and social cohesion. This report would be used by the Council as a basis for defining the guidelines needed to guarantee balanced progress.

4. The Single Act specified that the priority objectives of the structural policies would be set out in a framework regulation, which was adopted in 1988. It would now be a good idea - without drawing up exhaustive lists - to write some of these objectives into the Treaty, paying attention notably to the need to improve conditions governing education and health (which should feature more prominently in the secondary legislation determining the conditions of eligibility for assistance) for the purpose of promoting:

- the development and structural adjustment of regions whose development is lagging behind;
- the conversion of industrial regions and urban areas in decline;
- employment, geographical and occupational mobility of workers, initial and continuing training and the integration into employment of those excluded from the working world;
- rural development.

These objectives would be referred to in the new Article 130c, drawing on the experience acquired in pursuing the objectives specified in Article 1 of Regulation No 2052/88 currently in force. Special stress needs to be laid on the role of the funds in countering the dereliction of certain urban areas affected by the decline of economic activity.

Provision also needs to be made for specific measures to promote the mobility of workers (in the spirit of the present Article 123 of the Treaty) or to facilitate the social integration of those excluded from the working world, given that general job-creation measures do not cater for their particular situation.

The recital of these priority objectives in the Treaty in no way rules out the definition of new missions by secondary legislation under Article 130d. In this connection the Commission believes that special attention should be given to the conversion of areas depending heavily on fishing. Similarly Article 130d could be relied on to tackle problems of environmental decay affecting certain regions in particular.

5. As to institutional adjustments linked to the decision-making process, the effectiveness of structural policies could be improved by:
 - the introduction of qualified majority voting instead of unanimity for the framework regulation provided for in Article 130d, which could be a law adopted under the co-decision procedure;
 - the option open to the legislator of creating Funds whose number would no longer be determined by the Treaty; the creation and amalgamation of Funds would be governed by a law.
6. The addition of a provision to Article 130 will also allow the European Investment Bank to be associated more closely with the various types of operation of the structural Funds.

RESEARCH AND TECHNOLOGICAL
DEVELOPMENT

Draft text

Research and technological development

Article 130f

1. The Union's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level.

2. In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological development activities; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the Union's internal market potential to the full, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that cooperation.

3. In the achievement of these aims, special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.

4. Any research, technological development or demonstration activities undertaken by the Union with a view to attaining the objectives assigned to it by the Treaty shall comply with the provisions of this Title.

Article 130g

In pursuing these objectives the Union shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with undertakings, research centres and universities;

(b) promotion of cooperation in the field of Community research, technological development, and demonstration with third countries and international organizations;

(c) dissemination and utilization of the results of activities in Community research, technological development, and demonstration;

(d) stimulation of the training and mobility of research scientists within the Union.

Article 130h

The Union shall work to coordinate the Member States' policies on research and technological development so as to ensure that those policies are consistent with one another and with Community policy. In close contact with the Member States, the Commission may take any useful initiative to promote such coordination.

Article 130i

1. The Union shall adopt a multiannual framework programme setting out all its activities. The framework programme shall comprise a limited number of specific programmes and shall lay down the necessary activities to promote, back up and monitor Community research and technological development policy. The framework programme shall lay down the scientific and technical objectives, define their respective priorities, establish the rules applicable to the dissemination of knowledge resulting from the activities envisaged and fix the amount deemed necessary, the detailed rules for financial participation by the Union in the programme as a whole and the breakdown of this amount. The framework programme shall also establish the detailed arrangements for carrying out the specific programmes and shall indicate the rules for the participation of undertakings, research centres and universities, which may include unsolicited projects.

2. The framework programme may be adapted or supplemented, as the situation changes.

3. The specific programmes provided for in paragraph 1 shall be put into effect by the Commission pursuant to the fourth indent of Article 155.

Article 130k

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible participation from the Union.

Where supplementary programmes are adopted, rules shall be adopted regarding the dissemination of knowledge and the access of other Member States.

Article 130l

In implementing the multiannual framework programme, the Union may make provision, with the agreement of the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 130m

In implementing the multiannual framework programme, the Union may make provision for cooperation in Community research, technological development and demonstration with third countries or international organizations.

Article 130n

The Union may set up joint undertakings or any other structure necessary for the efficient execution of programmes of Community research, technological development and demonstration.

Article 130o

The amount of the Union's annual contribution to the activities provided for under the multiannual framework programme shall be laid down under the budgetary procedure, without prejudice to other possible methods of financing by the Union.

Article 130p

1. The provisions referred to in Articles 130i and 130n shall be adopted in the form of laws by co-decision of the European Parliament and the Council, acting on a Commission proposal and after consulting the Economic and Social Committee.

2. The provisions referred to in Articles 130k, 130i and 130m shall be adopted by the Commission pursuant to the fourth indent of Article 155.

3. At the beginning of each year the Commission shall send a report on Community research and technological development policy to the Council and to the European Parliament. The report shall include information on activities carried out during the previous year and on the work programme of the current year.

EXPLANATORY MEMORANDUM

RESEARCH AND TECHNOLOGICAL DEVELOPMENT

1. At its meeting in Rome on 14 and 15 December 1990, the European Council noted that among the specific areas in which it recognized the need to extend or redefine the Community's powers, "a research effort commensurate with the development of the Community's competitive capacity" was one of the aspects to be borne in mind.

