

CONV 216/02

NOTE

from :	Praesidium
to :	Convention
Subject :	Legislative procedures (including the budgetary procedure): – current situation

Members of the Convention will find attached a discussion paper on legislative procedures, including the budgetary procedure.

This document and the avenues to be explored identified in Chapter IV of the document are intended to serve as a basis for the debate to take place at the plenary session of the Convention on 12 and 13 September 2002.

I. INTRODUCTION

1. Legislative procedure has evolved considerably since the Treaty of Rome of 25 March 1957. It was basically characterised by the Commission having sole right of initiative and the Council having the power of decision, with the Parliament only being allowed the right to be consulted (ordinary consultation, with one reading). The Single European Act (which entered into force on 1 July 1987) introduced the cooperation procedure (two readings) in the sphere of the establishment of the internal market, but this procedure has now fallen almost completely into disuse, except in the context of Economic and Monetary Union. The Treaty of Maastricht (which entered into force on 1 November 1993) introduced the codecision procedure. This procedure applied initially in 15 areas, subsequently extended to 24 areas by the Treaty of Amsterdam (which entered into force on 1 May 1999). The Treaty of Nice extended its scope yet further, and it could nowadays be described as the dominant legislative procedure. It is distinct from the cooperation procedure in two essential ways: the conciliation phase, and the fact that it is impossible for the Council to impose its will on the Parliament, even by unanimity.
2. The budgetary procedure has also evolved considerably. Although dialogue between the two budgetary arms, the Parliament and the Council, has been through difficult periods, and has even led to disputes before the Court of Justice, the institutions have endeavoured – particularly by the adoption of interinstitutional agreements – to establish procedures leading to greater budgetary discipline and improvements to the budgetary procedure, as laid down in Article 272 of the EC Treaty.
3. These efforts have without any doubt contributed to strengthening the democratic legitimacy, transparency and the efficiency of the procedures in question. However, these procedures are so complex that they are difficult to understand. Their course can often only be followed by specialists. Citizens demand greater simplicity. They want to be able to grasp what is at stake, and to know how the Union makes legislation.
4. It has already been demonstrated (see CONV 162/02 of 13 June 2002 on the legal instruments: present system) that the legal instruments laid down in the Treaties are numerous and complex. This note is concerned with the existing legislative and budgetary procedures, and aims to facilitate consideration of the need for them to be simplified, of course without

this meaning any move away from the tendency towards more democratic and efficient mechanisms. This document describes only the legislative procedures as such, and the budgetary procedure in its links with legislative activity. It therefore does not address the procedures under Titles V (CFSP) and VI (JHA) of the TEU (even though some of the acts adopted under the latter Title may be regarded as legislative acts; for example the European arrest warrant). For the same reasons, this note does not examine procedures relating to the negotiation and conclusion of international agreements (opinion or assent by Parliament under the conditions laid down in Article 300(2) and (3) of the TEC).

5. The aim of this note is basically to describe – if incompletely – how the dialogue between the institutions is structured, from the stage of the legislative initiative to the adoption of the act, and to elucidate the roles played by the Parliament, the Council and the Commission, as well as other institutions or bodies associated in some way with the legislative or budgetary procedure. The procedures which have been established are founded on this dialogue and this desire to reach an objective, and each institution – with its own special characteristics – has a decisive role to play.

The institutions' duty to cooperate and to act diligently is stipulated in the Treaty (Article 10 of the TEC) as it has been interpreted by the Court of Justice. The Union must ensure the consistency and continuity of the activities carried out to attain its objectives while building on the *acquis communautaire* (Article 3 of the TEU). There is now a need to evaluate the functioning of existing procedures and to determine what should be replaced or improved. In this context, it should be stressed that the abovementioned evolution stemming from the successive amendments to the Treaties has also sometimes been reflected in a simplification of procedures. For example, the Treaty of Amsterdam amended codecision by providing that it could end at the first reading stage, so as to accelerate the procedure. This possibility has given rise to negotiations at an early stage of the procedure in the case of dossiers which have at times been difficult, but which have been successfully concluded (e.g. Regulation No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents).

II. LEGISLATIVE PROCEDURES IN THE EC TREATY

A. General decision-making procedures on the basis of the Treaty (second-level rules)

6. The European Community's legislative procedure is a "sui generis" procedure in which decision-making is the result of interaction between the national and Community levels on the one hand, and between the various Community institutions and bodies participating in the legislative process on the other, particularly the three main players which are the Council, the European Parliament and the Commission.

- (a) **The Council** is the institution which usually took the final decision. Since the entry into force of the Amsterdam Treaty it exercises legislative power jointly with the Parliament in a considerable number of areas, through the codecision procedure. Other procedures require more or less intensive participation by the European Parliament in the decision-making process (see below).

As the Council adopts its decisions by negotiation between its members so as to find a compromise between the various interests at stake, the Presidency and the Commission have a very important role to play in seeking such a compromise. The extension of the qualified majority rule has greatly influenced the negotiation process. In fact, although the members of the Council try to take account of the difficulties of other members, the possibility of a vote and the prospect that one member of the Council might be placed in a minority lead delegations to promote the search for a compromise.

In the area of economic and monetary policy the Council shares its power of decision with the European Central Bank as regards monetary policy, and the European Council has been expressly recognised as having a role in the conduct of that policy (see Article 99(2) of the TEC).

- (b) **The European Parliament:** the Parliament's degree of involvement in the legislative procedure has evolved, and over the years it has acquired increasingly broader powers in the legislative field. Currently, the European Parliament codecides with the Council in most areas (internal market, transport, research, the environment). However, in some

other areas (agriculture, structural policies), other legislative procedures have been maintained (the cooperation procedure, the advisory opinion procedure and the assent procedure), in which the European Parliament's ability to influence the legislative procedure and its interaction with other institutions is less. To see the legislative procedure through successfully, the Parliament also has to reach political compromises in very complex areas and the role of the rapporteurs in this area often proves essential.

- (c) **The Commission:** plays a key role in the legislative procedure, by dint of its power of initiative and its ability to amend its proposal throughout the procedure.

Except for certain very specific cases, the Commission has the monopoly of legislative initiative in the context of the EC Treaty. This means that it is a matter for the Commission to set the framework for negotiations with a view to the legislator taking decisions, and that the legislator is unable to amend the Commission's proposal beyond its subject or to act in the absence of a proposal from the Commission.

