

CONV 618/03

NOTE

from : Secretariat

to : Convention

Subject : Part Two of the Constitution

– **Report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission**

1. Convention members will find attached the report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission with a view to making technical adjustments to EC and EU Treaty provisions for insertion into Part Two of the Constitutional Treaty.

This is a purely technical exercise which is intended to facilitate the political discussion without prejudging or influencing the Convention's decisions.

2. In accordance with the mandate issued to it on 29 January 2003 (CONV 529/03), the working party of experts has in particular:
 - inserted into the provisions of Part Two the amendments resulting essentially from the conclusions of the Working Group on the simplification of legislative procedures and instruments;
 - ascertained the future of the various TEC and TEU provisions in terms of the preliminary draft Constitutional Treaty in accordance with the outline presented in October 2002 (CONV 369/02), thereby merging the two Treaties and reorganising the provisions;

- harmonised the language of the various legal bases from a technical point of view;
- deleted some Articles, either as a follow-up to Convention discussions or on the grounds that they had become obsolete.

In line with the request made in their mandate, the working party also provided the Praesidium with suggestions for subsequent technical simplifications and various regroupings in Part Two which it considered appropriate. On the same basis, the working party confined itself to purely technical amendments and made no other amendments, particularly with regard to decision-making procedures, where no guidelines had been agreed in the Convention or which had not yet been decided on by the Praesidium and the Convention.

3. The draft text of Part Two, drawn up by the working party of experts based on the preliminary draft Constitutional treaty of 28 October 2002, is set out below as Volume 1. This volume contains, in Annex I, "terminological and typographic conventions" and, in Annex II, a number of suggestions and comments made by the working party of experts which will be useful for further work on Part Two.

This document also contains a Volume II, likewise drawn up by the working party of experts and containing, by way of illustration, the amendments made to the current provisions of the EC and EU Treaties before the merging and reorganisation of these within Part Two, so that Convention members can identify the amendments more readily.

Neither of the two Volumes contains the section on economic and monetary policy (Title VII of the TEC). Given the technical nature of the subject, the working party of experts thought it necessary to conduct a more in-depth examination. This Title will be the subject of an addendum for distribution to Convention members very shortly.

4. The aim of this technical work carried out by the working party is to provide a basic document to facilitate discussion within the Praesidium and the Convention on those aspects of Part Two which require substantive decisions. These matters concern the following in particular:

- (a) the scope of the legislative procedure and possible exceptions to it;
- (b) the scope of the qualified-majority voting rule and exceptions to it;
- (c) the amendments needed following the Convention's discussions and its examination of the Articles on the area of freedom, security and justice, external action, defence and the budget;
- (d) the distribution of the institutional provisions between Part One and Part Two which can only take place after the debate on the Institutions has been held in the Convention;
- (e) the suggestions made by the working party of experts over and above the technical adjustments, in accordance with the request made to it. Particular attention must be given to where the horizontal and general clauses identified by the working party of experts should be placed.

5. The Praesidium will make proposals to the Convention on all of the above matters.

Text presented to the Praesidium

on 13 March 2003

by the working party of experts nominated by the Legal Services

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VOLUME I

PRELIMINARY DRAFT CONSTITUTIONAL TREATY

Part Two

Union policies and their implementation

* * *

Text of the EC and EU Treaty provisions

in line with the structure of the preliminary draft Constitutional Treaty of 28 October 2002

(CONV 369/02)

Those provisions not found in Part Two of the draft Constitution which, following examination by the Convention, will be consigned either to Part One or Part Three (General and final provisions) have, for future reference, been placed in an addendum attached hereto.

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PART TWO:
UNION POLICIES AND THEIR IMPLEMENTATION

[COMMON PROVISIONS]¹

Clause 1 (ex Article 3)

1. [...] ²

~~2.~~ In all the activities referred to in this ~~Article~~ **Part**, the ~~Community~~ **Union** shall aim to eliminate inequalities, and to promote equality, between men and women. ³

Clause 2 (ex Article 6) ⁴

Environmental protection requirements must be integrated into the definition and implementation of the ~~Community~~ **Union** policies and activities referred to in ~~Article 3~~ **this Part**, in particular with a view to promoting sustainable development.

¹ As the preliminary draft structure of the Constitutional Treaty of 28 October 2002 (CONV 369/02) does not specify where certain provisions are to be placed, these have been inserted in different parts of the text under a provisional heading pending more precise instructions from the Convention. Furthermore, the headings of (existing or suggested) provisional titles and sections generally appear between square brackets pending a more refined structure.

² This paragraph appears in the addendum to this document.

³ This paragraph, which applies horizontally to all the policies, could be incorporated into a single article with Article 6 (environment) and even with the other similar provisions to be found in the various chapters, and entitled "common provisions" for example. It will also be noted that the reference to "this Part" – insofar as it would contain subjects currently coming under the second and third pillars – would broaden the scope of the horizontal paragraph(s) concerned.

⁴ This Article, which applies horizontally to all the policies, could be incorporated into a single article with others of the same type (see footnote to Article 3(2)). The same comment regarding the use of "this Part" applies.

Clause 3 (ex Article 16)

Without prejudice to [Articles 73, 86 and 87], and given the place occupied by services of general economic interest in the [shared values]¹ of the Union as well as their role in promoting social and territorial cohesion, the ~~Community Union~~ and the Member States, each within their respective powers and within the scope of application of ~~this Treaty~~ **the Constitution**, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

Clause 4 (ex Article 295)

~~This Treaty~~ **The Constitution** shall in no way prejudice the rules in Member States governing the system of property ownership.

Clause 5 (ex Article 296)²

1. ~~The provisions of this Treaty~~ **The Constitution** shall not preclude the application of the following rules:

- (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) any Member State may take such ~~measures~~ **steps** as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such ~~measures~~ **steps** shall not adversely affect the conditions of competition in the ~~common~~ **internal** market regarding products which are not intended for specifically military purposes.

2. The Council, ~~may, acting unanimously~~ on a proposal from the Commission, may **unanimously** make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

¹ This concept of "shared values" is questionable when "values" are defined in the draft Article in Part One entitled "The Union's values" (Article 2 CONV 528/03) in terms of human rights values. The suggestion is to find another term.

² The Convention may wish to consider this Article in the context of common defence questions.

[NON-DISCRIMINATION AND CITIZENSHIP] ¹

Clause 6 (ex Article 12)

~~Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.~~

The **European Parliament and the Council**, acting in accordance with the **legislative** procedure referred to in Article 251, may adopt rules **any measure** designed to prohibit such discrimination **on grounds of nationality as referred to in [Article (.....)]** ².