Similarly, the Commission, in its opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, emphasized that the Treaty needed to be rewritten so as to make research and technology activities carried out at Community level more effective.

Experience gained in implementing Articles 130f to 130q of the Treaty has shown that they are cumbersome and lead to malfunctioning, which must be rectified.

2. The first point concerns the objectives which the Treaty assigns to the Union in respect of research and technological development activities. Article 130f(1) states that this objective is to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level. It quite rightly emphasizes the vital importance of industrial activity. However, this wording of the objective has proved too restrictive. It has made it difficult to undertake research activities, which are hard to justify in terms of making industry competitive, but which are nonetheless useful with regard to the Community's other tasks (including research on the environment, health and improvement of the quality of life). Now, a fundamental requirement for consistency is that all Community research activities be coordinated and follow the same rules.

This is what the new Treaty must try to achieve; on the one hand, by stipulating that whenever research activities are provided for by specific provisions (provisions on health, energy), such activities should be carried out under Articles 130f et seq., and on the other, by adding a new paragraph to Article 130f confirming the general scope of the provisions relating to research and technological development.

Lastly, it goes without saying that the Union's research and technological development policy must accord with the aims of the harmonious development of the Union as a whole and the strengthening of its economic and social cohesion.

3. The second problem concerns the coordination of the Member States' policies on research and technological development. Article 130h lays down merely that the Member States themselves must coordinate them in liaison with the Commission. This provision has proved unsatisfactory. The proposed new wording is designed to step up this coordination, by placing responsibility more clearly on the Union itself and by stipulating that the aim is to ensure that the national policies are consistent both with one another and with Community policy.
4. The main difficulty in implementing the Treaty's provisions on research and technological development is of an institutional nature. The problem is that the Treaty provides for a two-stage decision-making process in the adoption of the programmes, involving the Council and the European Parliament.

The first, for the adoption of the multiannual framework programme, requires the Council to act unanimously on a proposal from the Commission, having consulted the European Parliament and the Economic and Social Committee (Articles 130i and 130q(1)).

The second, for the adoption of the specific programmes, requires the Council to act by a qualified majority on a proposal from the Commission, having consulted the Economic and Social Committee and in cooperation with the European Parliament (Articles 130k and 130q(2)).

These procedures are extremely cumbersome and have led to long delays, to the point where it has become almost impossible to complete a proposed programme within the period originally planned.

It would be expedient to remove this major obstacle and to take account of the new rules to be included in the Treaty, concerning the hierarchy of norms and the decision-making process within the Union.

To this end, the new Article 130p lays down that the multiannual framework programme is to be adopted by co-decision of the European Parliament and the Council. Its implementation, and thus the specific programmes, are part of the executive function and are the responsibility of the Commission. This is laid down in the new paragraph 3 of Article 130i.

With regard to the adoption of supplementary programmes (new Article 130k), participation in programmes undertaken by several Member States (new Article 130l) and cooperation with third countries or international organizations (new Article 130m), the Commission will be responsible for taking decisions.

5. The revised text of Article 130i(1) stipulates that the multiannual framework programme must comprise a limited number of specific programmes and lays down the necessary promotion, back-up and monitoring activities. These activities are not in themselves research activities as such, but it is clear that, whether in the preparation or in the promotion stage, Community research and technological development activities call for measures of this type. For instance, preliminary studies and activities, initiatives on trans-European networks, application of research in support of other Community policies, support for and exploitation of the activities of the scientific community, and international cooperation.

The first paragraph of the new Article 130i also indicates the various constituent elements of the framework programme. In particular, it refers to the detailed arrangements for carrying out the specific programmes and the rules applicable to the dissemination of knowledge. This means that the provisions of Article 130k become redundant and can be dispensed with.

Article 130i also takes account of the need to allow a place in Community programmes for possible consideration of projects drawn up directly by undertakings, research centres and universities, e.g. large inter-disciplinary integrated projects likely to fall within the scope of several specific programmes.

6. The new Article 130k (which replaces Article 130i) has been reworded to take account of the new rules laid down in Article 130p regarding powers and the decision-making process.

The text of the new Article 130m, which replaces Article 130n, does not include the second paragraph of the old Article since the detailed arrangements regarding international cooperation are given in that part of the new Treaty dealing with the Union's external relations.

7. The new Article 130p sets out the procedures already referred to in respect of Article 130i. The co-decision procedure also applies to the setting-up of Joint undertakings, provided for in Article 130n.

Lastly, in order that the European Parliament and the Council be properly informed, paragraph 3 lays down that the Commission must send them a report at the beginning of each year on Community research and technological development policy. The report must include information on the previous year's activities and the work programme of the current year.

ENERGY

Draft text

ENERGY

Article 1

The objectives of this Treaty shall, in matters governed by this Title, be pursued within the framework of a common energy policy.

The common energy policy shall be closely coordinated with the policies pursued in the framework of the ECSC and EAEC Treaties.

