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COVER NOTE

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The Secretary-General of the Convention has received the contribution annexed hereto from Ms Elena Ornella Paciotti, member of the Convention.



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DRAFT CONSTITUTION OF THE EUROPEAN UNION

A proposal based on European Parliament resolutions

INTRODUCTION

This document represents an attempt to translate European Parliament deliberations on the Constitution of the European Union and the reform of the Treaties into a consistent text.

In short, by following the indications from successive resolutions adopted by the European Parliament, we have tried to combine the regulations of a constitutional nature set down in the Treaties in force into a single text with the innovations Parliament wishes to make.

This document is intended to represent the first part of a new Treaty of the Union - the Constitution of the European Union - the second part of which should comprise all the other regulations, coordinated in the same way into a single consolidated text of the Treaties in force.

This text contains many new elements: the Charter of Fundamental Rights is incorporated into the text of the Constitution; the distinction between Community and Union has disappeared; the institutional system has been simplified and clarified; the procedures for revising the Constitution and the Treaty have been differentiated.

However, we have had to abandon all other innovative proposals that would help in drafting an autonomous constitutional text due to the absence of appropriate European Parliament resolutions.

This document is therefore not a proposal from one person or one political group, but a practical technical exercise to translate proposals which the European Parliament has already adopted by a very large majority.

The result may be a useful resource for making the debate in progress on a future Constitution of the European Union more specific and concrete, and may thus contribute to the work of the Convention on the future of Europe.

This project is the result of an initiative by Elena Paciotti, MEP and President of the Fondazione Basso, who coordinated the work. The text was drafted by Federico Petrangeli, University of Milan, and Valentina Bazzocchi, University of Bologna. The text was discussed by members of the European Observatory of the Fondazione Basso, who made suggestions and provided encouragement. The French version was edited by Ludovica Zagrebelsky.

NB:

The starting point of this work is the consolidated text of the Treaties, amended in the light of the Treaty of Nice. Selected references are indicated in footnotes. Bold italics highlight the amendments proposed by the European Parliament. The resolutions in question are indicated in footnotes with the date of adoption, the title and the name of the rapporteur. Italics highlight the amendments introduced by the authors for the purposes of coordination.

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PREAMBLE¹

RECALLING the historic importance of the ending of the division of the European continent and the need to create a solid basis for the construction of the future Europe, *with the prospect of federal-style development*²,

*STRESSING that membership of the European Union is based on values shared by its peoples, enshrined in the Charter of Fundamental Rights of the Union*³,

*DESIRING to strengthen solidarity among these peoples whilst respecting their diversity, history, culture, language and institutional and political structures*⁴,

*DESIRING to guarantee citizens and all who reside in the European Union better living conditions and an active role in economic and social development*⁵,

DETERMINED to promote economic and social progress for their peoples, *and to strengthen the European social*⁶, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including a single and stable currency,

RESOLVED to implement a common foreign and security policy providing for *the definition and progressive implementation*⁷ of a common defence policy, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice,

¹ The Preamble is taken from the Preambles to the TEC and TEU, eliminating those parts whose substance is already contained in the Preamble to the Charter.

² Addition taken from paragraph 1 of the Herman draft, 1994 (European Parliament resolution on the foundation of the European Union, with an annex containing the 'Draft Constitution of the European Union', 10 February 1994).

³ Rewording of paragraph 2 of the Preamble to the Herman draft, 1994, adding a reference to the Charter of Fundamental Rights.

⁴ Rewording of paragraph 3 of the Preamble to the Herman draft, 1994.

⁵ Rewording of paragraph 3 of the Preamble to the Herman draft, 1994.

⁶ Added in accordance with 16.5.2002, division of competences between the European Union and the Member States (Lamassoure), para. 8.

⁷ This goes beyond the merely possible nature of a definition of defence policy.

**THE MEMBER STATES AND THE PEOPLES OF THE EUROPEAN UNION HEREBY
ADOPT THE FOLLOWING CONSTITUTION AND TREATY¹:**

A. CONSTITUTION OF THE UNION

**TITLE I
CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION²**

PREAMBLE

The peoples of Europe, in creating an ever closer Union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks *of the Union*³ and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, *this Constitution and the Treaty*, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the [European Communities]⁴ and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

¹ This formulation is taken from European Parliament resolutions that assert the dual legitimacy of the Union as a Union of States and a Union of peoples; 7.2.2002, relations between the EP/national parliaments in European integration (Napolitano), para. 18, and 25.10.2001, Council reform (Poos), para. 2. As stated in the introduction, this work relates only to the constitutional part.

² 31.5.2001, Treaty of Nice and the future of the Union (Méndez de Vigo, Seguro), para.9.

³ Parts in italics have been amended in accordance with the new structure of the Constitution.

⁴ The name 'Court of Justice' has been used in this text.

CHAPTER I - DIGNITY

Article 1. Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law;
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - the prohibition on making the human body and its parts as such a source of financial gain;
 - the prohibition of the reproductive cloning of human beings.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II - FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8. Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10. Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12. Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13. Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14. Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15. Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16. Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and

practices is recognised.

Article 17. Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18. Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the *Treaty*.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III - EQUALITY

Article 20. Equality before the law

Everyone is equal before the law.

Article 21. Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the *Constitution and the Treaty*, and without prejudice to the special provisions of the *Treaty*, any discrimination on grounds of nationality shall be prohibited.

Article 22. Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23. Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24. The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25. The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26. Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV - SOLIDARITY

Article 27. Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28. Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29. Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31. Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32. Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33. Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35. Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36. Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, *in accordance with the Constitution and the Treaty*, in order to promote the social and territorial cohesion of the Union.

Article 37. Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38. Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V – CITIZENS’ RIGHTS

— Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40. Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41. Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages *of the Treaty* and must have an answer in the same language.

Article 42. Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43. Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Union institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44. Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45. Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance *with the Constitution and the Treaty*, to nationals of third countries legally resident in the territory of a Member State.

Article 46. Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI - JUSTICE

Article 47. Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 48. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed.

If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII - GENERAL PROVISIONS

Article 51. Scope

1. The provisions of *this Title* are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. *This Title* does not establish any new power or task for the Union, or modify powers and tasks defined by *the Constitution*.

Article 52. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Right recognised by Articles 8, 15(2) and (3), 18, 21(2), 22, 23(2), 35, 37, 38, 39, 40, 41(3) and (4),

42, 43, 44, 45 and 46 shall be exercised under the conditions and within the limits defined by *the Treaty*¹.

3. Insofar as *this Title* contains rights which correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53. Level of protection

Nothing *in this Title* shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions.

Article 54. Prohibition of abuse of rights

Nothing *in this Title* shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised *in this Title* or at their limitation to a greater extent than is provided for *by this Title*.