Clause 7 (ex Article 13)

1. Without prejudice to the other provisions of ~~this Treaty~~ **the Constitution** and within the limits of the powers conferred by it upon the ~~Community~~ **Union**, the Council, ~~acting unanimously~~ on a proposal from the Commission ~~and after consulting the European Parliament~~, may ~~take appropriate action~~ **unanimously adopt the necessary measures** to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **The Council shall act after consulting the European Parliament.**

2. By way of derogation from paragraph 1, ~~when the Council adopts Community~~ **the Union's** incentive measures, excluding any harmonisation of the laws and regulations of the Member States, ~~to which~~ support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, ~~it shall act in accordance with the procedure referred to in paragraph 1~~ **shall be adopted by the European Parliament and the Council in accordance with the legislative procedure.**

Clause 8 (ex Article 18)

1. ~~Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.~~ ³

¹ Suggested new heading which was not contained in the structure of the preliminary draft Constitutional Treaty of 28 October 2002 (CONV 369/02).

² Insert a reference to the draft Article entitled "Non-discrimination on grounds of nationality" in Part One (Article 6 CONV 528/03).

³ Article 18(1) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

2. If action by the ~~Community~~ **Union** should prove necessary to attain ~~this~~ **the** objective, **referred to in [Article (.....)]¹, of the right of every Union citizen to move and reside freely** and ~~this Treaty the Constitution~~ has not provided the necessary powers, the **European Parliament and the Council, in accordance with the legislative procedure**, may adopt ~~provisions~~ **measures** with a view to facilitating the exercise of ~~the rights~~ **that right** referred to in paragraph 1. ~~The Council shall act in accordance with the procedure referred to in Article 251.~~

3. [Paragraph 2] shall not apply to ~~provisions~~ **measures** concerning passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.²

Clause 9 (ex Article 19)³

1. ~~Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right⁴ shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament~~ **The Council, on a proposal from the Commission, shall unanimously adopt the measures determining the detailed arrangements for exercising the right, referred to in [Article (....)]⁵, for every Union citizen to vote and to stand as a candidate at municipal elections in the Member State in which he resides. It shall act after consulting the European Parliament.** These arrangements may provide for derogations where warranted by problems specific to a Member State.

¹ Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

² The suggestion is to clarify whether this paragraph has as its purpose to exclude all competence under this Article in the areas listed or whether the aim is to exclude codecision or just qualified majority voting in the Council. In the latter case, the Convention should examine whether a specific legal basis should be introduced for the measures referred to in paragraph 3.

³ A merger of these two paragraphs is suggested as they are virtually identical, subject to a solution being found to the reference to Article 190(4) (see footnote to Article 19(2) below).

⁴ The first sentence of Article 19(1) and (2) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 2nd indent CONV 528/03).

⁵ Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03).

2. Without prejudice to [Article 190(4)]¹ and to the ~~provisions~~ **measures** adopted for its implementation, ~~every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament;~~ **the Council, on a proposal from the Commission, shall unanimously adopt the measures determining the detailed arrangements for exercising the right, referred to in [Article (...)]², for every Union citizen to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides. It shall act after consulting the European Parliament.** These arrangements may provide for derogations where warranted by problems specific to a Member State.

Clause 10 (ex Article 20)³

~~Every citizen of the Union shall, in the territory of a third country in which the Member State of which he 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 State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection~~ **the diplomatic and consular protection of Union citizens in third countries, as referred to in [Article (...)]⁴**

Clause 11 (ex Article 21)⁵

~~Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194.~~

~~Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195.~~

¹ The reference to Article 190 (the uniform electoral procedure for Members of the European Parliament, to be covered in Part One) referred to the right (to vote and to stand as a candidate in European elections) and not to the procedure for adopting provisions for exercising that right (as laid down here). The draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03), which embodies this right, no longer refers to Article 190. Leaving the reference to Article 190 here, linked to the procedure alone, would therefore amend the scope of the reference, unless it were made into a separate sentence specifying that it applied solely to the right to vote or stand as a candidate.

² Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03).

³ The first sentence of Article 20 is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), third indent, CONV 528/03). To follow up that provision, Member States held negotiations in the Council and concluded an international agreement among themselves. The Convention could examine whether it would be appropriate to change the procedure under which the rules laid down in this Article are to be established, and in particular the possibility of no longer using an agreement (see report by Working Group IX on Simplification, page 5).

⁴ Insert reference to the draft Article on citizenship in Part One (Article 7(2), 3rd indent, CONV 528/03).

⁵ The first two paragraphs, which are not operational and merely refer to Articles 194 and 195, should be deleted as the right they provide for is set out in the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

The languages in which every citizen of the Union may write to any of the institutions or bodies pursuant to [Article (...)]¹ referred to in this Article or Article 7 in one of the languages mentioned in Article 314, and have an answer in the same language, are those listed in Article 314. The institutions and bodies referred to in this Article are those listed in [Article] and also the Ombudsman².

Clause 12 (ex Article 22)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of [Article (...)]³ and of [this Part]. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament~~, may **unanimously** adopt ~~provisions~~ **measures** to strengthen or to add to the rights laid down in ~~this Part~~ [Article (...)]⁴, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. **The Council shall act after consulting the European Parliament.**

A. POLICIES AND INTERNAL ACTION⁵

A1. INTERNAL MARKET

Clause 13 (ex Article 14)⁶

1. The ~~Community~~ **Union** shall adopt measures with the aim of ~~progressively~~ establishing the internal market ~~over a period expiring on 31 December 1992~~⁷, in accordance with ~~the provisions of~~ this Article, [Articles 15 and 26] [Article 47(2)] **and** [Articles 49, 80, 93 and 95] and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**.

¹ Insert reference to the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

² Insert reference to the draft Article in Part One that will contain the list of institutions and the two advisory bodies (Economic and Social Committee and Committee of the Regions).

³ Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).

⁴ Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).

⁵ It is to be noted that the structure of the preliminary draft Constitutional Treaty (CONV 369/02) did not specify an exact place for the provisions relating to certain areas such as energy, space, humanitarian aid, protection against disasters and sport, which have in the meantime been provided for in the draft Articles on the Union's competences (CONV 528/03). The Convention should therefore indicate if and where it would like these provisions to appear.

⁶ It is suggested that Articles 14 and 15 appear in the chapter on the internal market.

⁷ The reference to this period is obsolete. The suggestion is to delete it.

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of ~~this Treaty~~ **the Constitution**.

3. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, shall ~~determine~~ **adopt by a qualified majority measures laying down** the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned ¹.

Clause 14 (ex Article 15) ²

When drawing up its proposals with a view to achieving the objectives set out in [Article 14], the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain ~~during the period of~~ **for the** establishment of the internal market and it may propose appropriate ~~provisions~~ **measures**.

If these ~~provisions~~ **measures** take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the ~~common~~ **internal** market.