Article 2

The common energy policy shall have the following objectives:

- (a) to guarantee security of supplies throughout the Union under satisfactory economic conditions;
- (b) to contribute to the stability of energy markets;
- (c) to complete the internal market in the energy field;
- (d) to define the measures to be taken in respect of each energy source in the event of a crisis;
- (e) to promote energy savings and the use of new and renewable energy sources.

It shall ensure a high level of protection in relation both to the environment, and to health and safety.

Article 3

The measures required to implement the objectives specified in Article 2 shall be adopted in the form of a law on a joint decision of the European Parliament and the Council on a proposal from the Commission and after consulting the Economic and Social Committee. Any Community research which may prove necessary shall be carried out within the framework of Articles 130f to 130q.

1. The provisions of Article 85(1) may be declared inapplicable to any agreement in the energy field which contributes to guaranteeing security of supplies in the Union, provided that the restrictions involved are indispensable to the attainment of that objective and do not afford the enterprises concerned the means to eliminate competition in respect of a substantial part of the products in question.
2. Aid within the meaning of Article 92(1) making an effective contribution to ensuring security of supplies in the Union shall be considered compatible with the common market where it does not distort the operation of the internal energy market to an extent contrary to the common interest.

Energy

The ECSC, EEC and Euratom Treaties apply to the energy sector depending on the type of energy source concerned.

In the case of the ECSC Treaty, which will expire in 2002, the Commission takes the view that, in the light of the conclusions of the European Council held in Rome on 14-15 December 1990, it is not appropriate, at this stage, to amend it in the context of this Intergovernmental conference. Equally, it does not propose any amendment of the Euratom Treaty.

It does consider, however, that a specific provision concerning energy policy should be inserted in the EEC Treaty, in order to:

- introduce in that Treaty the concept of security of supplies in the Union,
- affirm the need to complete the internal market also in the field of energy, and to make decision-making in that area more effective.

It was considered appropriate at this juncture to clarify the situation as regards the application of the competition rules to the energy sector.

ENVIRONMENT

Draft text

TITLE VII

Environment

Article 130r

1. Action by the Community relating to the environment shall have the following objectives:
 - to preserve, protect and improve the quality of the environment;
 - to contribute towards protecting human health;
 - to ensure a prudent and rational utilization of natural resources.
2. Action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of the Community's other policies.
3. In preparing its action relating to the environment, the Community shall take account of:
 - available scientific and technical data;
 - environmental conditions in the various regions of the Community;
 - the potential benefits and costs of action or of lack of action;
 - the economic and social development of the Community as a whole and the balanced development of its regions.
4. The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States.

Article 130s

The measures required under Article 130r shall be adopted as laws by the Council and the European Parliament under the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee.

Article 130t

The protective measures adopted jointly pursuant to Article 130s shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

EXPLANATORY MEMORANDUM

Environment

At its meeting in Rome on 14 and 15 December 1990, the European Council noted that protection of the environment was one of the specific areas in which it recognized the need to extend or redefine the Community's powers. It noted that environmental protection needed to be improved "in order to ensure sustainable growth."

Similarly, the Commission, in its opinion of 21 October 1990 on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union, emphasized that the provisions dealing with the environment needed to be rewritten so as to make the decision-making process more effective, and proposed use of qualified-majority voting in this area.

The amendments proposed by the Commission (II) are designed to meet two essential requirements (I), viz. to ensure more effective action by the Union to protect the environment and to facilitate and encourage consideration of environmental imperatives in the other policies.

I. The following objectives are to be attained:

A. Recourse to the Treaty's provisions on the environment must be made more effective

This calls for:

1. A better decision-making process:

. In this respect, the shift to qualified-majority voting should speed up decision-making. It should also put an end to disputes on legal bases (100a - 130s).

. In this connection, when formulating its proposals the Commission will take into account objectively different situations in the Member States or in the regions, in accordance with Article 130r(3), in order to allow adjustment periods where necessary.

2. Greater implementing powers for the Commission:

. In a general manner, the need to step up the Commission's implementing powers is mentioned in the conclusions reached by the European Council in Rome, "so that it may... help to make Community action more effective."

. With regard to environmental protection, this should, in particular, enable the Commission to make a better

contribution towards the funding of Community action, both within the Community and in the context of international cooperation. The possibility of setting up new financial instruments (for the environment and research) is brought up in the Commission's opinion of 21 October 1990 (p.13). Moreover, the Commission has recently proposed a specific financial instrument for the environment (LIFE).

3. Greater compliance with environmental legislation: this point could be examined within the framework of the broader discussion on the idea of penalties put forward in the Commission Opinion to encourage greater compliance with the judgments of the Court of Justice.

B. Greater consideration of the environment in the other policies

One of the chief aims of the Union must be "sustainable growth". This cannot be attained unless environmental imperatives are taken fully into account in the other policies of the Union (policies pursued both within the Union and internationally).

The Commission is therefore proposing the following:

1. A statement in the opening provisions of the Treaty (Articles 2 and 3 of the EEC Treaty) that protection of the environment is one of the objectives of the Union.

The essential objectives of the Union's action on the environment must be set out in those articles.

The terms employed at the European Councils (sustainable growth, guarantee of a healthy environment for this and future generations) could be retained.

These amendments will be included, in due course.