TITLE II FUNDAMENTAL PRINCIPLES AND OBJECTIVES OF THE UNION

Article 55. The European Union²

1. The European Union consists of the Member States and their citizens. All powers of the Union emanate from the latter.

2. The Union shall respect the historical, cultural and linguistic identity of the Member States and their constitutional structure. It shall exercise its powers and competences in accordance with the principles of subsidiarity, proportionality and transparency³.

3. The Union has legal personality and shall be provided with the means necessary to achieve its objectives and implement its policies.

4. In accordance with the Constitution, the law of the Union takes precedence over the law of the Member States.

Article 56. Principles of the Union

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States and which are set out in Title I⁴.

2. The Union shall recognise the principles of the United Nations Charter, preserve peace, develop and consolidate democracy and the rule of law, respect for and the supremacy of human rights in Europe and in the world, and shall participate in international organisations which

¹ New formulation following the inclusion of the Charter in the Constitution (taking account of explanations relating to the text of the Charter, CHARTER 4471/00 CONVENT 48)

² Amendment of Article 1 of the Herman draft, 1994

³ Inclusion of the principle of transparency provided for in Article 1, TEU.

⁴ Article 6.1, TEU, adding the reference to the Charter of Fundamental Rights.

*pursue this objective*¹.

Article 57. Objectives of the Union²

1. The Union shall set itself the following objectives:

- a) to promote economic and social progress, a high degree of competitiveness and convergence of economic performance, and a high level of employment and social protection, and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union *with* a single currency;
- b) to ensure a high level of protection and improvement of the quality of the environment, and the raising of the standard of living and quality of life;
- c) to assert its identity on the international scene *by pursuing the ends and affirming the principles of the preceding article; to defend* the common values, fundamental interests, independence and integrity of the Union; to strengthen the security of the Union in all ways; to promote international cooperation;
- d) to strengthen the protection of the rights and interests of the nationals of its Member States; to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured with a high level of security by preventing and combating crime, racism and xenophobia.

¹ Rewording of Article 11, TEU as amended by 17.4.2001, opinion on the distribution of competences between the European Union and the Member States (Newton Dunn), Conclusions, para. 6a), and by 31.5.2001, Treaty of Nice and the future of the Union (Méndez de Vigo, Seguro), para. 15b).

² Article 2, TEU, with the additions taken from Article 2, TEC, Article 11, TEU, and Article 29, TEU.

Article 58. Citizenship of the Union¹

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union *shall complement* and not replace national citizenship.

2. *Citizens of the Union shall take part in the political life of the Union in the forms laid down by the Constitution and the Treaty*; they shall enjoy the rights conferred by *the legal system of the Union* and shall be subject to the duties imposed thereby.

Article 59. Fair cooperation and solidarity²

1. Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising under *the Constitution and the Treaty* or resulting from action taken by the institutions of the Union. They shall facilitate the achievement of the Union's tasks.

2. Member States shall act in a spirit of fairness and reciprocal solidarity and shall abstain from any measure which could jeopardise the attainment of the objectives *of the Constitution and the Treaty* or which are contrary to the Union's interests.

TITLE III **POLICIES AND COMPETENCES OF THE UNION**

Article 60. Policies of the Union³

1. For the purposes of Article 57 (a) and (b), the activities of the European Union shall include:

- a) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- b) the prohibition, as between Member States, of customs duties and *any* restrictions on the import and export of goods;
- c) a common commercial policy;
- d) a common policy in the sphere of agriculture and fisheries;
- e) a common policy in the sphere of transport;
- f) a system ensuring that competition in the internal market is not distorted;
- g) the approximation of the laws of Member States to the extent required for the functioning of the *internal market*⁴;
- h) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by preparing a coordinated strategy for employment;
- i) a policy in the social sphere comprising a European Social Fund;
- j) the strengthening of economic and social cohesion;
- k) a policy in the sphere of the environment;
- l) the strengthening of the competitiveness of Community industry;
- m) the promotion of research and technological development;

¹ Article 17, TEC, combined with Article 3 of the Spinelli draft, 1984 (European Parliament resolution on the draft Treaty establishing the European Union, 14 February 1984).

² Combination of Articles 10 and 49, TEC.

³ Rewording of Article 3, TEC, and Articles 2, 12 and 29, TEU, with additions from Articles 61, 62 and 63, TEC.

⁴ 'Common market' has been replaced by 'internal market'

- n) encouragement for the establishment and development of trans-European networks;
 - o) a contribution to the attainment of a high level of health protection;
 - p) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
 - q) a policy in the sphere of development cooperation;
 - r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
 - s) a contribution to the strengthening of consumer protection;
 - t) measures in the spheres of energy, civil protection and tourism;
2. For the purposes of Article 57(c), the activities of the European Union shall include:
- a) the implementation of a common foreign and security policy by defining the principles of and guidelines for the latter, deciding on common strategies, adopting joint actions and common positions and strengthening systematic cooperation between Member States in the conduct of policy;
 - b) *the progressive framing of a common security and defence policy strengthened by cooperation in the field of armaments, including humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking*¹.
3. For the purposes of Article 57(d), the activities of the European Union shall include:
- a) measures concerning access and the movement of persons;
 - b) measures on immigration policy and external border controls, asylum and the protection of the rights of citizens of third countries;
 - c) measures in the fields of judicial cooperation in civil and criminal matters and in the sphere of administrative cooperation, including the recognition of judicial and extrajudicial decisions;
 - d) measures for preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, drug trafficking and arms trafficking, corruption and fraud;
 - e) *the promotion of enhanced cooperation between legal authorities, police forces and customs authorities in Member States, through agencies such as Eurojust and Europol*²;
 - f) approximation, where necessary, of rules on criminal matters in the Member States;
 - g) *protection of the rights of individuals at Union level, through special independent authorities established by the Treaty, such as the European Commissioner for the protection of personal data*³;
4. The action of the European Community for the purposes of this article shall aim to eliminate inequalities, and to promote equality, between men and women.
5. Environmental protection requirements must be integrated into the definition and implementation of the policies and activities referred to in this Article, in particular with a view to promoting sustainable development⁴.

Article 61. System of division of competences⁵.

1. The Union shall act within the limits of the powers conferred upon it by the *Constitution* and of the objectives assigned to it therein⁶.

2. *In areas which fall within the exclusive competence of the Union it alone shall have the*

¹ Article 17, TEU, as amended by Article 1 of the Treaty of Nice; the merely possible nature of the progressive framing of common defence has been eliminated.

² Rewording of Articles 30 and 31, TEU, as amended by Article 27e of the Treaty of Nice.

³ Article 8 of the Constitution and Article 286, TEC.

⁴ Article 6, TEC.

⁵ New article; 16.5.2002, division of competences between the European Union and the Member States (Lamassoure), para. 19 et seq.