The Commission participates very actively in the legislative process and can amend its proposal throughout that process, or even withdraw it, which gives it an essential role in the search for compromise. This role is all the more important since in a large proportion of cases the Council acts by qualified majority. It can only amend the Commission proposal by unanimity. This means that in cases where the Council wants to amend the Commission proposal, it is able to act by qualified majority only if the Commission agrees with the amendments which the Council wants to introduce. Otherwise the Council will need unanimity.

The Commission also plays an important role in the search for a compromise between the Council and the Parliament in the codecision procedure, particularly in the conciliation phase.

The Commission's role in initiating legislation is modified in the area of economic and monetary policy, insofar as the Treaty provides that the Council shall act on the basis of a recommendation by the Commission (and not a proposal) or by the European Central Bank, and that unanimity within the Council is not required to amend the Commission's recommendation.

7. The legislative procedure also brings in certain bodies representing various economic, social, local, regional and other interests, and whose consultation is stipulated by the Treaties in certain areas. These bodies are the Economic and Social Committee (ESC), the Committee of the Regions (COR), the European Central Bank (ECB), the Employment Committee, etc.
8. Finally, there are cases in which the TEC provides for the approval of a Community act by the Member States in accordance with their respective constitutional rules. This applies to provisions of a "constitutional" nature such as rights of citizenship, the uniform electoral procedure or own resources.
9. The extent of and arrangements for the participation of the Community's institutions and bodies in the Community decision-making process is laid down by the Treaty, in the provisions granting the Community competence to legislate in a particular area. The choice of legal basis on which the act is to be adopted is made initially by the Commission when it submits its proposal to the Council. Although the Council (or where appropriate the Parliament) may amend the Commission proposal, including its legal basis, this initial choice made by the Commission in most cases determines the procedure to be followed, and hence the arrangements for the participation of the various institutions and bodies in the legislative process. Thus if the Commission considers that one of its proposals comes under the internal market (Article 95, codecision, qualified majority, consultation of the Economic and Social Committee), or under the environment (Article 175, codecision in some cases, unanimity and advisory opinion in others, consultation of the Economic and Social Committee and the Committee of the Regions), then the procedure and involvement of the various institutions and bodies will be different.
10. The EC Treaty currently provides for more than 22 different decision-making procedures for the adoption of legislative acts, involving the participation of different institutions and bodies in the legislative procedure (see Annex I). This high number of procedures, the fact that sometimes different procedures are applied in areas which are closely related (or appear in the same provision of the Treaty), their complexity, and the need to maintain and/or improve their efficiency in an enlarged Europe, are all arguments in favour of an effort to rationalise and simplify legislative procedures.
11. The four main legislative procedures referred to in the EC Treaty are: codecision, assent, cooperation and advisory opinion (see Annex 2: list of procedures by legal basis).

These procedures may be summarised as follows:

(a) **The codecision procedure**

12. In the codecision procedure (Article 251 of the TEC), the European Parliament and the Council participate in the legislative procedure as co-legislators, on an equal footing. This procedure, which was incorporated in the TEC by the Treaty on European Union, was the subject of some improvements and had its scope extended by the Treaty of Amsterdam. Thus the codecision procedure currently applies in areas such as the internal market, freedom of movement of workers, the right of establishment, transport, education and vocational training, consumer protection, etc.
13. In the codecision procedure, if the Council does not accept the amendments adopted by the European Parliament, the Council (or its representatives) must sit in the Conciliation Committee with representatives of the European Parliament, so as to try to find agreement on a common draft. If there is agreement, the compromise is submitted for the approval of the Council and of the European Parliament.

This procedure may be summarised as follows:

- the Commission submits a proposal to the European Parliament and to the Council. The European Parliament delivers an opinion on this proposal;
- first reading: the Council states its position on the Commission's proposal and gives a decision on the Parliament's amendments. If the Council approves all the amendments (or in the absence of amendments) the Council may adopt the act in question. In other cases, it forwards to the European Parliament a common position;
- second reading: the Parliament gives a ruling on the common position within a time limit of three months:
 - If the Parliament agrees with the common position, the act is adopted in accordance with the common position.
 - If the Parliament rejects the common position, the proposed act is deemed not to have been adopted.
 - If the Parliament proposes amendments, the text thus amended is forwarded to the Council and to the Commission, which delivers an opinion on these amendments. If, within three months, the Council approves all these amendments by a qualified majority, the act is deemed to have been adopted in the form of the common position thus amended. The Council acts unanimously on those amendments by the

Parliament which were the subject of a negative opinion from the Commission.

- In the event of disagreement between the Parliament and the Council, the Conciliation Committee is convened within a time limit of six weeks.
- Conciliation Committee: brings together the members of the Council (or their representatives) and an equal number of members of the Parliament in an attempt to reach agreement on a common text within six weeks of being convened. In the event of agreement, the Council and the Parliament must approve the common text thus established within a time limit of another six weeks from approval. In the event of disagreement, the proposed act is deemed not to have been adopted.

14. As is evident from the above, at first reading no deadlines are laid down, whereas at second reading and in the conciliation phase there are strict deadlines which can lead to non-adoption of the act if they are not complied with.
15. In most cases, the Council acts by qualified majority. However, in certain specific cases, it acts unanimously throughout the procedure. Tripartite technical meetings and "trialogues" between the Council, the European Parliament and the Commission take place during the first and second readings and before the meeting of the Conciliation Committee, in order to resolve differences between the institutions and facilitate endeavours to reach agreement, thus avoiding the convening of the Conciliation Committee (see Joint Declaration of May 1999 on practical arrangements for the new codecision procedure). This trialogue mechanism, which is not provided for by the Treaties, has significantly reduced the number of dossiers requiring the Conciliation Committee to be convened and thus the length of the legislative procedure.
16. Agreements at first and second reading currently represent around 72% of the total number of codecision dossiers (around 32% at first reading and 40% at second reading). It is often the most politically sensitive dossiers which are subject to the conciliation procedure, which is in keeping with the logic of the codecision procedure. However, this is not always the case. Sometimes, relatively technical dossiers reach the conciliation procedure, and on other occasions agreement at first reading is reached even in the case of a politically sensitive dossier on account of political priorities or timetable constraints.