2. The wording of the last sentence of Article 130r(2) needs to be made tighter and more forceful in order that genuine account be taken of the environment in the definition and implementation of the other policies.
3. Provisions on the Union's external action to protect the environment to be included in the general articles of the future Treaty which deal with the common external policy, since action to protect the environment is merely one aspect of a common external policy.

In addition, reference to the general articles relating to the Union's external policy is desirable in order to clarify the Union's external powers and simplify procedures.

II. The following amendments to Title VII of the EEC Treaty are therefore being proposed: (see attached text)

A. To improve effectiveness:

1. Amendment of Article 130s:

- . Introduction of qualified-majority voting under the co-decision procedure.

2. Deletion of the last sentence of Article 130r(4): "Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures."

- . This sentence does not appear to add anything useful to the general rules on implementation of the Treaty and secondary legislation. It is already the rule that Member States implement regulations and apply directives.

It is always possible for them to help finance Community operations or even to finance them in full (as with the part-financing of agreements concluded within the framework of the common commercial policy).

- . This sentence ("certain measures") could be interpreted in such a way as to hinder Community financing, for which there is a recognized need.

B. For greater integration

1. Rewording of the last sentence of Article 130r(2):

The current wording "Environmental protection requirements shall be a component of the Community's other policies" appears:

- . imprecise: the practical implications of this statement are not clear;
- . optimistic: the words "shall be a component" record a fact rather than imposing an obligation [translator's note: this is more true of the French version].

The proposed text is designed to be more precise and more forceful, which should make it easier for full account of the environmental factor to be taken in other areas of action.

2. The deletion of Article 130r(5) for the reasons given above (I.B.3).

TRANS-EUROPEAN NETWORKS

Draft text

Part Three of the EEC Treaty, Title I
(Common rules), new Chapter 4

TRANS-EUROPEAN NETWORKS

Article 102a

1. In order to help to attain the objectives of Article 8a of this Treaty and to enable all operators and regions to derive full benefit from the establishment of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks, in particular infrastructure for transport, telecommunications, energy and vocational training.
2. The Member States shall regard infrastructure programmes that may have a significant impact on the attainment of the objective referred to in paragraph 1 as a matter of common interest. To that end, they shall coordinate those programmes with the assistance of the Commission, and shall cooperate as far as necessary in their implementation.
3. Action by the Union shall aim in particular to promote the interconnection and interoperability of the networks. It shall take account of the demands of economic and social cohesion, environmental protection and cooperation with third countries.

Article 102b

1. In order to attain these objectives the Union shall:
 - establish a reference framework for trans-European networks, laying down the objectives, priorities and broad lines of measures envisaged for each sector. This reference framework shall identify projects of common interest;
 - implement such measures as may prove necessary to ensure the interoperability of the networks, in particular in the field of standardization.
2. In network finance, the Union shall provide additional financial aid for projects of common interest identified in the reference framework referred to in paragraph 1. The Union shall also take account of the development of trans-European networks in the implementation of structural policies.

Article 102c

The measures provided for in Article 102b shall be adopted in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee.

EXPLANATORY MEMORANDUM

Trans-European networks

Article 8a of the Treaty provides that: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

The Single Act gave the Community the instruments it needed to adopt a legal framework for achieving these freedoms, but it is now clear that a set of legal rules alone is not enough to ensure real freedom of movement, which alone can produce the economic effects the internal market is intended to achieve.

A substantial effort in structural and technical improvement is also necessary, for the operation of the internal market is at present being hindered by missing links, bottlenecks and missing networks in sectors which are essential for free movement.

The legal means available to the Community until now have not enabled these difficulties to be overcome.

For the future, networks facilitating communications and bringing the different parts of the Community closer together, so as to increase its cohesion, are of fundamental importance if the frontier-free area is to operate properly.

The need for such networks was stressed at the meetings of the European Council in Strasbourg and Dublin and the Commission sent the Council a communication on the matter (COM(90)585 final).

Looking at the four main areas concerned:

- transport infrastructure, which is essential for free movement of persons and goods, has to be seen globally, so as to ensure an intermodal and multimodal approach, which is indispensable for optimum exploitation of existing infrastructures and for developing them in a way which will help protect the environment;

- telecommunications have a vital role to play in ensuring free movement in general, by providing rapid and secure transmission of necessary information; pan-European services are indispensable for the operation of the frontier-free area;
- energy must be available throughout the Community and this requires gas pipelines and electricity lines which are interconnected at the Community, and indeed the continental, level; such interconnection is necessary in order to help optimum exploitation of existing capacities and to guarantee the Union's security of supply;
- vocational training is an area where efforts have to be undertaken to improve the way everyone can be integrated into economic and social life and to facilitate mobility in the Union as a whole. The links here with telematic services are clear, as regards exchange of information to make sure that training systems are transparent, that experience is exploited and that the methods used are improved (CEDEFOP, EURYCLEE, ERASMUS) and also in setting up systems of distance training.

Assessing the needs at Community level cannot simply be a matter of adding together the requirements as worked out at national level. There must be Community consultation between all those concerned in designing and setting up infrastructures and services, so as to appreciate the value to the Community of existing and planned infrastructures in order to ensure that they will be developed in a way consistent with the operation of the internal market.