⁶ Article 5, TEC.

authority to adopt legislative rules. The Member States may take action in these areas only if authorised by the Union and within the limits of such authorisation, in accordance with the rules laid down by the Treaty¹.

Article 62. Subsidiarity and proportionality²

1. In areas which do not fall within its exclusive competence, the Union shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

2. In areas which do not fall within its exclusive competence, Union intervention shall be legitimate only if it meets at least one of the three following criteria:

a) the relevant scope of the proposed action goes beyond the limits of a Member State and the action might give rise to perverse effects in terms of distortion or imbalances for one or more States should it not be implemented at Community level;

b) the action planned at Community level would generate, by comparison with similar actions implemented separately by each Member State, substantial synergies in terms of effectiveness and economies of scale;

c) the proposed action meets a requirement for solidarity or cohesion which, in the light of disparities in development, cannot be met satisfactorily by the Member States acting alone.

3. Any action by the Union shall not go beyond what is necessary to achieve the objectives of the Constitution.

4. In exercising the powers conferred on it, each institution shall ensure that the principles of subsidiarity and proportionality are complied with, in accordance with the provisions and procedures laid down by the Treaty³.

¹ The possibility of ‘authorisation’ by the Union for Member States to exercise competences held exclusively by the Union is set out in 16.5.2002, division of competences between the European Union and the Member States (Lamassoure), para. 22, which does not state the rules according to which it would be granted.

² Article 5, TEC, amended in accordance with the Lamassoure resolution (point g of the recitals)

³ Paragraph 4 is taken from the Protocol on the application of the principles of subsidiarity and proportionality, to which we refer.

Article 63. The Union's own competences¹

1. The Union shall enjoy exclusive competence in the following areas:

- a) the internal market, including freedom of movement of persons, goods, services and capital and financial services;*
- b) competition policy;*
- c) structural and cohesion policies;*
- d) the strengthening and development of the common area of freedom, security and justice;*
- e) customs policy;*
- f) the definition and implementation of the common foreign and defence policy;*
- g) external economic relations;*
- h) association agreements;*
- i) the funding of the Union budget;*
- j) for the countries which adopt the single currency, monetary policy.*

Article 64. Competences shared by the Union and the Member States²

1. In the following areas of shared competence the Union shall lay down the guidelines, general principles and objectives, including, where necessary, common rules and minimum standards:

- a) the promotion of equality between men and women;*
- b) social and employment policy;*
- c) immigration policy and other policies linked to the free movement of persons;*
- d) consumer protection;*
- e) the environment;*
- f) agricultural policy and fisheries;*
- g) transport;*
- h) trans-European networks;*
- i) research and technological development;*
- j) energy;*
- k) taxation relating to the single market;*
- l) foreign policy;*
- m) internal and external defence and security policy, as regards the transnational dimension thereof;*
- n) development cooperation;*
- o) the association of overseas countries and territories;*

2. In these areas Community regulations shall aim to create uniformity only where, in the absence of the latter, there is a clear threat to equal rights or competition. The Member States shall retain the capacity to legislate where the Union has not yet exercised its prerogatives.

3. In the following areas of shared competence action by the Union shall only complement that of the Member States, which thus retain the competence to enact ordinary law:

- a) education, vocational training and youth;*
- b) civil defence;*
- c) culture;*
- d) the media;*
- e) sport;*

¹ 16.5.2002, division of competences between the Union and the Member States (Lamassoure), para. 22, 23 and 24 (for defining the competences of the Union in this Title we have reproduced the text of the resolution, which would itself require adjustments and clarifications).

² 16.5.2002, division of competences between the Union and the Member States (Lamassoure), para. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.

- f) health;*
- g) industry;*
- h) tourism;*
- i) civil and commercial contracts;*

4. In the following areas of shared competence the Union shall coordinate national policies according to the procedures laid down by the Treaty¹:

- a) budget and fiscal policies in connection with economic and monetary union;*
- b) employment policies.*

Article 65. Competences of the Member States²

Member States shall have competence in all areas not referred to in the Constitution or the Treaty.

Article 66. Other intervention by the Union³

If action by the *Union* should prove necessary to attain one of the objectives referred to in *the Constitution* and *the latter* has not provided the necessary powers, the Council ***and Parliament***, ***using the procedure laid down in Article 98***, shall take the appropriate measures. ***The Court of Auditors shall inform the Council, the Commission and the European Parliament of the consequences of the transfer of competences for the Union budget.***

TITLE IV

INSTITUTIONAL ORGANISATION

CHAPTER I. GENERAL PROVISIONS

Article 67. The European Council⁴

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings

¹ 16.5.2002, division of competences between the Union and the Member States (Lamassoure), para. 30-31 provides for establishing new forms of coordination and indicating them in the Treaty (there is no reference to which). With the necessary prudence, the Treaty would have to provide for a reference to the open coordination method, as defined in the conclusions of the Council of Lisbon. 4.10.2001, Strengthening economic policy coordination within the euro area (Berès), para. 2; 29.11.2001, European governance (Kaufmann), para. 37; 16.5.2002, division of competences between the Union and the Member States (Lamassoure), para. 33.

² 16.5.2002 division of competences between the Union and the Member States (Lamassoure), para. 21, and Article 308, TEC, with the amendments suggested by the resolution itself.

³ This Article reiterates Article 308, TEC, with the amendments proposed by 16.5.2002, division of competences between the Union and the Member States (Lamassoure), para. 35.

⁴ Article 4, TEU.

and the yearly written report on the progress achieved by the Union.

Article 68. The Institutions¹

The tasks entrusted to the Union shall be carried out by the following institutions:

- the European Parliament
- the Council
- the Commission
- the Court of Justice
- the Court of Auditors

In the execution of *their*² tasks the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 69. Principle of attribution of powers³

The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for *by the Constitution and by the Treaty*.

Article 70. European System of Central Banks and European Central Bank⁴

A European System of Central Banks (hereinafter referred to as ‘ESCB’) and a European Central Bank (hereinafter referred to as ‘ECB’) are hereby established in accordance with the procedures laid down *in the Treaty*, and shall act within the limits of the powers conferred upon them *by the Constitution, by the Treaty* and by the Statute of the ESCB and of the ECB annexed thereto.

Article 71. European Investment Bank⁵

A European Investment Bank is hereby established, which shall act within the limits of the powers conferred upon it *by the Treaty* and by the Statute *annexed thereto*.

¹ Consolidated version of Article 5, TEU, and Article 7, TEU.

² The limitation according to which the ESC and the CoR are only valid for the Community is thus removed; 29.11.2001, resolution on the constitutional process and the future of the Union (Leinen, Méndez de Vigo), para. 3 b) and f); 31.5.2001, resolution on the Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 17.