17. At the Nice IGC, the Commission proposed the application of the codecision procedure for the adoption of all legislative texts. Although such generalisation has not taken place, the Nice IGC extended the scope of the codecision procedure to other areas.

That IGC did not adopt the Presidency proposal to associate the codecision procedure with a new kind of act, the "legislative act", which would concentrate on defining the general principles, basic elements and objectives of Community legislation rather than on technical details that would be more appropriate to acts covered by a lighter procedure to be determined by the legislator. It would be for the latter to determine the general principles, basic elements and objectives of the legislation in question (see CONV 162/02, points 35 and 65).

18. At that same IGC, the Presidency proposed to introduce the rule of qualified majority voting in certain provisions of the Treaty which provided for codecision together with the unanimity voting rule, considering that the requirement of unanimity in the codecision procedure could be regarded as an institutional anomaly which might void the codecision procedure of its substance. This involved Article 18(2) of the TEC (provisions with a view to facilitating the exercise of the right of citizens to move and reside freely within the territory of the Member States), Article 42 TEC (social security for migrant workers), Article 47(2) TEC (taking-up and pursuit of activities as self-employed persons) and Article 151(5) TEC (culture). The Conference followed up the Presidency's suggestion only in the case of Article 18(2).

(b) Cooperation procedure

19. The cooperation procedure (Article 252 TEC) was introduced by the Single European Act in order to give greater weight to consultation of Parliament in the adoption of certain decisions, whilst leaving the Council the last word. The Treaty of Amsterdam considerably reduced the scope of this procedure, which currently applies only to the field of economic and monetary policy (Articles 99(5), 102(2), 103(2) and 106(2) TEC) (5 acts adopted to date).
20. Under this procedure, the European Parliament's reaction to the Council's common position directly influences the legal situation of the Council: if the Parliament approves the Council's

common position, the latter must adopt the act in accordance with its common position. If the Parliament rejects the common position, the Council may adopt the act only unanimously. Should the Parliament make amendments, the Commission must re-examine its proposal on the basis of those amendments; the Council may amend the re-examined proposal only unanimously.

The cooperation procedure may be summarised as follows:

- the Council, at the Commission's proposal and following the EP opinion, adopts by a qualified majority a common position;
- the European Parliament may:
 - either approve the common position: in this case, the Council finally approves the act concerned in accordance with the common position;
 - or reject it: the Council may adopt the common position only unanimously;
 - or propose amendments: the Commission re-examines its proposal on the basis of the amendments proposed by the EP. The Council adopts the re-examined proposal by a qualified majority; it may only amend it by unanimity.

21. At the Nice IGC, the question of abolishing the cooperation procedure was examined. Although a majority of delegations declared themselves in favour of abolishing it (most favoured its replacement by the consultation procedure, considering that the provisions concerned were not of a legislative nature, while a minority were in favour of replacing it by the codecision procedure), in the end the Treaty of Nice did not make any amendment in this respect.

(c) **Advisory opinion procedure**

22. On the basis of this procedure, the Council must request and examine the European Parliament's Opinion on the Commission's proposal. The Council acts by a qualified majority or unanimously after having examined this opinion. The Council may amend the draft act in question if it considers the European Parliament's proposals for amendment to be justified, but the Parliament's opinion cannot prevent adoption of the act, nor force it to be amended. The Commission may also amend its proposal to take account of the European Parliament's

opinion and, in this case, the Council may amend the Commission's proposal only by acting unanimously. Thus, the Commission plays an important role in this procedure when the Council acts by a qualified majority, which is most often the case.

At present this procedure applies to fields such as the common agricultural policy (Article 37(3) TEC), liberalisation of services (Article 52(1) TEC) and competition (Article 83 TEC).

(d) Assent procedure

23. This procedure was introduced by the Treaty on European Union in a certain number of cases, which it was considered could not be covered by the codecision procedure but where there was nevertheless a desire to give the European Parliament an important role. Examples are the adoption of the Structural Funds and Cohesion Fund regulations (Article 161 TEC), provisions concerning the uniform electoral procedure (Article 190(4) TEC) or amendments to the Statute of the European Central Bank (Article 107(5) TEC).

The assent calls for agreement by the Council and the Parliament on the text to be adopted, since the Council may not adopt an act without the Parliament having delivered an opinion approving the act in question. In the event of a negative opinion, the Council cannot adopt the act.

24. The Treaties of Amsterdam and Nice extended the cases in which this procedure may be applied. The Council decides by a qualified majority or unanimously, depending on the situation.

B. Decision-making within the institutions

(a) The Council

25. The Council takes decisions by a simple majority, a qualified majority, or unanimously.
26. The simple majority rule entails a majority of Council members being in favour of adopting a decision (currently 7 out of 15). This is the voting rule which corresponds to "ordinary law" in the EC Treaty, which means that, where no specific voting rule is provided for in the Treaty, it is the simple majority rule which applies. However, in practice, the simple majority

is applied mainly to procedural decisions, given that in most cases the Treaty specifically requires either a qualified majority or unanimity for the adoption of legislative decisions.

27. The unanimity rule requires all members of the Council to be in favour of a decision, which means that each Council member has one vote and a right of veto. Abstention is not an obstacle to unanimity.
28. The qualified majority rule gives each member of the Council a weighting in the decision-making process according to its population. It makes it possible for a certain number of Council members to be placed in a minority during a vote. The weighting ranges from the 10 votes granted to Germany, the United Kingdom, France and Italy to the two votes for Luxembourg. Decisions require 62 votes to be adopted ¹. Abstentions are equal to a negative vote.

Where decisions are not taken on a Commission proposal, the 62 votes must represent at least 10 Council members.

The Nice Treaty alters the current weighting of votes and the threshold required for a qualified majority. That Treaty also added the stipulation that adoption of a decision requires votes in favour cast by at least the majority of Council members where the decision is taken on a Commission proposal and of two thirds in other cases. It also opens the possibility that a Council member may ask for verification that the qualified majority comprises at least 62% of the total population of the Union. If this condition proves not to have been fulfilled, the decision in question is not adopted.