Clause 15 (ex Article 297)

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the ~~common~~ **internal** market being affected by ~~measures~~ **steps** which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Clause 16 (ex Article 298)

If ~~measures~~ **steps** taken in the circumstances referred to in [Articles 296 and 297] have the effect of distorting the conditions of competition in the ~~common~~ **internal** market, the Commission shall, together with the State concerned, examine how these ~~measures~~ **steps** can be adjusted to the rules laid down in ~~the Treaty~~ **the Constitution**.

¹ It appears that this paragraph has never been used. Should it be deleted?

² Deleting the reference to the period of establishment of the internal market has been suggested (see footnote to Article 14). However, deletion could result in perpetuating the possible derogations provided for in Article 15, which are applicable only during the period in question.

By way of derogation from the procedure laid down in [Articles 226 and 227], the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in [Articles 296 and 297]. The Court of Justice shall give its ruling in camera.

I. FREE MOVEMENT OF PERSONS AND SERVICES

1. WORKERS

Clause 17 (ex Article 39)

1. ~~Freedom of movement for workers shall be secured~~ **Workers shall have the right to move freely within the Community Union.** ¹

2. ~~Such freedom of movement shall entail the abolition of~~ Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment **shall be prohibited.** ²

3. ~~It shall entail~~ **Workers shall have** ³ the right, subject to limitations justified on grounds of public policy, public security or public health:

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of Member States for this purpose;
- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in ~~implementing~~ **European** regulations ~~to be drawn up~~ **adopted** by the Commission.

4. ~~The provisions of~~ This Article shall not apply to employment in the public service.

¹ This wording is more direct, clearer, and does not change substance.

² This wording is more direct, clearer, and does not change substance.

³ This wording is more direct, clearer, and does not change substance.

Clause 18 (ex Article 40)

~~The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the European laws or framework laws** required to bring about freedom of movement for workers, as defined in [Article 39] ~~in particular~~. **They shall act after consulting the Economic and Social Committee. These European laws and framework laws shall aim, in particular, to:**

- (a) ~~by ensuring~~ **ensure** close cooperation between national employment services;
- (b) ~~by abolishing~~ **abolish** those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) ~~by abolishing~~ **abolish** all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) ~~by setting up~~ **set up** appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Clause 19 (ex Article 41)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.¹

Clause 20 (ex Article 42)

~~The Council shall, acting in accordance with the procedure referred to in Article 251~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall** adopt such measures in the field of social security as are necessary to provide freedom of movement for workers²; to this end, ~~it~~ **they** shall make arrangements to secure for migrant workers and their dependants:

¹ Suggestion: examine this provision to see whether it could usefully be "modernised" by providing competence for the Union of some nature to be defined.

² This legal basis allows the adoption of measures only for "workers", i.e. for the employed. Extension of the "social security" Regulation to the self-employed has taken place on the basis of Article 308 TEC. If the Convention wanted to limit cases of recourse to Article 308, it could consider whether it would be appropriate to provide a specific legal basis covering this subject in the "establishment" chapter, which applies to the self-employed.

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~¹

2. FREEDOM OF ESTABLISHMENT

Clause 21 (ex Article 43)

Within the framework of ~~the provisions~~ **[this Chapter]**, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

~~Freedom of establishment shall include the right~~ **Nationals of a Member State shall have the right, in the territory of another Member State,** to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of [the second paragraph of Article 48], under the conditions laid down for its own nationals by the law of the ~~country~~ **Member State** where such establishment is effected, subject to the provisions of the [chapter] relating to capital.²

Clause 22 (ex Article 44)

1. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt European framework laws in order to attain freedom of establishment as regards a particular activity ~~the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by means of directives. They shall act after consulting the Economic and Social Committee.~~

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under ~~the preceding provisions~~ **paragraph 1**, in particular:

- (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

¹ Removal of unanimity by the Council (see report by Working Group IX on Simplification, page 14).

² This wording is more direct, clearer and does not change substance (see also Article 39 on workers).

- (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the ~~Community~~ **Union** of the various activities concerned;
- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in [Article 33(2)];
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of [the second paragraph of Article 48] with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Clause 23 (ex Article 45)

~~The provisions of~~ This chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.¹

The Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, ~~rule that the provisions of this Chapter shall not apply to~~ **adopt by a qualified majority measures exempting** certain activities **from application** of this Chapter.

¹ This wording is more direct, clearer and does not change anything in substance.

Clause 24 (ex Article 46)

1. ~~The provisions of [This chapter] and measures taken~~ **adopted** in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action **in Member States** providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. ~~The Council shall, acting in accordance with the procedure referred to in Article 251, issue directives~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt European framework laws** for the coordination of the ~~abovementioned~~ **national provisions referred to in paragraph 1.**

Clause 25 (ex Article 47) ¹

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, ~~the Council shall acting in accordance with the procedure referred to in Article 251, issue directives~~ **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt European framework laws** for:
 - (a) the mutual recognition of diplomas, certificates and other evidence of formal qualifications;
 - (b) the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.
2. ~~For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.~~ ²
3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

¹ There is a suggestion that paragraphs 1 and 2, which follow the same procedure, should be merged (following the abolition of unanimity in the Council as indicated in the report of Working Group IX on Simplification, page 14).

² Abolition of unanimity in the Council (see report by Working Group IX on Simplification, page 14).

Clause 26 (ex Article 48)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the ~~Community~~ **Union** shall, for the purposes of [this Chapter], be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Clause 27 (ex Article 294) ¹

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of [Article 48], without prejudice to the application of the other provisions of ~~this Treaty~~ **the Constitution**.

3. FREEDOM TO PROVIDE SERVICES

Clause 28 (ex Article 49)

Within the framework of ~~the provisions set out below~~ **[this Chapter]**, restrictions on freedom to provide services within the ~~Community~~ **Union** shall be prohibited in respect of nationals of Member States who are established in a **Member State of the Community** other than that of the person for whom the services are intended.

The Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, **adopt by a qualified majority measures designed to** extend ~~the provisions of this Chapter~~ to nationals of a third country who provide services and who are established within the ~~Community~~ **Union**.

Clause 29 (ex Article 50)

Services shall be considered to be "services" within the meaning of ~~this Treaty~~ **the Constitution** where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- (a) activities of an industrial character;

¹ This provision covers freedom of establishment and the free movement of capital. It is proposed that it be moved to the title or chapter on these freedoms in the internal market.

- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the ~~provisions of~~ [chapter] relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the **Member State** where the service is provided, under the same conditions as are imposed by that **State** on its own nationals.

Clause 30 (ex Article 51)

1. Freedom to provide services in the field of transport shall be governed by the ~~provisions of~~ [title] relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Clause 31 (ex Article 52)

1. In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission ~~and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority,~~ **adopt European framework laws by a qualified majority. It shall act after consulting the European Parliament and the Economic and Social Committee.**
2. As regards the ~~directives~~ **European framework laws** referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Clause 32 (ex Article 53) ¹

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the ~~directives issued~~ **European framework laws adopted** pursuant to [Article 52(1)], if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

¹ The relevance of retaining this provision may be questioned.