Links which already exist or are being developed with other European and neighbouring countries must also be taken into account.

Protecting the environment is another reason for such assessment, which may lead to a more efficient and effective use of existing infrastructures. The requirements of environmental protection also have to be taken into consideration in developing networks.

In the four areas singled out above, the assessment of needs at Community level should help in identifying, realizing and developing trans-European networks.

The barriers to the emergence of these networks have already been pointed out. They are due to difficulties in interoperability across frontiers, mostly for technical reasons, to inconsistent rules and regulations, to the absence of an overall vision at European level of the way demand and the corresponding infrastructures will develop, and to financing problems connected with the size of the risks and an insufficiently European view of the projects to be undertaken.

The remedies have also been identified and they mostly involve a greater degree of coordination at Community level between all those concerned.

The first task is to find out what is the most appropriate network configuration at Union level for all the parties concerned, and at the same time to identify those difficulties which may arise in creating the network, at the technical level and also as regards rules and regulations and administration. It must be possible to use the reference framework to determine what action is necessary to create the network, in compliance with the principle of subsidiarity. It should also enable the advantage to the Community to be clearly identified and the scope of Community action precisely circumscribed.

Interoperability of networks is essential in ensuring their interconnection at Community, and indeed continental, level. It justifies Community action on rules and regulations, and on standardization.

As far as possible, trans-European networks should be financed on private capital markets. Public financing will still be essential in those cases where profitability cannot be ensured, and in particular where it is justified for economic and social reasons. The situation of the outlying parts of the Union as regards the creation and interconnection of networks deserves special attention, with a view to economic and social cohesion and the implementation of the Union's structural policies.

Community financing - which should be additional financing only - will be concentrated on projects which have been shown to be of value to the Community and it may be in addition to national or regional help, taking in particular the form of financing for feasibility studies or loan guarantees.

The measures to be taken to achieve the objectives of the Union will be adopted by the Council, acting by a qualified majority on a proposal from the Commission. The Economic and Social Committee will be consulted and the European Parliament will be associated through the co-decision procedure.

CULTURE AND PROTECTION
OF THE HERITAGE

Draft text

CULTURE AND PROTECTION OF THE HERITAGE

ARTICLE ...

1. The Union shall contribute to the flowering of cultures in Europe while respecting their national and regional diversity. It shall pay particular attention to improving familiarity with and dissemination of the cultures, languages and history of the peoples of Europe, to safeguarding the cultural heritage and to cultural exchanges, in particular by developing communications media and audiovisual cooperation.
2. The Union shall also develop cooperation with non-member countries and with international organizations with responsibilities for cultural matters, in particular the Council of Europe.
3. In pursuance of the objectives set out in paragraph 1, the Union shall have regard for the cultural dimension in its other policies, in particular when adopting measures to achieve the objectives set out in Article 8a.
4. Measures to encourage European artistic creation, cultural exchanges, multilingualism and audiovisual cooperation shall be adopted [in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee]. They may take the form of programmes.

EXPLANATORY MEMORANDUM

CULTURE AND PROTECTION OF THE HERITAGE

1. Culture is one of the fundamental elements of the European identity. Since the Union is to have the general aim of bringing its component peoples closer together, it cannot be confined to the purely economic and social areas to which the Community, under the existing Treaties, is basically limited. It must also have regard for those values which, for every citizen, for every community and for every people, constitute the heritage through which they express their sense of belonging and solidarity and the source of influence which they can exert in their relations with each other and with non-members. It is everybody's business to preserve these heritages and renew them through artistic creation and cultural exchange. Consequently, the Treaty guarantees every Union citizen the right to cultural expression and imposes on him the obligation to respect cultural expression by others (Article X 6 of the "Union Citizenship" Title). At different levels, however, this is also a collective responsibility, devolving partly upon the Union.

The Rome European Council of 14 and 15 December 1990 recognized this. One of the specific areas in which it affirms the need to extend or redefine the powers of the Union is "safeguarding the diversity of the European heritage and promoting cultural exchanges and education". The Commission, too, referred to culture in its opinion of 21 October 1990, stating: "in line with the principle of subsidiarity, cultural affairs should continue to be a matter for the Member States and the regions. It would be a good idea, however, to include an article on the cultural dimension of Community activities". That is the background to the present draft.

2. Paragraph 1 begins by setting out the Union's objectives in cultural matters and stressing the importance of the principle of subsidiarity. The Treaty does not set out to introduce a common cultural policy and certainly does not aim at the kind of centralization that can only result in uniformity. The Union is conceived as having a purely supporting role, with powers over cultural matters remaining firmly with the Member States and their regional authorities. All the Union would do would be to make its contribution where this seems potentially useful.

The corollary is that the emphasis is placed on cultural diversity. The draft would guarantee respect for this diversity by the Union, and quite specifically refers to cultures in the plural.

That paragraph further clarifies the general significance of Union action along two main lines:

- first, to support efforts made to safeguard and develop the cultural heritage;

- second, to promote cultural enrichment and dissemination by developing exchanges and encouraging mutual understanding.

Special attention would therefore be devoted to improving familiarity with and dissemination of the cultures, languages and history of European peoples, to safeguarding the cultural heritage and to cultural exchanges, in particular by means of developing communications media and audiovisual cooperation.