29. In the EEC Treaty, the Council voted by unanimity in most cases. However, in various revisions of the Treaty the unanimity rule was gradually replaced by the qualified majority rule. It is now the voting rule referred to in a large proportion of areas in the EC Treaty. Unanimity remains the voting rule applicable to "constitutional" provisions (namely those where the Treaty expressly provides for adoption of a decision by Member States in accordance with their respective "constitutional" procedures) or "quasi-constitutional" provisions (e.g. "comitology", Statute of the Court of Justice), and to certain provisions

¹ Cf. also Council Decision of 1 January 1995, known as the "Ioanina compromise", amending the Council Decision of 29 March 1994 concerning the taking of decisions by qualified majority by the Council.

relating to areas which are politically sensitive for one or more Member States or to the establishment of new policies (Article 308).

30. It is generally felt that the unanimity voting rule guarantees that all Member States will abide by Council decisions. On the other hand, it is true that the qualified majority rule makes the process easier: the possibility for each Council member to be placed in a minority prompts delegations to look for compromises. In this sense, final adoption of the act by unanimity is misleading, since it would possibly not have succeeded if the prospect of being placed in a minority had not provided an incentive to show flexibility. The qualified majority rule also assigns a more important role in the legislative process to the Commission in that, although the Commission can amend its proposal at any time during the process, the Council can only amend it by a unanimous vote.
31. The gradual transition from unanimity to qualified majority was fairly widely regarded as necessary for maintaining the efficiency of the decision-making process in an enlarged European Union. In order to facilitate the transition from unanimity to qualified majority in politically sensitive areas, formulae which lie somewhere in between unanimity and qualified majority (augmented qualified majority, super-qualified majority) have been put forward.

(b) European Parliament

32. The general rule laid down in the Treaty is that Parliament "shall act by an absolute majority of the votes cast", save as otherwise provided in the Treaty (Article 198 TEC). That rule – like Article 205(1) TEC for the Council – takes precedence over all other provisions of secondary legislation (e.g. rules of procedure of the institutions). In other words, if the Treaty does not provide for a certain type of majority in a specific provision, Parliament must act by an absolute majority of the votes cast. That basic rule applies by analogy to the second (Article 28(1) TEU) and third pillars (Article 41(1) TEU).
33. Under Article 192 TEC, Parliament participates in the process leading up to the adoption of Community acts by exercising its powers under the codecision (Article 251 TEC) and

cooperation (Article 252 TEC) procedures and by giving its assent ¹ or delivering advisory opinions.

34. In legislative matters, the Treaty provides for specific majorities as exceptions to the general rule in the following cases:

- (i) Act relating to the election of members of the European Parliament in accordance with a uniform procedure (majority of its component members: Article 190(4) TEC);
- (ii) In codecision (Article 251 TEC) or cooperation (Article 252 TEC) procedures, Parliament acts by a majority of its component members when it:
 - rejects the Council's common position;
 - proposes amendments to the Council's common position.

(See also footnote 4 on page 16, which indicates specific majorities for the budget procedure).

II. BUDGET PROCEDURE ²

(a) The procedure and classification of expenditure

35. Article 272 is the provision of the EC Treaty which formally governs the procedure for establishing the Union budget. However, that Article (which has remained practically unchanged since the 1975 revision) now only partially reflects the reality of a procedure which has changed radically as numerous interinstitutional agreements have been adopted.

In those interinstitutional agreements, the European Parliament allowed its powers to be limited by accepting a number of restrictions (chapters, ceilings, sub-ceilings) in exchange for improved cooperation in the budgetary procedure. The first two interinstitutional agreements (1988 and 1992) coincided with increases in the ceilings for own resources so that new Community policies could be launched. The 1999 interinstitutional agreement, which resulted from decisions taken by the Berlin European Council, was reflected in an increase in the ceiling for own resources.

¹ In only one case (Article 7 TEU) Parliament has to give its assent by a two-thirds majority of the votes cast, representing a majority of its members.

² Issues relating to the Union's budget were the subject of the contribution from Mr Carnero Gonzalez (CONV 38/02).

36. Since 1988, the Parliament, the Council and the Commission have signed three Interinstitutional Agreements on budgetary discipline and improvement of the budgetary procedure. Each of these Agreements was accompanied by a multiannual financial perspective establishing spending limits per sector with which the three institutions undertook to comply during the annual budget procedure.
37. The last of these Agreements is still in force ("the Berlin agreement"). It established the financial perspective for 2000-2006 and also codified a whole series of procedures and rules which were scattered throughout various agreements and declarations, relating to interinstitutional cooperation, classification of expenditure, inclusion of financial provisions in legislative acts, the requirement of a legal basis for expenditure and budgetary provisions relating to the Common Foreign and Security Policy (CFSP).
38. The budget procedure begins with the presentation of the preliminary draft budget by the Commission. There follows an examination at two readings by the Council and the Parliament. The factor which makes the procedure extremely complex is the classification of expenditure into compulsory (CE) and non-compulsory (NCE).
39. Parliament's decision-making power varies radically depending on which part of the budget is being discussed. Whereas in relation to non-compulsory expenditure it has the last word, within certain limits, its power is reduced to little more than a reasoned opinion in relation to compulsory expenditure. The increase in Parliament's budgetary powers has in fact more to do with an increase in the percentage of non-compulsory expenditure in the budget than with procedural changes (in 20 years non-compulsory expenditure has increased from barely 20% of the budget to more than 50% of appropriations: agricultural expenditure constitutes the bulk of compulsory expenditure which is not controlled by Parliament).
40. The importance of the classification of expenditure begs the question of the nature of the distinction between these two types of appropriations. Article 272 refers to expenditure "necessarily resulting from this Treaty or from acts adopted in accordance therewith." That would mean that we are dealing with essential expenditure, payment of which constitutes a right for third parties, whether they be farmers receiving guaranteed prices or third countries linked to the Union by international agreements. Non-compulsory expenditure would be appropriations which could be abolished, in relation to which the budget authority has wide-ranging powers of discretion.