Clause 33 (ex Article 54) ¹

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of [the first paragraph of Article 49].

Clause 34 (ex Article 55)

~~The provisions of [Articles 45 to 48] shall apply to the matters covered by [this chapter].~~

~~[4. VISAS, ASYLUM AND IMMIGRATION AND OTHER POLICIES RELATED TO THE
MOVEMENT OF PERSONS]~~ ²

II. FREE MOVEMENT OF GOODS

1. CUSTOMS UNION

Clause 35 (ex Article 23)

1. The ~~Community~~ **Union** shall ~~be based upon~~ **comprise** a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. ~~The provisions of [Article 25] and of [Chapter 2] of [this title]~~ shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Clause 36 (ex Article 24)

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

¹ In the interests of consistency, it may be questioned whether it would not be appropriate to introduce a provision of this kind for all four freedoms.

² This title has been incorporated into Chapter A4 below in order to take account of the latest draft currently being examined by the Praesidium concerning the area of freedom, security and justice.

Clause 37 (ex Article 25)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Clause 38 (ex Article 26)

~~Common Customs Tariff duties shall be fixed by the Council acting by a qualified majority on a proposal from the Commission.~~ **The Council, on a proposal from the Commission, shall adopt by a qualified majority the measures fixing Common Customs Tariff duties.**

Clause 39 (ex Article 27)

In carrying out the tasks entrusted to it under [this chapter] the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the ~~Community~~ **Union** insofar as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the ~~Community~~ **Union** as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the ~~Community~~ **Union**.

[1a. CUSTOMS COOPERATION]¹

Clause 40 (ex Article 135)

Within the scope of application of ~~this Treaty~~ **the Constitution, the European Parliament and the Council acting in accordance with the procedure referred to in Article 251 shall take, in accordance with the legislative procedure**, shall adopt measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

2. PROHIBITION OF QUANTITATIVE RESTRICTIONS

Clause 41 (ex Article 28)²

Quantitative restrictions on imports **and exports** and all measures having equivalent effect shall be prohibited between Member States.

~~Article 29~~

~~Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between Member States.~~

Clause 42 (ex Article 30)

~~The provisions of [Articles 28] and 29~~ shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

¹ Suggested new heading not contained in the structure dated 28 October 2002.

² Suggestion: merge this Article with Article 29.

Clause 43 (ex Article 31)

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

~~The provisions of~~ This Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. ~~These provisions~~ It shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in [paragraph 1] or which restricts the scope of the Articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying ~~the rules contained in~~ this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

III. CAPITAL AND PAYMENTS

Clause 44 (ex Article 56) ¹

1. Within the framework of ~~the provisions set out in~~ this Chapter, ~~all~~ restrictions **both** on the movement of capital **and on payments** between Member States and between Member States and third countries shall be prohibited.

~~2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.~~

Clause 45 (ex Article 57)

1. ~~The provisions of~~ [Article 56] shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or ~~Community~~ **Union** law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

¹ It is suggested that paragraphs 1 and 2 be merged.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other [Chapters] of ~~this Treaty~~ **the Constitution**, the Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, adopt measures **by a qualified majority** on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets. ~~Unanimity shall be required for~~ **The Council shall act unanimously when it adopts** measures under this paragraph which constitute a step back in ~~Community Union~~ law as regards the liberalisation of the movement of capital to or from third countries.

Clause 46 (ex Article 58)

1. ~~The provisions of~~ [Article 56] shall be without prejudice to the right of Member States:
 - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
 - (b) to take all requisite ~~measures~~ **steps** to prevent infringements of national ~~law and regulation~~ **provisions laid down by law or regulation**, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.
2. ~~The provisions of This [chapter]~~ shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with ~~this Treaty~~ **the Constitution**.
3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in [Article 56].

Clause 47 (ex Article 59)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission, ~~and after consulting the ECB, may take~~ **may adopt by a qualified majority** safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary. **It shall act after consulting the ECB.**¹

¹ Question regarding the use of abbreviations in the Constitution (see footnote re Article 8 above).

[IIIa. FISCAL PROVISIONS]¹

Clause 48 (ex Article 90)

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Clause 49 (ex Article 91)

Where products are exported² **by a Member State** to the territory of ~~any~~ **another** Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Clause 50 (ex Article 92)

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the ~~measures~~ **provisions** contemplated have been previously approved for a limited period by **a European decision adopted by the Council acting by a qualified majority** on a proposal from the Commission.

Clause 51 (ex Article 93)

The Council, ~~shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee,~~ shall adopt **unanimously provisions measures** for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market ~~within the time limit laid down in Article 14~~³. **The Council shall act after consulting the European Parliament and the Economic and Social Committee.**

¹ Suggested new heading not contained in the structure dated 28 October 2002.

² The use of the word "exported" in the context of trade between Member States needs to be reconsidered.

³ It has been proposed that the time limit mentioned here (13.12.1992) should be deleted (see footnote re Article 14).

IV. APPROXIMATION OF LEGISLATION

Clause 52 (ex Article 94) ¹

The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives shall~~ **adopt unanimously European framework laws** for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the ~~common~~ internal market. **It shall act after consulting the European Parliament and the Economic and Social Committee.**

Clause 53 (ex Article 95) ²

1. By way of derogation from [Article 94] and save where otherwise provided in ~~this Treaty~~ **the Constitution**, ~~the following provisions this Article~~ shall apply for the achievement of the objectives set out in [Article 14]. ~~The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall** adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. **They shall act after consulting the Economic and Social Committee.**
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

¹ At present only measures which represent an "approximation of national laws" may be adopted on the basis of Articles 94 and 95. As a result, Article 308 is used in certain cases which relate to the internal market but which do not imply any harmonisation of national laws. This happens, for example, when action is taken to introduce a Community intellectual property instrument which is superposed on national instruments. Should it wish to limit the use of Article 308, the Convention could consider whether specific legal bases should be laid down or whether the reference to the "approximation of laws" in Articles 94 and 95 should be amended so as to permit the action in question. The Convention could also consider the matter of the relationship between Articles 94 and 95 (see explanation in Annex II to this report).

² See suggestion in previous footnote.

4. If, after the adoption by the **European Parliament and the Council** or by the Commission ¹ of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in [Article 30], or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption by the **European Parliament and the Council** or by the Commission ² of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions ~~as well as the grounds for introducing them and the reasons for them.~~

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, ~~approve or reject~~ **adopt a European decision approving or rejecting** the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a **European** decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to [paragraph 6], a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the **European Parliament and the Council**.

9. By way of derogation from the procedure laid down in [Articles 226 and 227], the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

¹ It will be remembered that the Commission adopts harmonisation measures only under the implementing powers conferred on it by Article 202.