³ Consolidated version of Article 5, TEU, and Article 7, TEC, last sentence.

⁴ Rewording of Article 8, TEC.

⁵ Article 9, TEC.

CHAPTER II. THE EUROPEAN PARLIAMENT

Article 72. Composition¹

1. The European Parliament shall consist of representatives of the peoples of the States brought together in the Union. The representatives shall be elected by direct universal suffrage for a term of five years.

2. *Under the procedure laid down in Article 98²*, the European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. ***The proposal may provide for a certain percentage of seats to be shared on a proportional representation basis within a single European constituency³.***

The number of representatives elected in each Member State *shall be established by the Treaty* and must ensure appropriate representation of the peoples of the States brought together in the Union. The number of Members of the European Parliament shall not exceed seven hundred⁴.

3. ***The Statute and general conditions governing the performance of the duties of Members of the European Parliament shall be laid down by a legislative act approved by Parliament acting by a majority of its component Members⁵.***

4. ***Acting by a majority of its component Members, the European Parliament shall lay down its own internal rules of procedure and shall decide where to sit and organise its meetings⁶.***

Article 73. Duties⁷

1. The European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers *under the procedures laid down in Article 98⁸* and by giving its assent or delivering advisory opinions.

2. The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing *the Constitution*.

3. The European Parliament shall express ***a binding opinion on the principal aspects and fundamental choices in the area of*** the foreign and security policy of the Union and shall be kept regularly informed by the Presidency and the Commission of its development⁹.

4. The European Parliament shall discuss in open session the annual general report on the progress

¹ Consolidated version of selected parts of Articles 189, 190 and 197, TEC.

² 29.11.2001, constitutional process and the future of the EU (Leinen, Méndez de Vigo), para. 4 c); 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 29 and 30.

³ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 6; 15.7.1998, electoral procedure for election to the European Parliament (Anastassopoulos), para. 3 and 4.

⁴ 13.4.2000, IGC: adapting the institutions to enlargement (Dimitrakopoulos, Leinen), para. 5.2; 31.05.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 15.

⁵ 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 26.

⁶ 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para.26; 13.4.2000, adapting the institutions to enlargement (Dimitrakopoulos, Leinen), para. 9.

⁷ Article 192, TEC.

⁸ 7.2.2002 Relations between the EP/national parliaments (Napolitano) para. 5; 29.11.2001 constitutional process and the future of the EU (Leinen, Méndez de Vigo), para.4 c); 31.5.2001, Treaty of Nice and the future of the EU (Méndez de Vigo, Seguro), para. 29 and 30.

⁹ Article 21.1, as amended after 10.4.2002, resolution on the present state of the European Security and Defence Policy (Brok), para. 26.

of the Union¹. The European Parliament may ask questions or make recommendations to the European Council, the Council or the Commission².

Article 74. Motion of censure³

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

Article 75. Voting⁴

Save where it is provided that the European Parliament shall act by an absolute majority of its Members or save as otherwise provided for, the European Parliament shall act by an absolute majority of the votes cast.

Article 76. Right to petition the European Parliament⁵

Any citizen of the Union, and any natural or legal person residing or having its registered office in the Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within Union's fields of activity and which affects him, her or it directly.

Article 77. The European Ombudsman⁶

1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration *within the meaning of Article 43*.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

CHAPTER III. THE COUNCIL

¹ Rewording of Article 200, TEC.

² Combination of Articles 4, 21.2 and 39.2, TEU.

³ Article 201, TEC.

⁴ Revision of Article 198, TEC.

⁵ Article 194, TEC

⁶ Selected parts of Article 195, TEC.

Article 78. Composition and Office of President¹

1. The Council, save where it meets in the composition of Heads of State or Government², **shall consist of representations of the Member States appointed by their respective Governments. Each representation shall be led by a Minister who is permanently and specifically responsible for Union affairs.**

2. The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.

3. The President-in-Office of the Council shall report to the European Parliament at the beginning of the presidency, to present his programme, during the presidency to report on progress achieved, and at the end of the presidency to give a concluding assessment³.

4. Specialist meetings of the Council, consisting of Members of the Member States competent in their respective fields, shall be devoted to the common foreign and security policy and defence policy⁴.

Article 79. Duties⁵

1. To ensure that the objectives set out in the Constitution are attained the Council shall:

a) participate in the legislative function in the context of the codecision procedure⁶;

b) ensure coordination of the general economic policies of the Member States;

c) have power to take decisions.

2. As regards the common foreign and security policy, the Council shall:

a) take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council,

b) recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.

3. The Council shall promote cooperation between Member States and with the institutions of the Union in the context of police and judicial cooperation, using the instruments provided for by the Treaty, such as Eurojust and Europol⁷.

4. When the Council acts in its role as legislator its meetings shall be public. The deliberations, votes, explanations of vote and items in the minutes relating to the adoption of legislative texts shall be made public⁸.

Article 80. Votes⁹

¹ Article 203, TEC, amended in accordance with Article 20 of the Spinelli draft, 1984 (European Parliament resolution on the draft Treaty establishing the European Union, 14 February 1984).

² Possibility already provided for by the Treaties in force, e.g. Article 7, TEU.

³ 25.10.2001, Council reform (Poos), para. 18.

⁴ 26.9.2002, resolution on the progress achieved in the implementation of the common foreign and security policy (Brok), para. 13.

⁵ Rewording of Article 202, TEC, and Article 13.3, TEU.

⁶ 7.2.2002, relations between the EP/national parliaments (Napolitano), para. 5; 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), para. 4 c); 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 29 and 30.

⁷ 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), para. 3 f).

⁸ 14.3.2002, implementation by the Council and the Commission of the Regulation on access to documents (B5-10131/2002), para. 20 and 21; 25.10.2001, Council reform (Poos), para. 25; 29.11.2001, European governance (Kaufmann), para. 20.

⁹ Article 205, TEC.

1. The Council shall act *by a qualified majority* save where it is provided that the Council shall act unanimously or by a simple majority¹.
2. *A qualified majority shall be achieved with the support of a simple majority of Member States representing the majority of the total population of the Member States of the Union*².
3. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

CHAPTER IV. THE COMMISSION

Article 81. Composition³

1. The Commission shall consist of Members who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

Only nationals of Member States may be Members of the Commission.

*The composition of the Commission shall be laid down by the Treaty*⁴.

2. The Members of the Commission shall, in the general interest of *the Union*, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks

¹ The qualified majority is taken as an ordinary procedure, in accordance with: 29.11.2001, constitutional process and the future of the EU (Leinen, Méndez de Vigo), para. 4 c); 31.5.2001, Treaty of Nice and the future of the EU (Méndez de Vigo, Seguro), para. 29.