3. The fact that international cooperation is necessary for the dissemination and defence of cultures is reflected in paragraph 2. The Union must be open to the world in this respect as in others and must be involved in international cooperation with non-member countries and the appropriate international organizations, both in promoting exchanges and interaction between peoples of different cultures and in working together with countries which, without being Members of the Union, share the same values as its Member States. The clear reference here is to other countries of Europe which are as much a part of the European identity as the Member States. The specific role of the Council of Europe is highlighted.
4. The forms that Union action can take are set out in paragraphs 3 and 4 and are of two types:

- First, the Union must have regard for the cultural dimension in its other policies, in particular when adopting measures to achieve the objectives set out in Article 8a. Free movement of cultural goods, and in particular of audiovisual material; harmonization of standards as the necessary means of promoting high-definition television; freedom of establishment and freedom to provide services for "cultural workers"; training of young artists - these are areas in which the beginnings of Community action are already present. By expressly calling for consideration for the cultural dimension, paragraph 3 consolidates the foundation thus laid but also involves the institutions in making appropriate adaptations to general rules if they have a potential impact on cultural goods and services (the book trade, for instance, or respect for the Member States' language rules in the teaching profession);

- Second, the Union can contribute to the flowering of cultures by taking measures to encourage them. Paragraph 4 offers a basis for such action which may concern European artistic creation, cultural exchanges, multilingualism and audiovisual cooperation, though this list is not to be regarded as exhaustive. Measures are to be taken in the form of laws [enacted by Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee].

HEALTH

Draft text

HEALTH

Article ...

1. The Union's objective shall be to complement and support action undertaken by the Member States to protect health, and in particular to combat major health scourges such as cancer, Aids, and cardiovascular and mental illness.
2. The measures needed to support action undertaken by the Member States, to approximate and coordinate the provisions they implement and to organize mutual assistance to this end shall be adopted [in the form of laws enacted by the European Parliament and the Council in accordance with the co-decision procedure on a proposal from the Commission and after consulting the Economic and Social Committee].
3. Research activities carried out pursuant to Articles 130f to 130p shall contribute to achieving the objective set out in paragraph 1.

EXPLANATORY MEMORANDUM

HEALTH

This new Article gives the Union the new task of complementing and supporting action undertaken by the Member States and is a dynamic implementation of the subsidiarity principle in defining the Union's contribution to public health. While the purpose is to enhance the action of the Member States by supplying a horizontal, comprehensive and coordinated approach, the Union clearly cannot and must not intervene in the whole range of health protection matters.

For one thing, the action concerned must relate to questions of general interest. Priorities need to be defined here, and the Article takes a first step by referring to major health scourges. This may be regarded as an historical priority, since at all times the fight against epidemics has been carried beyond national borders. But apart from epidemics, which are tending to disappear in our part of the world, there are new health scourges with substantial human and economic costs that are further compounded by the general ageing of our population.

The major health scourges identified here are those where the Council, at the explicit request of the European Council, has already begun action - such as cancer, Aids and cardiovascular disease. The new Article will make it possible to pursue and amplify this action. Closely related to these major diseases are the social problems related to the use of drugs and tobacco and the abuse of alcohol.

The objective set out in this Article will require measures to promote cooperation and mutual assistance between the Member States. This in concrete terms confirms the orientation taken by the Council in recent years; exchanges of information between the Member States and the possibility of Community action have been introduced despite the absence of a specific basis for health protection.

Nevertheless this Article would enable the Union to go further and to take action to give a Community character to the prevention of health risks and the fight against major scourges wherever necessary, particularly where there is a cross-frontier element. Consideration could be given to health protection measures to accompany measures taken under other policies, including those for the completion of the internal market. When adopting the Directive on products derived from human blood, for example, the Council asked for general consideration to be given to the supply of blood products in the Community. Human organ transplants also qualify for cross-frontier consideration.

It is proposed that the Union should act by establishing minimum requirements applicable in each Member State so that a common base can be established at a minimum level without prejudicing existing or future national measures providing for a higher degree of protection or more intensive action.

Unlike the present situation, in which separate measures are taken in isolation from each other, the combination of all these components (minimum requirements, coordination and mutual assistance) should make it possible to ensure consistency, efficiency and harmonization of basic principles; in this manner, health protection may be better assured and the campaign against major health scourges improved.

Given the importance attached to health protection in the Member States, the fullest possible involvement of Parliament must be ensured and the adoption of measures facilitated by introducing the majority voting rule.

Union research policy has an integral role to play in health protection; medical and health research is already provided for in the framework programme (Articles 130f to 130p).

COMPLIANCE WITH THE
JUDGMENTS OF THE COURT OF JUSTICE

**Judgments of the Court of Justice:
penalties for failure to comply**

Commission staff paper

1. In its Opinion of 21 October 1990 the Commission expressed concern at the fact that, in the absence of sanctions, Court of Justice rulings are not always implemented, and stated that it might consider proposing a system of sanctions to deal with this type of situation. The correct application of Community law suffers from the all too frequent reluctance of Member States to implement Court judgments declaring that they have failed to fulfil their obligations, even though Article 171 of the EEC Treaty requires them to comply.