41. Reality is much less clear-cut and classification of expenditure into one or other category has always been a source of conflict between the two arms of the budget authority. Furthermore, there are classic examples which demonstrate the difficulty of drawing a distinction. Agricultural policy has evolved and the appropriations allocated to it fund activities which it is hard to describe as "necessary" (for example set-aside measures or direct aid). On the other hand, EU officials' salaries have always been regarded as non-compulsory expenditure, even though there is a real legal obligation to pay them.
42. The 1999 Interinstitutional Agreement redefined, in terms very similar to the Treaty, compulsory expenditure as expenditure which the budgetary authority is obliged to enter in the budget by virtue of a legal undertaking entered into under the Treaties or acts adopted by virtue of the said Treaties. The Agreement sanctions the status quo as regards the traditional budget headings. It stipulates that the preliminary draft budget is to contain a proposal for the classification of new budget items and items with an amended legal base. If they do not accept that classification, the European Parliament and the Council will examine classification of the budget item concerned on the basis of Annex IV of the Agreement, which contains a classification of the headings of the financial perspective.
43. Apart from its power to amend the draft budget, the Parliament may also reject the draft budget as a whole (as it has done on three occasions) and ask for a new draft to be submitted. Moreover, it is the President of the European Parliament who closes the procedure by stating

that the budget has been definitively adopted and agreement reached with the Council ¹.

(b) Interinstitutional cooperation

44. The most striking feature of the procedure is the efforts of the two arms of the budgetary authority to secure agreement, as the Court of Justice has highlighted on several occasions.
45. The Interinstitutional Agreement of 6 May 1999 codified and made systematic the machinery for interinstitutional conciliation developed since the eighties and which aims to facilitate agreement between the two arms of the budgetary authority.
46. It institutes a conciliation procedure which commences every year even before the Commission adopts the preliminary draft budget, with a trialogue to discuss the foreseeable priorities for the budget for the coming financial year.
47. In fact, the key mechanism of the system is the trialogue which brings together delegations from the three institutions, led respectively by the President of the Budget Council, the Chairman of the European Parliament's Committee on Budgets and the Member of the Commission with responsibility for the budget. Three trialogues are held during the budget

¹ Under the budget procedure, the Treaty provides that Parliament:

- has a right to amend the draft budget, acting by a majority of its Members (Article 272(4), second subparagraph);
- may, acting by a majority of its Members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly (Article 272(6));
- acting by a majority of its Members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it (Article 272(8));
- may, acting by a majority of its Members and three-fifths of the votes cast, by agreement with the Council, fix another maximum rate of increase for NCE in relation to the expenditure of the same type to be incurred during the current financial year (Article 272(9), fifth subparagraph);
- may, if, at the beginning of a financial year, the budget has not yet been voted, acting by a majority of its Members and three-fifths of the votes cast, adopt a different decision on the authorisation of NCE in excess of one-twelfth of the budget appropriations provided for in the budget for the preceding financial year (Article 273, third subparagraph).

procedure:

- when the Council establishes its draft budget, followed by a conciliation meeting;
- before the European Parliament's first reading (during this triadialogue the institutions also exchange views on the state of implementation of the current budget);
- after the European Parliament's first reading to prepare the second conciliation meeting, which is held the day before the Council's second reading.

48. As previously stated, Parliament has the final say on non-compulsory expenditure but that does not mean that it is free to enter any amount in the budget. It is restricted by the "maximum rate of increase" (Article 272 TEC), which is a statistical indicator calculated by the Commission.

The mechanisms laid down for interinstitutional conciliation (the triadialogue) have functioned rather well. Despite serious difficulties regarding some financing in recent years (Kosovo, Serbia, Afghanistan), the Council and the European Parliament have agreed on the budget by consensus, when each institution has obtained the financing of its priorities.

49. During the eighties, the setting of a maximum rate was a constant source of conflict between Parliament and the Council. The adoption of multiannual financial perspectives from 1988 radically changed the approach to this question. The Interinstitutional Agreement of 1988, followed by two further agreements, provided the scope for considerable extension of Community expenditure in certain sectors (primarily the Structural Funds – NCE), while at the same time guaranteeing budgetary discipline in others (agricultural expenditure)¹.
50. The mechanism of the financial perspective which requires the three institutions to comply with annual ceilings for each expenditure heading relegated the problem of the rate of increase. That rate had often been exceeded since 1988 on the basis of an explicit agreement between the Parliament and the Council in accordance with the fifth subparagraph of Article 272(9).

¹ The agricultural guideline has effectively curbed the excessive agricultural expenditure seen in the eighties. It should be noted that this is CE and therefore expenditure not affected by the maximum rate of increase.

(d) Legislative and budgetary procedures

51. The Interinstitutional Agreement of 1999 (by incorporating earlier provisions) introduces restrictions on the temptation to use the budgetary procedure for legislative purposes. It lays down that implementation of appropriations entered in the budget for any Community action requires the prior adoption of a basic act. A "basic act" is an act of secondary legislation which provides a legal basis for the Community action and for the implementation of the corresponding expenditure entered in the budget. Under the agreement, such an act must take the form of a regulation, a directive or a decision. Recommendations and opinions do not constitute basic acts, nor do resolutions or declarations.
52. There are, however, some exceptions to the rule: appropriations for pilot schemes of an experimental nature, appropriations relating to preparatory actions for future Community actions, appropriations concerning actions of a specific, or even indefinite, nature carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level (set out in a specific list annexed to the agreement) and appropriations intended for the operation of each institution.
53. The other aspect of interaction between the budgetary procedure and the legislative procedure relates to the problems encountered in drawing up the budget when financial amounts are laid down in legislative acts.
54. This question was first addressed in the Maastricht Treaty with the addition of Article 270: "With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269".
55. The Agreement of 1999 (again incorporating earlier provisions) deals with the problem of overlap between the two procedures, reacting to the tendency to set financial frameworks in legislative acts by drawing a distinction between acts adopted under codecision and other acts.
56. Legislative acts concerning multiannual programmes adopted under the codecision procedure contain a provision in which the legislator lays down the financial framework of the programme for its entire duration. This "amount deemed necessary" constitutes the prime

reference for the budgetary authority during the annual budgetary procedure. The institutions undertake not to depart from this amount unless new circumstances arise, which must be explicitly justified.

57. This provision does not apply to the legislative acts not subject to the codecision procedure. Any financial references are illustrative and would not affect the powers of the budgetary authority.