² Same comment as in footnote re Article 95(4) above.

10. The harmonisation measures referred to ~~above in this Article~~ shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in [Article 30], provisional ~~measures~~ **provisions** subject to a ~~Community~~ **Union** control procedure.

Clause 54 (ex Article 96)

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the ~~common~~ **internal** market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in ~~an agreement eliminating~~ **the elimination of** the distortion in question, the Council, on a proposal from the Commission, shall **adopt by a qualified majority the necessary framework laws**. The Commission and the Council may ~~take~~ **adopt** any other appropriate measures provided for in ~~this Treaty~~ **the Constitution**.

Clause 55 (ex Article 97)

1. Where there is a reason to fear that the adoption or amendment of a **national** provision laid down by law, regulation or administrative action may cause distortion within the meaning of [Article 96], a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall ~~recommend~~ **address** to the Member States concerned **a recommendation on** such measures as may be appropriate to avoid the distortion in question.

2. If a **Member** State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuance of [Article 96], to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, ~~the provisions of~~ [Article 96] shall not apply.

A2. ECONOMIC AND MONETARY POLICY

Clause 56 (ex Article 4) ¹

1. For the purposes set out in [Article 2] ², the activities of the Member States and the ~~Community Union~~ shall include, as provided in ~~this Treaty~~ **the Constitution** [and in accordance with the timetable set out therein] ³, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in ~~this Treaty~~ **the Constitution** and in accordance with [the timetable and] ⁴ the procedures set out therein, these activities shall include ~~the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU euro,~~ and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the ~~Community Union~~, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the ~~Community Union~~ shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

The remainder of this Title will be dealt with in an addendum to this report

¹ It is suggested that this Article should head up the Chapter on Economic and Monetary Policy.

² Article 2 has been deleted and replaced by the draft article entitled "The Union's objectives" in Part One (Article 3(2) CONV 528/03).

³ It is debatable whether there is any point in keeping this reference ("the timetable").

⁴ It is debatable whether there is any point in keeping this reference ("the timetable....").

A3. POLICIES IN OTHER SPECIFIC AREAS

I. RULES ON COMPETITION

[SECTION 1

RULES APPLYING TO UNDERTAKINGS]

Clause 57 (ex Article 81)

1. The following shall be prohibited as incompatible with the ~~common~~ **internal** market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the ~~common~~ **internal** market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. ~~The provisions of~~ Paragraph 1 may, however, be declared inapplicable in the case of:
 - (a) any agreement or category of agreements between undertakings;
 - (b) any decision or category of decisions by associations of undertakings;
 - (c) any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (d) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (e) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Clause 58 (ex Article 82)

Any abuse by one or more undertakings of a dominant position within the ~~common~~ **internal** market or in a substantial part of it shall be prohibited as incompatible with the ~~common~~ **internal** market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Clause 59 (ex Article 83)

1. The Council, on a proposal from the Commission, shall adopt by a qualified majority ~~The appropriate the European laws/European regulations~~¹ **or European framework laws** to give effect to the principles set out in [Articles 81 and 82] ~~shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission.~~ **It shall act** after consulting the European Parliament.

¹ Since under the draft Articles of Title V of Part One "Exercise of Union Competence" (Articles 25 and 26 CONV 571/03), the Council may adopt laws or regulations, the Convention will need to identify the cases, in the area covered by this Article, in which the Council may adopt either or both types of act (see explanatory comments in Annex II to this report).

2. The **European laws/European regulations or European framework laws** referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in [Article 81(1)] and in [Article 82] by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of [Article 81(3)], taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of [Articles 81 and 82];
- (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and ~~the provisions contained in this~~ Section or **measures** adopted pursuant to this Article.

Clause 60 (ex Article 84)

Until the entry into force of ~~the provisions~~ **European laws/European regulations or European framework laws** adopted in pursuance of [Article 83], the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the ~~common~~ **internal** market in accordance with ~~the law of their country~~ **their internal law** and ~~with the provisions of~~ [Article 81, in particular paragraph 3, and of Article 82].

Clause 61 (ex Article 85)

1. Without prejudice to [Article 84], the Commission shall ensure the application of the principles laid down in [Articles 81 and 82]. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall ~~record such infringement of the principles in a reasoned decision~~ **adopt a reasoned European decision recording the infringement of the principles**. The Commission may publish its **European** decision and authorise Member States to take the ~~measures~~ **steps**, the conditions and details of which it shall determine, needed to remedy the situation.

Clause 62 (ex Article 86)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the ~~rules contained in this Treaty~~ **provisions of the Constitution**, in particular [Article 12 and Articles 81 to 89].
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the ~~rules contained in this Treaty~~ **provisions of the Constitution**, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the **Union's interests of the Community**.
3. The Commission shall ensure the application of ~~the provisions of this Article~~ and shall, where necessary, ~~address~~ **adopt** appropriate ~~directives~~ **[European regulations¹ or] European decisions** ~~to Member States~~.

[SECTION 2

AIDS GRANTED BY **MEMBER STATES**]

Clause 63 (ex Article 87)

1. Save as otherwise provided in ~~this Treaty~~ **the Constitution**, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the ~~common~~ **internal** market.
2. The following shall be compatible with the ~~common~~ **internal** market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;

¹ Since directives no longer count among the instruments which the Commission may adopt (see draft Title V of Part One, "Exercise of Union Competence" (CONV 571/03)), this leaves only decisions (see Article 26 of draft Title V) and regulations. However, unlike directives, regulations in principle leave Member States no room for manoeuvre. Providing for the adoption of regulations here represents a change in the status quo.

[(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.]¹

3. The following may be considered to be compatible with the ~~common~~ **internal** market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the ~~Community~~ **Union** to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by ~~decision of~~ **measures adopted by** the Council ~~acting~~ by a qualified majority on a proposal from the Commission.

Clause 64 (ex Article 88)

1. The Commission, in cooperation with Member States, shall keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the ~~common~~ **internal** market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a **Member** State or through State resources is not compatible with the ~~common~~ **internal** market having regard to [Article 87], or that such aid is being misused, it shall ~~decide that~~ **adopt a European decision requiring** the State concerned to ~~shall~~ abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this **European** decision within the prescribed time, the Commission or any other interested **Member** State may, in derogation from ~~the provisions of~~ [Articles 226 and 227], refer the matter to the Court of Justice direct.

¹ The Convention may wish to consider whether this Article is still relevant (see also Article 78).

On application by a Member State, the Council may ~~acting unanimously decide~~ **adopt unanimously a European decision** that aid which that State is granting or intends to grant shall be considered to be compatible with the ~~common internal~~ market, in derogation from the provisions of [Article 87] or from **European laws/European** regulations provided for in [Article 89], if such a **European** decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed **by the Member States**, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the ~~common internal~~ market having regard to [Article 87], it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final **European** decision.