The only possible way of dealing with such situations as the Treaties stand is to commence new proceedings under Article 169 for infringement of Article 171, but experience has shown that a second adverse ruling may have no more effect than the first.

The Commission's annual reports to Parliament and the Council on the application of Community law reveal that the number of judgments given under Article 171, even where the Court has given a second adverse ruling, remains excessively high. In the last three report years alone, 83 Article 171 judgments were not implemented. On twelve occasions the Commission, following a first condemnation, has had to bring yet further proceedings against Member States in the Court of Justice in respect of the very same infringement.

This being so, the idea of applying sanctions to make the procedure more effective was bound to arise.

2. Of the various types of sanction that might be envisaged, there is one which must be dismissed immediately: there can be no question of providing or authorizing countermeasures against the recalcitrant Member State. The possibility exists in subparagraph (b) of the third paragraph of Article 88 of the ECSC Treaty¹ but has never been used. Above all, while it might be possible to conceive of this kind of measure in the ECSC, which is a Community of limited scope, the idea is inconceivable

¹ Article 88 provides that where a Member State fails to comply with a decision recording that it has failed to fulfil an obligation, "the High Authority may, with the assent of the Council acting by a two-thirds majority:

...
(b) take measures, or authorize the other Member States to take measures, by way of derogation from the provisions of Article 4, in order to correct the effects of the infringement of the obligation".

in a general Community. If there was a whole series of infringements, and derogations along these lines proliferated, new barriers would inevitably be raised whereas the point of the Community is to remove them. In other words, the remedy would run the risk of actually dismantling the single market.

3. It might, however, be possible to envisage financial sanctions against Member States which, having been condemned by the Court of Justice for infringing Community law, were again arraigned before the Court for failure to comply with the first judgment. This is the idea which has been put forward by the UK delegation.

One solution might be to give the Court, in its second judgment, the power to decide, or to authorize the Commission to decide:

- to suspend payment of sums owing to the offending Member State (as already provided in the ECSC Treaty);
- to inflict a financial penalty on the Member State.

Community secondary legislation already provides examples of measures akin to financial penalties. Where the Community provides financial assistance under the structural Funds, payment of aid which has been decided upon is dependent on the Member State complying with requirements of Community law relating to the operation to be financed (Article 7 of Regulation No 2052/88; Article 24 of Regulation No 4253/88). The same applies also in the application of common rules on public procurement: where an operation for which Community support is available involves the award of public contracts, the payment of Community aid is dependent upon compliance with the requirements of the relevant directive.

The question now is whether the possibility of financial sanctions should be written into the Treaty in general terms, specifically wherever a Member State fails to comply with a judgment given against it by the Court of Justice.

There is no legal obstacle to a power to inflict financial penalties, but it has to be admitted that the exercise of it may come up against practical and political difficulties. The first difficulty would lie in setting the penalty at such a level that it can be both effective and balanced. Experience has shown that the Member States which are the most frequent offenders are also those which suffer from difficult economic and financial situations and need Community assistance. The impact of a financial penalty can accordingly vary from one Member State to another. A penalty which hurts one Member State may have little deterrent effect on another. Likewise, the practical consequences of

an infringement may vary, not only according to its nature but also according to the Member State concerned. These, then, are all material considerations for the determination of the amount of a financial penalty.

Another important question is the decision as to which institution should have power to impose a sanction and set its amount. It would have to be an independent institution, either the Court of Justice or, at the very least, the Commission acting with the Court's authorization. If the Council were to be involved, the spirit of mutual understanding between the Member States, or indeed their complicity (if several of them were guilty of an infringement), could make the sanction ineffectual in practice. The Court's preliminary thinking on the subject favours the Commission as the institution which would be responsible for setting the amount.

Whatever the outcome of these reflections, the Commission reserves the right to make proposals in due course for the introduction of financial penalties against Member States in breach of their obligations, covering both the nature of the penalty and rules for determining the amount.

4. Are there, however, other ways of making the Member States comply with Community law?

(a) In the decentralized system set up by the Treaty, the Member States are responsible for ensuring the implementation of Community law and the protection of rights conferred on citizens and firms by them. A power is thus conferred on the Member States, but so, above all, is a duty, flowing from the general principles of the Community legal order as defined by the Court of Justice on the basis, notably, of the general obligation imposed by Article 5 of the Treaty.¹ One of the requirements imposed on Member States is that their domestic law should contain provisions of such a nature that anybody with an interest can reap the benefit (or suffer the detriment) of a failure to comply with Community law - recovery of aid wrongly paid; availability of remedies in the event of wrongful acts or failure to act; possible liability of public authorities towards victims of failure to apply Community law.

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

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

However, the situation is far from satisfactory. Community law relies on the national legal orders for its application, but suffers from the fact that they are widely different and in some cases frankly inadequate (some, but not all, Member States have a principle of liability for abuse of legislative powers, but even where this liability exists it is extremely difficult to obtain redress).

The question, then, is whether the efficacy of Community law would not be adequately boosted by relying on the broad obligation flowing from Article 5 and from the general principles of law, but spelling out their requirements in provisions explicitly offering guarantees. A number of instruments of Community secondary legislation have attempted to achieve this in specific areas (the directives on equal treatment for women and men at work require the Member States to provide judicial remedies for the victims of discrimination, and Directive 89/665/EEC provides for remedies in relation to public procurement).