IV. Avenues to be explored

58. The above description of the legislative procedures and the budgetary procedure demonstrates the complexity of those procedures. During the plenary debates, there was strong demand for simplification and more easily comprehensible decision-making processes. Below are some of the avenues which could therefore be explored:

(a) Legislative procedures:

- (i) The question of how to reduce the number of legislative procedures provided for by the Treaty could be examined.
For example, consideration could be given to the possibility of extending the codecision procedure to acts to be adopted by a qualified majority (including the replacement of the cooperation procedure).
- (ii) The possibility of simplifying certain procedures could be considered.
For instance, we could study how the codecision procedure could be improved and made less cumbersome, particularly as regards the functioning of the Conciliation Committee.
- (iii) We could consider whether the drafting of certain Treaty provisions describing the legislative procedures could be simplified.

(b) Budgetary procedure:

- (i) We could consider whether the Treaty should not be amended to reflect practice, by referring in particular to the machinery for interinstitutional conciliation which was codified in the Agreement of 1999.

(ii) The question might be considered of whether the distinction between compulsory and non-compulsory expenditure should be abolished. If this distinction were removed, what procedure apply to all expenditure?

(iii) It might be considered whether replacing the budgetary procedure by the codecision procedure would simplify matters.

In this context, it might be considered whether the example of the US budgetary procedure might simplify and make more transparent the political decisions leading to the adoption of the Union's budget.

59. There is an obvious link between simplification of the legislative process, on the one hand, and simplification of the legal instruments ensuing from that process, on the other hand. Consequently, the questions raised in the last section of CONV 162/02 "The legal instruments: present system" should be examined at the same time and by the same working group as those raised above. These questions will be deepened, developed or replaced in a new version of this document which will be drawn up to further consider the points raised during the Convention's plenary debate on 12 and 13 September.

Classification of procedures, taking account of the voting system at the Council, Parliament's involvement and the consultation of institutions or other bodies, in the EC Treaty¹

- Qualified majority with codecision (*e.g. Article 12*)
- Qualified majority with codecision and consultation of the Court of Auditors (*e.g. Article 280(4)*)
- Qualified majority with codecision and consultation of the Economic and Social Committee (*e.g. second paragraph of Article 172*)
- Qualified majority with codecision and consultation of the Economic and Social Committee and of the Committee of the Regions (*e.g. Article 175(1)*)
- Qualified majority with cooperation (*e.g. Article 99(5)*)
- Qualified majority with cooperation and consultation of the ECB (*e.g. Article 106*)
- Qualified majority with assent of the Parliament (*e.g. Article 107(5)*)
- Qualified majority with opinion of the Parliament (*e.g. Article 37(2)*)
- Qualified majority with opinion of the Parliament and consultation of the Economic and Social Committee (*e.g. first paragraph of Article 172*)
- Qualified majority with opinion of the Parliament and consultation of the Economic and Social Committee, the Committee of the Regions and the Employment Committee (*e.g. Article 128 (1)*)
- Qualified majority without participation by the Parliament (*e.g. Article 26*)
- Qualified majority without participation by the Parliament, with consultation of the ECB (*e.g. Article 59*)
- Qualified majority without participation by the Parliament, with consultation of the ECB and of the Economic and Financial Committee (*e.g. Article 114(3)*)
- Qualified majority without participation by the Parliament, with consultation of the Economic and Social Committee (*e.g. Article 75*)
- Unanimity with codecision (*e.g. Article 42*)
- Unanimity with codecision and consultation of the Committee of the Regions (*e.g. Article 151(5), first indent*)
- Unanimity with assent of the Parliament (*e.g. Article 300(3)*)

¹ Some special procedures (*e.g. adoption of the budget, discharge, some appointments*) are not included in this list.

- Unanimity with assent of the Parliament (by a qualified majority) on a proposal from the Parliament (*e.g. Article 190(4)*)
 - Unanimity with assent of the Parliament and consultation of the ECB (*e.g. Article 105(5)*)
 - Unanimity with assent of the Parliament and consultation of the Economic and Social Committee and of the Committee of the Regions (*e.g. Article 161*)
 - Unanimity with opinion of the Parliament (*e.g. Article 19(1)*)
 - Unanimity with opinion of the Parliament and consultation of the Court of Auditors (*e.g. Article 279*)
 - Unanimity with opinion of the Parliament and consultation of the ECB (*e.g. Article 111(1)*)
 - Unanimity with opinion of the Parliament and consultation of the Economic and Social Committee (*e.g. Article 157(3)*)
 - Unanimity with opinion of the Parliament and consultation of the Economic and Social Committee and the Committee of the Regions (*e.g. Article 175(2)*)
 - Unanimity without participation by the Parliament (*e.g. Article 88(2)*)
 - Unanimity without participation by the Parliament and with consultation of the ECB (*e.g. Article 123(5)*)
 - Unanimity without participation by the Parliament and with consultation of the Economic and Social Committee (*e.g. Article 144*)
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DECISION-MAKING PROCEDURES IN THE EC TREATY
ACCORDING TO LEGAL BASIS¹

Qualified majority voting within the Council with codecision

- Rules prohibiting any discrimination on grounds of nationality. Article 12.
- Freedom of movement for workers. Article 40.
- Right of establishment. Article 44.
- Coordination of provisions laid down by law, regulation or administrative action providing for special treatment of nationals of other Member States in exercising the right of establishment. Article 46(2).
- Right of establishment for activities as self-employed persons. End of Article 47(2).
- Services. Article 55.
- Common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; conditions under which non-resident carriers may operate transport services within a Member State; measures to improve transport safety. Article 71(1).
- Extension of the rules of procedure laid down in Article 71(1) to include sea and air transport. Article 80(2).
- Harmonisation measures relating to the internal market. Article 95(1).
- Employment incentive measures. Article 129 (New).
- Customs cooperation. Article 135 (New).
- Working environment and conditions; workers' health and safety, information and consultation of workers; integration of excluded persons; equal opportunities and treatment; measure designed to encourage cooperation in order to combat social exclusion. Article 137(1) and (2).
- Social policy (equal opportunities, treatment and pay). Article 141.
- Implementation of decisions relating to the European Social Fund. Article 148.
- Education. Article 149(4) (excluding recommendations).
- Vocational training (measures to contribute to the achievement of the objectives of Article 150). Article 150(4).
- Public health (minimum conditions for the quality and safety of organs, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health). Article 152(4)(a) and (b).
- Incentive measures designed to protect and improve human health. Article 152(4)(c).
- Consumer protection. Article 153(4).
- Trans-European networks, guidelines. Article 156, first paragraph.
- Other measures concerning trans-European networks. Article 156.
- Implementing decisions relating to the ERDF. Article 162.
- Research framework programme. Article 166.
- Adoption of the measures referred to in Articles 167, 168 and 169 – research. Article 172.
- Environment (Community action in order to achieve the objectives referred to in Article 174). Article 175(1).