Clause 65 (ex Article 89)

The Council, on a proposal from the Commission, ~~acting by a qualified majority on the proposal from the Commission and after consulting the European Parliament, may make any appropriate~~ **may adopt by a qualified majority the European laws/European** regulations¹ for the application of [Articles 87 and 88] and may in particular determine the conditions in which [Article 88(3)] shall apply and the categories of aid exempted from this procedure. **It shall act after consulting the European Parliament.**

II. SOCIAL POLICY

Clause 66 (ex Article 136)

The ~~Community~~ **Union** and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

¹ Since under the draft Articles of Title V of Part One "Exercise of Union Competence" (Articles 25 and 26 CONV 571/03), the Council may adopt laws or regulations, the Convention will need to identify the cases, in the area covered by this Article, in which the Council may adopt either or both types of act (see explanatory comments in Annex II to this report).

To this end the ~~Community~~ **Union** and the Member States shall ~~act implement measures which~~ **taking** account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the ~~Community~~ **Union** economy.

They believe that such a development will ensue not only from the functioning of the ~~common~~ **internal** market, which will favour the harmonisation of social systems, but also from the procedures provided for in ~~this Treaty~~ **the Constitution** and from the approximation of provisions laid down by law, regulation or administrative action.¹

Clause 67 (ex Article 137)

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

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in ~~Community~~ **Union** territory;
- (h) the integration of persons excluded from the labour market, without prejudice to [Article 150];
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. **The following may be adopted** to this end:

¹ The force of this paragraph would appear to be no more than declaratory.

- (a) ~~May adopt~~ measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) ~~may adopt~~, in the fields referred to in paragraph 1(a) to (i), ~~by means of directives~~, **European framework laws laying down** minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such ~~directives~~ **European framework laws** shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

In the fields referred to in paragraph 1(a), (b), (e), (i), (j) and (k), the European Parliament and the Council shall act in accordance with the legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions. ¹

In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously on a proposal from the Commission after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

2a. The Council, on a proposal from the Commission, may decide unanimously to render the legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act after consulting the European Parliament.

~~The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this Article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this Article.~~ ²

3. A Member State may entrust management and labour, at their joint request, with the implementation of ~~directives~~ European framework laws adopted pursuant to paragraph 2.

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

¹ In the interests of clarity, these three subparagraphs reproduce the provisions of the current second subparagraph of Article 137(2) TEC.

² The whole of this paragraph has been incorporated above.

4. The ~~provisions~~ **measures** adopted pursuant to this Article:
- (a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;
 - (b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with ~~this Treaty~~ **the Constitution**.
5. ~~The provisions of~~ This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Clause 68 (ex Article 138)

1. The Commission shall have the task of promoting the consultation of management and labour at ~~Community~~ **Union** level and shall ~~take~~ **adopt** any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of ~~Community~~ **Union** action.
3. If, after such consultation, the Commission considers ~~Community~~ **Union** action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.
4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in [Article 139]. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Clause 69 (ex Article 139)

1. Should management and labour so desire, the dialogue between them at ~~Community~~ **Union** level may lead to contractual relations, including agreements.
2. Agreements concluded at ~~Community~~ **Union** level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by [Article 137], at the joint request of the signatory parties, by a Council ~~decision~~ **measure**¹ **adopted by a qualified majority** on a proposal from the Commission.

¹ The term "decision" seems to be used in its generic sense here, which is not in accordance with the definition of "decision" in the fourth paragraph of Article 249 TEC. The Convention should indicate whether it wishes to specify the legal act to be used, which hitherto has been a directive and should therefore be a framework law (see Annex II to this report).

~~The Council shall act by qualified majority, except~~ Where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to [Article 137(2)], ~~In that case, it~~ the Council shall act unanimously.

Clause 70 (ex Article 140)

With a view to achieving the objectives of [Article 136] and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under [this chapter], particularly in matters relating to:

- (a) employment
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;
- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

Clause 71 (ex Article 141)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

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

3. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **in accordance with the legislative procedure, shall** adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. **The European Parliament and the Council shall act after consulting the Economic and Social Committee.**

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Clause 72 (ex Article 142)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes ¹.

Clause 73 (ex Article 143)

The Commission shall draw up a report each year on progress in achieving the objectives of [Article 136], including the demographic situation in the ~~Community~~ **Union**. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

~~The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.~~ ²

Clause 74 (ex Article 144)

The Council ~~, after consulting the European Parliament,~~ shall establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. **It shall act after consulting the European Parliament.** The tasks of the Committee shall be:

¹ There are doubts about how this would work.

² This paragraph is identical to the second paragraph of Article 145 and could therefore be deleted.

- (a) to monitor the social situation and the development of social protection policies in the Member States and the ~~Community~~ **Union**;
- (b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
- (c) without prejudice to [Article 207], to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Clause 75 (ex Article 145)

The Commission shall include a separate chapter on social developments within the ~~Community~~ **Union** in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

[CHAPTER 2

THE EUROPEAN SOCIAL FUND]

Clause 76 (ex Article 146)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with ~~the provisions set out below~~ **this [Chapter]**; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the ~~Community~~ **Union**, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Clause 77 (ex Article 147)

~~The Fund shall be administered by~~ **The Commission shall administer the Fund.**

~~The Commission~~ **It** shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of ~~governments~~ **Member States**, trade unions and employers' organisations.

Clause 78 (ex Article 148)

The European Parliament and the Council, acting in accordance with the legislative procedure, referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing decisions measures¹ relating to the European Social Fund. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

III. ECONOMIC AND SOCIAL COHESION

Clause 79 (ex Article 158)

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

In particular, the ~~Community~~ **Union** shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

Clause 80 (ex Article 159)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in [Article 158]. The formulation and implementation of the ~~Community's~~ **Union's** policies and actions and the implementation of the internal market shall take into account the objectives set out in [Article 158] and shall contribute to their achievement.² The ~~Community~~ **Union** shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

¹ The term "decision" seems to be used in its generic sense here, which is not in accordance with the definition of "decision" in the fourth paragraph of Article 249 TEC. The Convention should indicate whether it wishes to specify the legal act to be used.

² This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

~~If specific actions prove necessary outside the Funds, and without prejudice to the measures decided upon adopted within the framework of the Union's other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and.~~ **The European Parliament and the Council, in accordance with the legislative procedure, may adopt any specific measure** necessary outside the Funds, ~~and~~ without prejudice to the measures ~~decided upon adopted~~ within the framework of the **Union's** other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and. **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

Clause 81 (ex Article 160)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the ~~Community~~ **Union** through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Clause 82 (ex Article 161)

Without prejudice to [Article 162], ~~the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define~~ **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt measures¹ defining:**

- (a) the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds, **and**
- (b) ~~the Council, acting by the same procedure, shall also define~~ the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.