² 13.4.2000, IGC, adapting the institutions to enlargement (Dimitrakopoulos, Leinen), para. 10.1.

³ Article 213.1, TEC, selected parts, and Article 213.2, para. 1 and 2, TEC.

⁴ 13.4.2000, IGC, adapting the institutions to enlargement (Dimitrakopoulos, Leinen), para. 12.1: two possible options are presented: 1) a Commission composed of 20 Commissioners and the President, with a rotation system ensuring the opportunity for citizens of every Member State to participate; 2) one Commissioner per Member State, the President's role strengthened and the establishment of an inner hierarchy which enables the Commission to operate efficiently. The question has been suspended until Parliament chooses between the two solutions (the Spinelli draft and the Herman draft refer the composition of the Commission back to an organic law).

Article 82. Appointment¹

1. The Members of the Commission shall be appointed for a period of five years, subject, if need be, to a motion of censure.

Their term of office shall be renewable.

2. *The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate two or more candidates for the position of President of the Commission. Acting by a majority of its Members, the European Parliament shall elect the President of the Commission from these two candidates*².

3. *Having heard the Council, the President of the Commission shall nominate the other Members of the Commission.*

The Members thus nominated shall be subject to a vote of approval by a majority of Members of the European Parliament³.

4. *Acting on a qualified majority and in agreement with the President of the Commission, the Council shall nominate a candidate for the position of High Representative for the common foreign and security policy who shall carry out the tasks of Vice-President of the Commission and who shall be subject to specific obligations vis-à-vis the Council and the European Parliament*⁴.

The nomination shall be approved by a majority of the Members of the European Parliament.

Article 83. Office of President⁵

1. The Commission shall work under the political guidance of its President, *who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.*

The Commission's competences shall be allocated among its Members by its President. The President may modify the allocation of competences during the Commission's term of office. The Members of the Commission shall carry out the duties attributed to them under his authority.

2. *After consideration by the College, the President shall appoint one or two Vice-Presidents from among the Members of the Commission, in addition to the High Representative.*

3. *After consideration by the College, the President shall ask Parliament for a vote of confidence. Where the vote of confidence is not given by a majority of Members of Parliament, the Commission should resign*⁶.

4. *Any Member of the Commission guilty of serious misconduct in the performance of his duties should be required to tender his resignation when asked to do so by the President of the Commission.*

¹ Article 214, TEC.

² 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 12.2.

³ This is inferred *a contrario* by differentiation in relation to the procedure for appointing the Vice-President acting as High Representative. Para. 25.2 of the Spinelli draft provides for the Council to be consulted before Commissioners are nominated.

⁴ 25.10.2001, resolution on the progress achieved in the implementation of the common foreign and security policy (Brok), para. 2 and 3; 31.5.2001, resolution on the Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 17; 25.10.2001, resolution on Council reform (Poos), para. 15.

⁵ Consolidated version of Article 219.1, TEC, Article 217, TEC, and Article 215, TEC, as amended by the Treaty of Nice. 30.11.2000, European Parliament resolution on the preparation of the Nice European Council (B5-0884, 0886, 0891/2000), para. 4, second indent.

⁶ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 13.1.

Article 84. Duties¹

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

- a) ***exercise the power of legislative initiative*** and participate in the shaping of measures ***taken in codecision by Parliament and the Council***²;
- b) ensure that the provisions of *the Constitution and the Treaty* and the measures taken by the institutions pursuant *thereto* are applied;
- c) formulate recommendations or deliver opinions on matters dealt with in the Treaty, if it expressly so provides or if the Commission considers it necessary;
- d) have its own power of decision and exercise the competences ***necessary for implementing the legislative acts of the Union***³.

Article 85. Votes⁴

The Commission shall act by a majority of its Members.

CHAPTER V. THE COURT OF JUSTICE

Article 86. Composition and appointment⁵

1. The Court of Justice shall consist of ***an odd number of Judges not less than the number of Member States and of a number of Advocates-General equal to half the Judges***⁶. Should the Court of Justice so request, the Council may, ***acting by a qualified majority after obtaining the assent of the European Parliament***, increase the number of Advocates-General. It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.
2. The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence. They shall be appointed ***for a non-renewable nine-year term of office***⁷. ***They shall be appointed by the Council acting by a qualified majority after obtaining the assent of the European Parliament***⁸.
3. The Statute of the Court of Justice is laid down in a Protocol *annexed to the Treaty*. The Council may, acting ***by a qualified majority*** at the request of the Court of Justice and with the European Parliament's ***assent***, amend the provisions of the Statute.
4. The Court of Justice shall adopt its Rules of Procedure⁹.

¹ Rewording of Article 211, TEC.

² 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), para. 4 c); 31.5.2001, Treaty of Nice and the future of the EU (Méndez de Vigo, Seguro), para. 29.

³ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 13.2.

⁴ Article 219, TEC, second sentence.

⁵ Article 221, 222 and 223, TEC, as amended by the Treaty of Nice.

⁶ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 14.

⁷ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 15.

⁸ 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), para.4 i); 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 21.

⁹ Paragraphs 3 and 4 are taken from Article 245, TEC, as amended by 13.4.2000, IGC: adapting the

Article 87. Duties¹

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of *the Constitution and the Treaty*, the law is observed.

Judicial panels may be attached to the Court of Justice and the Court of First Instance in order to exercise, in certain specific areas, the judicial competence laid down in the Treaty.

Article 88. Court of First Instance²

1. The Court of First Instance shall comprise at least one judge per Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court to be assisted by Advocates-General.

2. The Members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed **for a non-renewable nine-year term of office³. They shall be appointed by the Council acting by a qualified majority after obtaining the assent of the European Parliament⁴.**

3. Unless the Statute of the Court of Justice provides otherwise, the provisions of the *Treaty* relating to the Court of Justice shall apply to the Court of First Instance.

The competences and Rules of Procedure of the Court shall be laid down by the Treaty and the Statute of the Court of Justice⁵.

CHAPTER VI. THE COURT OF AUDITORS

Article 89. Composition and appointment⁶

1. The Court of Auditors shall consist of one citizen from each Member State.

2. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries of external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

3. The Members of the Court of Auditors shall be appointed **by the Council acting by a qualified majority after obtaining the assent of the European Parliament⁷. They shall be appointed for a term of six years. They shall be eligible for reappointment.**

4. The Members of the Court of Auditors shall, in the general interest of the Union, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with their duties.

institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 16.

¹ Article 220, TEC, as amended by the Treaty of Nice.

² Article 224 and 225, TEC, as amended by the Treaty of Nice.

³ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 15.

⁴ 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo) para. 4 i); 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 21.

⁵ Cross-reference with the Treaty and to the Statute of the Court of Justice for parts of no constitutional relevance.

⁶ Article 247.2, 3 and 4, TEC.