¹ The amendments made by the Treaty of Nice are indicated in bold italics.

- Action programme in other areas of the environment. Article 175(3).
- Development cooperation. Article 179.
- ***Regulations governing political parties at European level and the rules regarding their financing. Article 191***.
- General principles on transparency. Article 255(2) (New).
- Fight against fraud affecting the financial interests of the Community. Article 280(4).
- Statistics. Article 285(1).
- Establishment of an independent supervisory body for data protection. Article 286(2).

Qualified majority voting within the Council with simple consultation

- Authorisation to launch closer cooperation activities. Article 11(2).
- Common agricultural policy. Article 37(3).
- Liberalisation of services. Article 52(1).
- Establishing the list of third countries required to issue a visa, and those which are exempt from that requirement, and the establishment of a uniform format for visas. Article 67(3).
- Adoption of regulations on competition. Article 83.
- Adoption of regulations on State aid. Article 89.
- Provisions for the implementation of the Protocol on the excessive deficit procedure. Article 104(14), last subparagraph.
- Amendment of certain provisions of the Protocol on the Statute of the ESCB and the ECB. Article 107(6).
- Limits and the conditions under which the ECB may impose fines. Article 110(3).
- Decision on entering the third stage of EMU. Article 121(3) and (4) in addition to the EMI report after evaluation by the Council.
- Decision on the entry of a State outside the single currency. Article 122(2).
- Drawing up guidelines which the Member States shall take into account in their employment policies, on the basis of the conclusions of the European Council. Article 128(2).
- Specific research programmes. Article 166(4).
- Research, setting up of joint undertakings. Article 172(1).
- ***Economic, financial and technical cooperation with third countries. Article 181a***.
- Establishing the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the Communities. Article 283.
- Adoption of measures in favour of the outermost regions. Article 299(2).
- Signing, provisional application and suspension of international agreements. Article 300(2), first subparagraph.
- Adoption of provisions on the Statute of the ESCB. Article 42 of the Protocol on the Statute of the ESCB and of the ECB.

Qualified majority voting within the Council with cooperation

- Multilateral surveillance. Article 99(5).
- Application of the prohibition on privileged access. Article 102(2).
- Application of the prohibition on assuming commitments or granting overdraft facilities. Article 103(2).
- Measures to harmonise the denominations and technical specifications of coins. Article 106(2).

Qualified majority voting within the Council with assent

- Amendment of the Protocol on the Statute of the ESCB and of the ECB on a recommendation from the ECB. Article 107(5).

Qualified majority voting within the Council without participation by the Parliament

- Fixing of Common Customs Tariff duties. Article 26.
- Exclusion in a Member State of certain activities from the scope of the provisions on the right of establishment. Article 45, second paragraph.
- Extension of the provisions on the supplying of services to include nationals of a third country established in the Community. Article 49, second paragraph.
- Adoption of other measures on the movement of capital to or from third countries. Article 57(2), first part.
- Adoption of strictly necessary safeguard measures where, in exceptional circumstances, movements of capital to or from third countries cause serious difficulties for the EMU. Article 59.
- Adoption of urgent measures on the movement of capital and on payments. Article 60(1).
- Decision on the amendment or abolition of unilateral measures taken by a Member State against a third country with regard to capital movements and payments. Article 60(2), second subparagraph.
- Adoption of provisional measures with regard to law and order and internal security for the benefit of certain States. Article 64(2).
- Abolition of discrimination in the transport sector. Article 75(3).
- Appropriate provisions concerning sea and air transport. Article 80(2).
- Approval of measures concerning charges other than turnover taxes, excise duties and other forms of indirect taxation. Article 92.
- Adoption of directives to eliminate distortion within the common market. Article 96, second subparagraph.
- Council recommendation regarding broad economic policy guidelines. Article 99(2).
- Severe economic difficulties in a Member State caused by natural disasters. Article 100(2), end.
- Decision on whether an excessive deficit exists. Article 104(6).
- Decision concerning the adjustment or abandonment of the ECU central rates. Article 111(1), end.
- Exchange rate policy. Article 111(2).
- Arrangements for the negotiation and the conclusion of international agreements on the monetary or foreign exchange regime. Article 111(3).
- Decision on the position of the Community at international level regarding the EMU. Article 111(4), first sentence.
- Composition of the Economic and Financial Committee. Article 114(3).
- Grant and revocation of mutual assistance where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments. Article 119(2) and (3).
- Adjustment, suspension or abolition of protective measures. Article 120(3).
- Decision on whether a Member State shall have a derogation for the purpose of excluding it from rights and obligations within the ESCB. Article 122(1).
- Recommendations on employment. Article 128(4).

- Adoption of measures to harmonise the systems for granting aid in the field of commercial policy. Article 132(1).
- Commercial policy. Article 133(4).
- Application of other agreements between management and labour. Article 139 (2).
- Recommendations in the field of education. Article 149(4), second indent.
- Recommendations in the field of public health. Article 152(4), end.
- Determination of the salaries, allowances and pensions of Members of the Commission and of the Court of Justice. Article 210.
- Determination of the conditions of employment, salaries, allowances and pensions of the Members of the Court of Auditors. Article 247(8).
- Determination of the allowances of members of the ESC. Article 258, final subparagraph.
- Establishment of the draft budget. Article 272 (3).
- Authorisation of expenditure in excess of the provisional one-twelfth. Article 273, second subparagraph.
- Conclusion of agreements between the Community and one or more States or international organisations. Article 301.
- Decision on the type of sanctions to be imposed on a Member State that has breached the principles of Article 6(1) of the Treaty on European Union. Article 309 (2) .
- Decision to vary or revoke sanctions imposed on a Member State that has breached the principles of Article 6(1) of the Treaty on European Union. Article 309 (3)
- Procedures for integrating the Schengen Secretariat into the General Secretariat of the Council Article 7 of the Protocol integrating the Schengen acquis.
- Amendment or revocation, at the request of a Member State, of decisions taken by the Commission on imports into the European Community of petroleum products refined in the Netherlands Antilles. Article 3(3) of the Protocol on petroleum products refined in the Netherlands Antilles.