In accordance with the same procedure, they shall adopt measures setting up a Cohesion Fund ~~set up by the Council in accordance with the same procedure shall provide~~ **which** shall provides a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.~~

¹ Change in the decision-making procedure from assent to codecision ("legislative procedure") in accordance with the report from Working Group IX on Simplification (CONV 424/02, p. 17).

Clause 83 (ex Article 162)

The European Parliament and the Council, in accordance with the legislative procedure, shall adopt implementing decisions measures relating to the European Regional Development Fund ~~shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and.~~ **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, [Articles 37 and 148] respectively shall ~~continue to~~ apply.

IV. AGRICULTURE AND FISHERIES

Clause 84 (ex Article 32) ¹

1. The ~~common~~ **internal** market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.
2. Save as otherwise provided in [Articles 33 to 38], the rules laid down for the establishment of the ~~common~~ **internal** market shall apply to agricultural products.
3. The products **listed in [Annex I] shall be** subject to the provisions of Articles 33 to 38 ². ~~are listed in Annex I to this Treaty.~~
4. The operation and development of the ~~common~~ **internal** market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Clause 85 (ex Article 33)

1. The objectives of the common agricultural policy shall be:
 - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

¹ The wording of Article 32 would need to be adapted following the addition of fisheries to the heading of this Chapter.

² Suggestion: delete these redundant words, as a reference to the Annex could only refer to the Constitution.

- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to stabilise markets;
 - (d) to assure the availability of supplies;
 - (e) to ensure that supplies reach consumers at reasonable prices.
2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
 - (b) the need to effect the appropriate adjustments by degrees;
 - (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Clause 86 (ex Article 34)

1. In order to attain the objectives set out in [Article 33], a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
 - (b) compulsory coordination of the various national market organisations;
 - (c) a European market organisation.
2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 33, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in [Article 33] and shall exclude any discrimination between producers or consumers within the ~~Community~~ **Union**.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Clause 87 (ex Article 35)

To enable the objectives set out in [Article 33] to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

Clause 88 (ex Article 36)

The ~~provisions of the~~ Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of [Article 37(2) and (3)] and in accordance with the procedure laid down therein, account being taken of the objectives set out in [Article 33].

The Council may, in particular, ~~authorise~~ **adopt measures authorising** the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

Clause 89 (ex Article 37)

~~1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.¹~~

~~2. Having taken into account the work of the Conference provided for in paragraph 1, After consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in [Article 34(1)], and for implementing the measures specified referred to in [this Title].~~

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

¹ This paragraph is obsolete. The conference took place in Stresa in 1958. Its outcome is therefore already part of the *acquis*.

~~The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make~~ **The Council, on a proposal from the Commission, shall adopt by a qualified majority European laws/European regulations¹, European framework laws, issue directives or take European decisions and without prejudice to any recommendations it may also make. It shall act after consulting the European Parliament.**

3. ~~The Council may, acting by a qualified majority and~~² **In accordance with paragraph 2, replace the national market organisations may be replaced** by the common organisation provided for in [Article 34(1)] if:

- (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
- (b) such an organisation ensures conditions for trade within the ~~Community~~ **Union** similar to those existing in a national market.

4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the ~~Community~~ **Union**.

Clause 90 (ex Article 38)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

¹ Since, according to the draft Articles in Title V "Exercise of Union competence" in Part One (Articles 25 and 26 CONV 571/03), the Council may adopt either laws or regulations, the Convention should identify the cases in which, in the area covered by this Article, the Council might adopt either or both types of act (see explanatory comments in Annex II to this report).

² The deleted text is redundant since the procedure to be applied is already indicated by the reference to Article 37(2).

V. ENVIRONMENT

Clause 91 (ex Article 174)

1. ~~Community~~ **Union** policy on the environment shall contribute to pursuit of the following objectives:

- (a) preserving, protecting and improving the quality of the environment;
- (b) protecting human health;
- (c) prudent and rational utilisation of natural resources;
- (d) promoting measures at international level to deal with regional or worldwide environmental problems.

2. ~~Community~~ **Union** policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the ~~Community~~ **Union**. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional ~~measures~~ **steps**, for non-economic environmental reasons, subject to a ~~Community inspection~~ procedure **of inspection by the Union**.

3. In preparing its policy on the environment, the ~~Community~~ **Union** shall take account of:

- (a) available scientific and technical data;
- (b) environmental conditions in the various regions of the ~~Community~~ **Union**;
- (c) the potential benefits and costs of action or lack of action;
- (d) the economic and social development of the ~~Community~~ **Union** as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the ~~Community~~ **Union** and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for ~~Community~~ **the Union's** cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with [Article 300].

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Clause 92 (ex Article 175)

1. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in accordance with the legislative procedure, shall adopt measures~~ in order to achieve the objectives referred to in [Article 174]. **They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

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

- (a) ~~provisions~~ **measures** primarily of a fiscal nature;
- (b) measures affecting:
 - (i) town and country planning;
 - (ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;
 - (iii) land use, with the exception of waste management;
- (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council shall act after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

In accordance with the same procedure, the Council may ~~, under the conditions laid down in the first subparagraph, define those matters referred to in this paragraph on which decisions are to be taken~~ **it acts** by a qualified majority.

3. In other areas ¹, **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt measures establishing** general action programmes **which** ~~setting out~~ set out priority objectives to be attained ~~shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and~~. **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

¹ This phrase could be deleted since in practice the European Parliament and the Council adopt framework programmes of general scope.

~~The Council, acting under the terms of~~ **The measures necessary for the implementation of these programmes shall be adopted following the procedure provided for in** paragraph 1 or paragraph 2 **respectively** ~~according to the case, shall adopt the measures necessary for the implementation of these programmes.~~

4. Without prejudice to certain measures ~~of a Community nature~~ **adopted by the Union**, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, ~~the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of~~ **such measure shall provide in appropriate form for:**

(a) temporary derogations, and/or

(b) financial support from the Cohesion Fund ~~set up pursuant to Article 161~~¹.

Clause 93 (ex Article 176)

The protective ~~measures~~ **provisions** adopted pursuant to [Article 175] shall not prevent any Member State from maintaining or introducing more stringent protective ~~measures~~ **provisions**. Such ~~measures~~ **provisions** must be compatible with ~~this Treaty~~ **the Constitution**. They shall be notified to the Commission.

VI. CONSUMER PROTECTION

Clause 94 (ex Article 153)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the ~~Community~~ **Union** shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other ~~Community~~ **Union** policies and activities.²

¹ This clarification is unnecessary as there is only one Cohesion Fund.