⁷ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 26 and 30.5.

Article 90. Duties¹

1. The Court of Auditors shall carry out the audit.

2. *In accordance with the rules laid down by the Treaty²*, the Court of Auditors shall examine the accounts of all revenue and expenditure *of the Union*. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the *Union* insofar as the relevant constituent instrument does not preclude such examination.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

CHAPTER VII. THE ADVISORY COMMITTEES

Article 91. The Economic and Social Committee³

1. *In accordance with the rules laid down by the Treaty⁴*, the Economic and Social Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and the general interest.

The number of Members of the Economic and Social Committee may not exceed one-third of the Members of the European Parliament⁵.

The Members of the Committee may not be bound by any mandatory instructions.

2. The Committee must be consulted by the Council and by the Commission where *the Treaty* so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

¹ Article 246 and 248, TEC, as amended by the Treaty of Nice (parts in italics).

² Cross-reference with the Treaty for parts of no constitutional relevance.

³ Article 257, 258, 259 and 262, TEC, as provided for and amended by the Treaty of Nice. Combination of original paragraphs 1 and 2.

⁴ Cross-reference with the Treaty for parts of no constitutional relevance.

⁵ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para.29.1.

ARTICLE 92. The Committee of the Regions¹

1. *In accordance with the rules laid down by the Treaty²*, the Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.
The number of Members of the Committee of the Regions shall not exceed three hundred and fifty³. The Members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Union.
2. The Committee of the Regions shall be consulted by the Council or by the Commission where *the Treaty* so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate.

CHAPTER VIII. THE EUROPEAN SYSTEM OF CENTRAL BANKS AND THE EUROPEAN CENTRAL BANK

Article 93. Framework⁴

The ESCB shall be composed of the ECB and of the national central banks.
The ECB shall have legal personality.
The ESCB shall be governed by the decision-making bodies of the ECB, which shall be the Governing Council and the Executive Board.

Article 94. The Governing Council and the Executive Board⁵

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.
2. The Executive Board shall comprise the President, the Vice-President and four other members. The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States in the composition of Heads of State or Government, on a recommendation from the Council, after obtaining the **assent**⁶ of the European Parliament and after it has consulted the Governing Council of the ECB.
Their term of office shall be eight years and shall not be renewable.
Only nationals of Member States may be members of the Executive Board.
3. When exercising the powers and carrying out the tasks and duties conferred upon them by the ECB, neither a national central bank nor any member of their decision-making bodies shall seek or take instructions from institutions or bodies *of the Union*, from any government of a Member State or from any other body⁷.

Article 95. Duties

1. The basic tasks to be carried out through the ESCB shall be:

¹ Rewording of Article 263, TEC, as amended by the Treaty of Nice.

² Cross-reference with the Treaty for parts of no constitutional relevance.

³ Article 263.2, TEC, as amended by the Treaty of Nice.

⁴ Article 107.1, 2 and 3, TEC.

⁵ Article 112, TEC

⁶ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 30.5.

⁷ Simplification of Article 108, TEC.

- a) to define and implement the monetary policy of the Union;
- b) to conduct foreign exchange operations;
- c) to hold and manage the official foreign reserves of the Member States;
- d) to promote the smooth operation of payment systems;
- e) to contribute to the policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system¹.***

2. The ECB shall have the exclusive right to authorise the issue of banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks are the only such notes to have the status of legal tender within the Union.

CHAPTER IX. THE EUROPEAN INVESTMENT BANK

Article 96. Framework and duties²

1. The European Investment Bank shall have legal personality.
The members of the European Investment Bank shall be the Member States.
2. The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market in the interest of the Union. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the projects referred to *in the Treaty*³ in all sectors of the economy.

TITLE V ACTS AND PROCEDURES

Article 97. The legal instruments of the Union⁴

1. The Union shall pursue the objectives *provided for in Title II* by:
 - a) adopting *legislative acts* set out in regulations and directives;
 - b) taking decisions;
 - c) making recommendations or delivering opinions;
 - d) deciding on common strategies;
 - e) adopting joint actions and common positions;
 - f) strengthening systematic cooperation between Member States in the conduct of policy.
2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in each Member State.
A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
A decision shall be binding in its entirety upon those to whom it is addressed.
Recommendations and opinions shall have no binding force.
Common strategies shall be implemented in areas where the Member States have important interests in common. They shall set out their objectives, duration and the means to be made

¹ Rewording of Article 3.3 of the Statute of the ESCB

² Combination of Article 266, TEC, as amended by the Treaty of Nice, and selected parts of Article 267.

³ Cross-reference with the Treaty.

⁴ Rewording of selected parts of Articles 249, TEC, and 12, 13, 14 and 34, TEU. An EP resolution is currently being drafted on this subject: hierarchy of Community acts/classification of acts (Bourlanges); the Spinelli draft, 1984 (European Parliament resolution on the draft Treaty establishing the European Union, 14 February 1984) envisaged two types of legislative act: organic laws and laws.

available by the Union and the Member States.

Joint actions shall address specific situations where operational action by the Union is necessary. They shall lay down their objectives, scope, the means to be made available to the Union, the conditions for their implementation and, if necessary, their duration.

Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.

Article 98. Codecision procedure for the adoption of legislative acts¹

1. The European Parliament and the Council shall jointly exercise legislative authority with the participation of the Commission².

2. The Commission shall submit a proposal to the European Parliament and the Council.

3. Commission proposals for legislation shall be made available in good time so that the governments of Member States may ensure that their own national parliaments receive them as appropriate³.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:

a) if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;

b) if the European Parliament does not propose any amendments, may adopt the proposed act;

c) shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;

c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

4. In order to make it easier to outline the respective positions and favour agreements, representatives of the European Parliament may participate in Council meetings and representatives of the Council may participate in European Parliament meetings. The representatives of the European Parliament and the Council shall be entitled to speak⁴.

5. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a

¹ Rewording of Article 251, TEC, with additions from 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 31.2; 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo) para. 4 c); 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), para. 29, which provides for the codecision procedure becoming the general rule.

² New formulation of Article 36 of the Spinelli draft, 1984 (European Parliament resolution on the draft Treaty establishing the European Union, 14 February 1984).

³ Point 2 of the Protocol on the role of the national parliaments in the European Union. This amendment takes account of the points made in 7.2.2002, relations between the European Parliament/national parliaments in European integration (Napolitano), para. 1, which do not, however, specifically propose the amendment in question.

⁴ 25.10.2001, Council reform (Poos), para. 20.

negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

6. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

7. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

8. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

9. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Article 99. Nature and forms of legislative acts¹

Legislative acts of the Union shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained. They shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the Union. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Article 100. The implementing measures of the Union²

The implementing measures of the Union shall be based on the legislative acts of the Union and shall respect the provisions thereof. Without prejudice to the autonomous powers of particular institutions and bodies, they shall be adopted by the Commission. Supervision procedures shall be laid down by the European Parliament and the Council, with the codecision procedure, within a period of three months from the entry into force of the Constitution.