Unanimous voting within the Council with codecision

- Provisions with a view to facilitating the exercise of the rights of citizens to move and reside freely within the territory of the Member States. Article 18(2) (QMV).
- Internal market (social security measures for Community migrant workers). Article 42.
- Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Coordination of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. Article 47.
- Culture. Article 151 (except for recommendations) .

Unanimous voting within the Council with assent

- Specific tasks of the ECB. Article 105(6).
- Amendment of the Statute of the ESCB and of the ECB. Article 107(5).
- Structural Funds and Cohesion Fund. Article 161 (QMV from 2007 or adoption of the financial perspective).
- Elections in accordance with a uniform procedure. Article 190(4).
- Association Agreements (provided for in Article 310) and other agreements establishing a specific institutional framework, having important budgetary implications and entailing amendment of an act adopted under the codecision procedure. Article 300(3), second subparagraph.
- ***Special procedure: Nomination and appointment of the President of the Commission and its***

members. Article 214 (QMV)

Unanimous voting within the Council with simple consultation

- Adoption of appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 13 (Codecision + QMV for paragraph 2).
- Citizenship: right to vote and to stand as a candidate. Article 19(1)
- Extension of rights linked to citizenship, ratification by Member States. Article 22.
- Measures to establish an area of freedom, security and justice (during a transitional period of 5 years). Article 67(1) (codecision + QMV for Article 65 except family law) (subsequent transition to QMV + codecision for Articles 63, 62(3) and 62(2)(a) (QMV + consultation of the EP for Article 66).
- Provisions concerning the principles of the regulatory system for transport application of which would be liable to have a serious effect on the standard of living and on employment. Article 71(2).
- Harmonisation of indirect taxation. Article 93.
- Harmonisation of laws. Article 94.
- Exchange-rate system for the ECU in relation to non-Community currencies. Article 111(1), first sentence.
- Decision concerning the external representation of EMU. Article 111(4), end (QMV).
- Commercial policy: extension to agreements on services and intellectual property. Article 133(5) (QMV).
- Measures in the field of social security, of social protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, conditions of employment for third-country nationals in possession of a residence permit and financial contributions for promotion of employment and job-creation. Article 137(3). (Parts of the Article will go over to QMV + codecision following a unanimous Council decision)
- Industry. Article 157(3).
- Measures to achieve economic and social cohesion. Article 159 (QMV + codecision).
- Provisions of a fiscal nature, measures concerning town and country planning and land use, measures affecting energy supplies and biodiversification. Article 175(2).
- Determination of classes of action or proceeding brought before the Court of First Instance, the composition of this Court and the necessary adjustments and additional provisions for the Statute of the Court of Justice. Article 225(2).
- Amendment of the Statute of the Court of Justice. Article 245, second subparagraph.
- Appointment of members of the Court of Auditors. Article 247(3) (QMV).
- Decision on own resources. Article 269.
- Adoption of the financial regulations. Article 279 (QMV).
- Signing, provisional application and suspension of application of agreements concluded by the Council in fields for which unanimity is required for the adoption of internal rules and for association agreements. Article 300(2), end of first subparagraph.
- Adoption of measures necessary to attain the Community's objectives. Article 308.
- Common definition of origin for petroleum products from third countries and associated countries. Article 6 of the Protocol on petroleum products refined in the Netherlands Antilles.
- Adoption of appropriate provisions to lay down the details of the convergence criteria referred to in Article 121 of the EC Treaty. Article 6 of Protocol on the convergence criteria.

Unanimous voting within the Council without participation by the Parliament

- Adoption of measures on the movement of capital to or from third countries which constitute a step back in Community law as regards liberalisation. End of Article 57(2).
- Decisions on the compatibility with the common market of State aid having regard to competition. Article 88(2).
- Measures appropriate to the economic situation. Article 100(1) (QMV).
- Grant of Community financial assistance to a State in severe difficulties. Article 100(2) (QMV).
- Adoption of conversion rates irrevocably fixed between national currencies and between those currencies and the ECU and other measures necessary for the rapid introduction of the ECU as the single currency. Article 123(4) (QMV).
- Abrogation of a derogation granted to a State outside the single currency and other measures necessary to that end. Article 123(5).
- Application of agreements concluded between the social partners in the fields covered by Article 137(3). Article 139(2).
- Assigning to the Commission tasks in connection with the implementation of common measures, particularly as regards social security for the migrant workers. Article 144.
- Recommendations in the field of culture. Article 151(5), second indent.
- Adoption of provisions as regards the detailed rules and the procedure for the association of the overseas countries and territories with the Community. Article 187.
- Appointment of the Secretary-General (High Representative for the CFSP) and the Deputy Secretary-General of the Council. Article 207(2) (QMV).
- Alteration of the number of Members of the Commission. (Article 213(1), second subparagraph)
- Decision not to replace a Commissioner following resignation or compulsory resignation. Article 215, second paragraph (QMV).
- Increase in the number of Court of Justice Judges. Article 221, fourth paragraph.
- Increase in the number of Advocates-General. Article 222, third paragraph.
- ***Approval of the Rules of Procedure of the Court. Article 223 (QMV).***
- Approval of the rules of Procedure of the Court of First Instance. Article 225(4) (QMV Article 224).
- Approval of the Rules of Procedure of the Court of Justice. Article 245, third paragraph.
- Appointment of the members of the Economic and Social Committee and determination of their allowances. Article 258, second paragraph (QMV).
- Appointment of the members of the Committee of the Regions and their alternates. Article 263, third paragraph (QMV).
- Establishment of the rules governing the languages of the institutions of the Community. Article 290.
- Amendments to the list of products covered by the provisions connected to the production of or trade in arms, munitions and war material. Article 296(2).
- Measures necessary for the implementation of the Schengen *acquis*. Article 2(1), second subparagraph of the Protocol integrating the Schengen acquis.
- Determination of the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*. Article 2(1), end of second subparagraph, of the Protocol integrating the Schengen acquis.
- Conclusion of a separate Agreement with Iceland and Norway for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen *acquis* which apply to these States. Article 6, second paragraph, of the Protocol integrating the Schengen acquis.