Should this approach be generalized, and should it be written into the Treaty itself? The technique would be to amplify Article 5 of the EEC Treaty by specifying what rules must be laid down in internal legal systems to deal with failures to comply with Community obligations and redress their consequences (judicial or similar remedies for citizens; liability of public authorities towards the victims, whatever the nature or origin (administrative or legislative) of the infringement; possibility of interim measures to ensure that a wrongful act does not have irreparable consequences). If necessary, the institutions could be empowered to take the requisite harmonization or coordination measures, for even if the rules to be laid down here remained in the first instance to be taken within the national legal systems of the Member States, it might be found necessary to ensure at least a modicum of consistency between them.

- (b) Another approach might be to extend the jurisdiction of the Court of Justice in cases concerning failure by a Member State to comply with its obligations.
 - (1) Most infringements in fact concern failure to transpose harmonization directives into domestic law. Where the Court of Justice finds against a Member State more than once on the same issue, it could conceivably be given the power to take its own decision, with direct effect, on the measures needed to transpose Community rules into the national law of the offending State.¹ It might, for instance, declare in certain cases that a directive was directly applicable.

¹ The Commission would, of course, be expected to assist the Court by its pleadings and its involvement in the oral proceedings.

In some ways this would be no more than an extension of the rule already to be found in Court judgments to the effect that individual citizens can rely on directives against recalcitrant Member States.

But there are two dangers here:

- This approach would be inadequate where the Community legislation requires the national authority to take positive action (especially where it actually has the possibility of choosing between different, equally effective transposition techniques) or to establish complex administrative machinery;
- This approach would, moreover, entail the establishment of a decentralization mechanism in the form of a superior authority enjoying a fully fledged power of substitution. The concept is familiar in many federal States, but given the present situation of Community integration, even assuming that further progress is made towards political union, some Member States might for that very reason find it unacceptable.

Ultimately, the difficulties are such that the solution scarcely seems realistic; it must be ruled out on political grounds.

(2) Another possibility would be to confer on the Court of Justice a jurisdiction similar to that enjoyed by the constitutional courts of a number of federal States to scrutinize federal legislation in the light of the federal constitution. The Court would then have power to rule that the legislation of a Member State conflicts with a provision of Community law and to declare it inapplicable or even to annul it.

- This technique, unfortunately, would only work where there was a positive act by a national authority. It would not help to solve the numerous disputes arising from a Member State's failure to take action.
- Moreover, even without going so far as to establish a substitution mechanism as considered above, the approach would probably encounter general opposition since it would give the Court the power to interfere in the national legal orders.

- (3) To take a more modest and less aggressive approach, the Court of Justice could be given jurisdiction to declare, in judgments finding that an infringement has been committed, what measures should be taken by the offending Member State in order to put an end to it.

There are a number of possible ways of extending the Court's jurisdiction along these lines:

- The Court might be given the power to impose periodic penalty payments on Member States as an incentive to come into line. The same practical difficulties might arise here as were already mentioned in connection with financial penalties earlier in this paper, but the psychological effect on the national authorities of the recalcitrant Member State could be quite salutary.
 - The Court could also be given jurisdiction to issue injunctions. As it happens, the Court of Justice already sees itself as having this jurisdiction when hearing applications for interim measures against Member States, but it is reserved for exceptional cases. It is predicated on there being a degree of urgency with a risk of irreparable damage being done. All the Court can do is order provisional measures, pending its consideration of the substance of the case. It would be worth considering the possibility of extending and formalizing this power of injunction.
- (4) The consequences of infringements include the liability of Member States towards persons who suffer as a result. A real possibility of having this liability duly established would have a much greater deterrent effect on Member States than the possibility of being ordered to make fixed or periodic penalty payments. The principle of this kind of liability already exists in the Community legal order. It is for the courts and tribunals of each Member State to implement it in accordance with their respective legal systems.

It would be worth while amplifying the liability without affecting national jurisdiction. One way would be for the Court, when confirming that an infringement has been committed, to declare explicitly in its judgment that the effect of the infringement is to render the offending Member State liable towards persons whose rights are affected. The authority enjoyed by a judgment duly given in these terms and pleaded in the national courts would be of great assistance to those seeking redress.

5. One last point: If the foregoing suggestions were accepted - particularly as regards expanding Article 5 of the EEC Treaty and extending the jurisdiction of the Court to declare the consequences of a judgment ruling that an infringement has been committed - and if one or more mediators were instituted in each Member State, as has been proposed in connection with European citizenship, these mediators would then have an important role to play in seeing that Community law was properly applied. If they were responsible for safeguarding the rights and interests of Union citizens in each Member State, one of their prime concerns would quite naturally be to ensure that national legislation was adapted so as to provide proper protection for these rights and interests, and they would be at pains to make all the necessary representations both to national authorities and to Community institutions. Where an infringement was committed by public authorities, one of the mediators' tasks would be to provide citizens with full information on the extent of their rights and to assist them in using all proper ways and means of obtaining redress (notably in proceedings to establish the liability of public authorities, as mentioned above).