TITLE VI **JUDICIAL REVIEW**

Article 101. Action for infringement of obligations arising under the Constitution and the Treaty³

1. If the Commission considers that a Member State has failed to fulfil an obligation under *the*

¹ Article 253 and 254, TEC.

² 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 31.2.

³ Article 226, 227 and 228, TEC.

Constitution and the Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

2. *In accordance with the rules laid down by the Treaty*¹, a Member State which considers that another Member State has failed to fulfil an obligation under *the Constitution and the Treaty* may bring the matter before the Court of Justice.

3. If the Court of Justice finds that a Member State has failed to fulfil an obligation, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

Article 102. Action for legitimacy of acts adopted by the institutions of the Union²

1. The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of *the Constitution and the Treaty* or of any rule of law relating to its application, or misuse of powers.

2. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the European Parliament, by the Court of Auditors and by the ECB for the purpose of protecting their prerogatives.

3. Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct *or*³ individual concern to the former.

Article 103. Action for failure to fulfil an obligation⁴

1. Should the European Parliament, the Council or the Commission, in infringement of *the Constitution and the Treaty*, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice to have the infringement established. The action shall be admissible only if the institution concerned has first been called upon to act.

2. Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Union has failed to address to that person any act other than a recommendation or an opinion.

The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence or proceedings brought against the latter.

¹ Cross-reference with the Treaty for the parts which do not have constitutional relevance.

² Simplification of Articles 230 and 231, TEC.

³ 16.3.2000, Charter of Fundamental Rights of the European Union (Duff, Voggenhuber); para. 15 d) calls for access to the Court of Justice to be extended to all persons protected under the Charter of Fundamental Rights. In addition, in the judgment of the Court of First Instance of 3.5.2002, *Jégo-Quéré v. Commission*, the Court accepted the appeal, giving a broader interpretation of the expression of Article 230.4, TEC; order of the President of the Court of Justice, 12.10.2000, *Federación de Confradías de Pescadores v. Council*; judgment of the Court of Justice, 25.7.2002, *Unión de Pequeños Agricultores v. Council*.

⁴ Simplification of Article 232 and 233, TEC.

Article 104. Preliminary rulings¹

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- a) the interpretation of *the Constitution and the Treaty*;
- b) the validity and interpretation of acts of the institutions of the *Union* and of the ECB;
- c) the interpretation of the statutes of bodies established *under the Constitution and the Treaty*².

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

¹ Article 234, TEC.

² The restriction of judicial review to cases provided for by the Statutes, contrary to the principle of legality, has been abolished.

Article 105. Statute of the Court¹

1. The Statute of the Court of Justice is laid down in a separate protocol. The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of the Statute.

2. *The Court of Justice shall adopt its Rules of Procedure. These shall require the approval of the Council.*

3. *The Statute of the Court shall define the powers of the court and the other actions which may be submitted thereto².*

TITLE VII FINANCIAL AND BUDGETARY PROVISIONS

Article 106. Budget³

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

Administrative expenditure occasioned for the institutions in the context *of the common foreign and security policy and police and judicial cooperation in criminal matters shall be charged to the budget⁴*. The operational expenditure occasioned by the implementation of the said provisions *shall be* charged to the budget.

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

2. Without prejudice to other revenue, the budget shall be financed wholly from own resources, *the amount of which shall be fixed by the European Parliament acting in codecision with the Council⁵*.

The Council, acting unanimously on a proposal from the Commission and after obtaining the *assent⁶* of the European Parliament, shall lay down provisions relating to the system of own resources of the Union, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 107. Financial equalisation⁷

A system of financial equalisation shall be introduced in order to reduce excessive economic imbalances between the regions. The Treaty shall lay down the procedures for the application of this system.

¹ Combination and simplification of Articles 245(1), (2) and (3), TEC.

² Cross-reference with the Treaty and to the Statute of the Court for the part with no constitutional significance.

³ Article 268 and 269, TEC.

⁴ From the combination of the pillars; 14.3.2002, legal personality of the European Union (Carnero González), para. 2.

⁵ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 51.4.

⁶ 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 30.5.

⁷ Article 73 of the Spinelli draft, 1984, cross-referenced with the Treaty.

Article 108. Budgetary discipline¹

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 the preceding Article.

The budgetary procedure shall apply to compulsory and non-compulsory expenditure².

Article 109. Financial interests of the Union³

1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures which shall act as a deterrent and be such as to afford effective protection in the Member States.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of the Treaty, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

Article 110. European Public Prosecutor⁴

1. The Council, acting by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament, shall appoint a European Public Prosecutor for a non-renewable term of six years. The European Public Prosecutor shall be responsible for detecting, prosecuting and bringing to judgment the perpetrators of offences prejudicial to the Union's financial interests and their accomplices and for exercising the functions of prosecutor in the competent courts of the Member States in relation to such offences in accordance with the rules provided for by the Treaty.

2. The European Public Prosecutor shall be chosen from persons whose independence is beyond doubt.

He shall be completely independent in the performance of his duties and shall neither seek nor take instructions from institutions of the Union, governments of Member States or any other body⁵.

The Statute of the European Public Prosecutor shall be laid down using the codecision procedure.

TITLE VIII

¹ Article 270, TEC.

² 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), para. 4 d); 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 51.1.

³ Article 280.1, 2 and 3, TEC.

⁴ 29.11.2001, constitutional process and the future of the Union (Leinen, Méndez de Vigo), par 3 f), et al (13.4.2000, Dimitrakopoulos, Leinen, para. 24 and 25 and 31.2.2001, Méndez de Vigo, Seguro). The text is taken from the proposal presented by the Commission to the Nice Inter-Governmental Conference.

⁵ The formulation has been reproduced by analogy with the rules of other institutions, from the ECB to the Committee of the Regions.

INTERNATIONAL AGREEMENTS

Article 111. Conclusion of agreements with third countries or international organisations¹

1. Where the *Constitution* provides for the conclusion agreements between the *Union* and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

2. Subject to the powers vested in the Commission in this field, the signing and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission, ***with the assent of the European Parliament***².

3. The Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions *of the Constitution or of the Treaty*. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only *after the Constitution or the Treaty have been revised*.

4. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the *Union and on Member States*.

5. *The Treaty may provide for different procedures for agreements which have specific objects*³.

Article 112. Association agreements⁴

The Union may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

¹ Rewording of Article 300.1, 2, 6 and 7, TEC.

² 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 30.5, 40.2 and 40.3 a), b), c), d), e).

³ Cross-reference with the Treaty for the part with no constitutional significance.

⁴ Article 310, TEC.

TITLE IX ENHANCED COOPERATION

Article 113. General conditions¹

1. Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by the *Constitution and by the Treaty* provided that the proposed cooperation:
 - a) is aimed at furthering the objectives of the Union, at protecting and serving its interests and at reinforcing its process of integration, and shall respect the limits, conditions and procedures laid down by the *Treaty*;
 - b) remains within the limits of the powers of the Union and does not concern the areas which fall within the exclusive competence of the Union;
 - c) does not undermine the internal market or economic and social cohesion;
 - d) respects the competences, rights and obligations of those Member States which do not participate therein;
 - e) is open to all the Member States, in accordance with point 3 of this Article.
2. *In the area of the common foreign and security policy* enhanced cooperation shall relate to implementation of a joint action or a common position. It may relate to matters having military or defence implications².
3. Enhanced cooperation may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by applying the relevant provisions of the Treaty.
4. When enhanced cooperation is being established, it shall be open to all Member States. It shall also be open to them at any time, subject to compliance with the basic decision and with the decisions taken within that framework. The Commission and the Member States participating in enhanced cooperation shall ensure that as many Member States as possible are encouraged to take part.

Article 114. Implementation of enhanced cooperation³

1. For the purposes of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation, the relevant provisions of *the Treaty* shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing Member States participating in enhanced cooperation shall take part in the adoption of decisions. *The qualified majority in this context is that laid down in Article 80, which takes account only of the Member States concerned*⁴. Unanimity shall be constituted by only those Council members concerned.
Such acts and decisions shall not form part of the Union *acquis*.
2. Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the enhanced cooperation in which they participate. Such acts and decisions shall

¹ Article 43, TEU, as amended by the Treaty of Nice, and Articles 43a and 43b, as introduced by the Treaty of Nice.

² Article 27b introduced by the Treaty of Nice. Reference to the exclusion of the defence sector in the context of enhanced cooperation, criticised by 31.5.2001, Treaty of Nice and the future of the European Union (Méndez de Vigo, Seguro), has been removed.

³ Article 44 and 45, TEU, as amended by the Treaty of Nice.

⁴ Adaptation necessary because of the new rules for calculating the qualified majority adopted in this paper.

be binding only on those Member States which participate in such cooperation and, as appropriate, shall be directly applicable only in those States. Member States which do not participate in such cooperation shall not impede the implementation thereof by the participating Member States.

3. Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after obtaining *the assent*¹ of the European Parliament, decide otherwise.

4. The Council and the Commission shall ensure the consistency of activities undertaken on the basis of this Title and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

TITLE X FINAL PROVISIONS

Article 115. Admission to the Union²

1. Any European State which respects the principles *of the Constitution* may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

2. The conditions of admission and the adjustments *to the Treaty* on which the Union is founded which such admission entails [] shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Article 116. Suspension of the rights of a Member State³

1. On a reasoned proposal by one-third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of one or more principles *of the Constitution* and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The Council, meeting in the composition of Heads of State or Government and acting by unanimity on a proposal by one-third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the principles *of the Constitution*, after inviting the government of the Member State in question to submit its observations⁴.

¹ 25.10.2000, closer cooperation (Gil-Robles Gil-Delgado), para. 13.

² Article 49, TEU.

³ Article 7, TEU, as amended by the Treaty of Nice.

⁴ Article 44 of the Spinelli draft, 1984, provided for the violation to be established by the Court of Justice, while the decision on any measures to be taken remained within the competence of the Council. Parliament has in addition examined the new formulation proposed by the Treaty of Nice (19.12.2000, report on the results of the Inter-Governmental Conference, Tsao).

3. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of *the Constitution and the Treaty* to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under *the Constitution and the Treaty* shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

6. For the purposes of *this Article*, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.

Article 117. Procedure for revising the Constitution¹

1. The government of any Member State, *the European Parliament* or the Commission *may make proposals for the amendment of the Constitution*.

If the Council, after consulting the European Parliament and the Commission, where appropriate, delivers an opinion in favour, *the proposals shall be submitted to a Convention which shall comprise a representative for each Head of State or Government, two representatives for each national parliament, a number of Members of the European Parliament equal to the representatives of the Heads of State or Government, and two representatives of the Commission. The Convention shall set out its regulations and shall elect its President from among its members*.

3. *Proposals for amendments formulated by the Convention shall be approved by a conference of representatives of Member State governments, convened by the President of the Council acting by a majority of four-fifths of its members²*.

4. *Once the amendments have been ratified by a majority of the Member States whose population constitutes two-thirds of the total population of the Union, the governments of the Member States which have ratified them shall meet at once to decide by common accord and with the assent of the European Parliament on the procedures by and the date on which the new constitutional provisions shall enter into force and on relations to be established in this area with the other Member States³*.

¹ Article 48, TEU, as amended on the basis of 7.2.2002, relations between the EP/national parliaments in European integration (Napolitano), para. 21, which calls for use of the 'Convention' method to revise the Constitution. The European Parliament has the power to present draft revisions.

² This solution is justified by deduction: on the one hand a Constitution and therefore an autonomous system is proposed, the life of which cannot depend on the right of veto of a single Member State when its population is a small minority of the total population of the Union; on the other a differentiation is proposed in relation to simplified procedures for amending the Treaty. 16.5.2002, division of competences between the European Union and the Member States (Lamassoure), para.10; 25.10.2000, constitutionalisation of the Treaties (Duhamel), para. 9. The majority of four-fifths is indicated (by analogy with that laid down by Article 116.1) to differentiate it from the two-thirds majority laid down for revising the Treaty.

³ Rewording of Article 82.2 of the Spinelli draft, 1984 (European Parliament resolution on the draft Treaty establishing the European Union, 14 February 1984).

Article 118. Procedure for revising the Treaty¹

1. The government of any Member State, *the European Parliament* or the Commission *may submit proposals for the amendment of the Treaty*.
2. If the Council, *after receiving the assent of the European Parliament*², and, where appropriate, after consulting the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining, *by a majority of two-thirds of its members*, the amendments to be made *to the Treaty*. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.
3. The amendments shall enter into force after being ratified *by a majority of the Member States whose population represents two-thirds of the total population of the Union*³.

¹ Rewording with the amendments of Article 48, TEU, with attribution to the European Parliament of the power to present draft revisions.

² 13.4.2000, IGC: adapting the institutions to make a success of enlargement (Dimitrakopoulos, Leinen), para. 30.5.

³ The majority of two-thirds of the members of the Council is included to differentiate it from the majority required to revise the Constitution. The majority of Member States whose population represents two-thirds of the total population of the Union is taken from Article 82.2 of the Spinelli draft, 1984.