² This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

3. The ~~Community~~ **Union** shall contribute to the attainment of the objectives referred to in paragraph 1 through:

- (a) measures adopted pursuant to [Article 95] in the context of the completion of the internal market;
- (b) measures which support, supplement and monitor the policy pursued by the Member States.

4. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **in accordance with the legislative procedure**, shall adopt the measures referred to in paragraph 3(b). **They shall act after consulting the Economic and Social Committee.**

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective ~~measures~~ **provisions**. Such ~~measures~~ **provisions** must be compatible with ~~this Treaty~~ **the Constitution**. The Commission shall be notified of them.

VII. TRANSPORT

Clause 95 (ex Article 70)

The objectives of ~~this Treaty~~ **the Constitution** shall, in matters governed by this Title, be pursued by ~~Member States~~ ¹ within the framework of a common transport policy.

Clause 96 (ex Article 71)

1. ~~For the purpose of implementing~~ **In order to implement** [Article 70], and taking into account the distinctive features of transport, ~~the European Parliament and the Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, in accordance with the legislative procedure, shall adopt measures. They shall act after consulting the Economic and Social Committee and the Committee of the Regions. Such measures shall include:~~

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;

¹ As this is a shared competence, it is suggested that this reference (which has no equivalent in the introduction to any other policy) should be deleted. See also the proposal to merge this with Article 80 (below).

- (c) measures to improve transport safety;
- (d) any other appropriate ~~provisions~~ **measure**.

2. By way of derogation from the procedure provided for in [paragraph 1], where the application of ~~provisions~~ **measures** concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be ~~laid down~~ **adopted unanimously** by the Council ~~acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee~~. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the ~~common~~ **internal market**. **It shall act** after consulting the European Parliament and the Economic and Social Committee.

Clause 97 (ex Article 72)

Until the ~~provisions~~ **measures** referred to in [Article 71(1)] have been ~~laid down~~ **adopted**, no Member State may, ~~without the unanimous approval of~~ **unless** the Council **has unanimously adopted measures granting a derogation**, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Clause 98 (ex Article 73)

Aids shall be compatible with ~~this Treaty~~ **the Constitution** if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Clause 99 (ex Article 74)

Any measures ~~taken~~ **adopted** within the framework of ~~this Treaty~~ **the Constitution** in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Clause 100 (ex Article 75)

1. In the case of transport within the ~~Community~~ **Union**, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the ~~country~~ **Member State** of origin or of destination of the goods in question shall be ~~abolished~~ **prohibited**.

2. Paragraph 1 shall not prevent the **European Parliament and the Council** from adopting other measures in pursuance of [Article 71(1)].

3. The Council, ~~shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules~~ **shall adopt by a qualified majority measures** for implementing ~~the provisions of paragraph 1.~~ **It shall act after consulting the Economic and Social Committee.**

The Council may in particular ~~lay down the provisions~~ **adopt the measures** needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall ~~take~~ **adopt** the necessary **European** decisions within the framework of the ~~rules laid down in accordance with the provisions of~~ **measures referred to in** paragraph 3.

Clause 101 (ex Article 76)

1. The imposition by a Member State, in respect of transport operations carried out within the ~~Community Union~~, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by **a European decision of** the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall ~~take~~ **adopt** the necessary **European** decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Clause 102 (ex Article 77)

Charges or dues [in respect of the crossing of frontiers] which are charged by ¹ a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs ~~progressively~~.

¹ It is legitimate to ask what kind of charges the carrier would be levying. Moreover, in an internal market without internal borders the reference to "the crossing of frontiers" seems obsolete. This Article needs to be examined for obsolescence.

The Commission may make recommendations to Member States for the application of this Article.

Clause 103 [(ex Article 78) ¹

The provisions of this title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.]

Clause 104 (ex Article 79)

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters [without prejudice to the powers of the Economic and Social Committee] ².

Clause 105 (ex Article 80)

1. ~~The provisions of~~ This title shall apply to transport by rail, road and inland waterway.
2. **The European Parliament and the Council may, acting by a qualified majority, decided whether, to what extent and by what procedure appropriate provisions may be laid down in accordance with the legislative procedure, may adopt appropriate measures** ³ for sea and air transport. ⁴ **They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

~~The procedural provisions of Article 71 shall apply.~~

¹ The Convention may wish to consider whether this Article is still relevant (see also Article 87(2)(c)).

² It is suggested that this phrase, which is redundant, should be deleted, since it is obvious that consulting the Advisory Committee cannot prejudice the powers of the Economic and Social Committee.

³ The reference to "appropriate procedure" is pointless : paragraph 2 has already identified it as the codecision procedure.

⁴ After successive amendments to the EC Treaty the empowerment of the Council by the first subparagraph of Article 80(2) would be difficult to reconcile with the second subparagraph. Moreover, it appears that the first subparagraph of Article 80(2) has not been used in practice. Since the adoption of the Single European Act, sea and air transport provisions have been adopted directly.

A clearer and more concise simplification would be for paragraph 2 to read as follows:
"Appropriate measures may be adopted for sea and air transport, in accordance with the procedure laid down in Article 71."

VIII. TRANS-EUROPEAN NETWORKS

Clause 106 (ex Article 154)

1. To help achieve the objectives referred to in [Articles 14 and 158] and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the ~~Community~~ **Union** shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the ~~Community~~ **Union** shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the ~~Community~~ **Union**.

Clause 107 (ex Article 155)

1. In order to achieve the objectives referred to in Article 154, the ~~Community~~ **Union**:
 - (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
 - (b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
 - (c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in ~~the first indent~~ **point (a)**, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the ~~Community~~ **Union** may also contribute, through the Cohesion Fund ~~set up pursuant to Article 161~~ to the financing of specific projects in Member States in the area of transport infrastructure.

The ~~Community's~~ **Union's** activities shall take into account the potential economic viability of the projects.

2. **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and paragraph 1. They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.¹

3. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in [Article 154]. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

4. The ~~Community~~ **Union** may ~~decide to~~ cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 156

~~The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.~~

~~Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.~~²

IX. RESEARCH AND TECHNOLOGICAL DEVELOPMENT

Clause 108 (ex Article 163)

1. The ~~Community~~ **Union** shall have the objective of strengthening the scientific and technological bases of ~~Community~~ **Union** industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of ~~this Treaty~~ **the Constitution**.

2. For this purpose the ~~Community~~ **Union** shall, throughout the ~~Community~~ **Union**, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

¹ With a view to simplification, new paragraph 2, which provides the legal basis for action by the Union concerning trans-European networks, takes over the full text of Article 156; the changes shown are those proposed for the existing text of that Article.

² This Article could be deleted; see previous footnote.

3. All ~~Community~~ **the Union's** activities under ~~this Treaty~~ **the Constitution** in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with ~~the provisions of [this Title]~~.

Clause 109 (ex Article 164)

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

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of ~~Community~~ **the Union's** research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in ~~Community~~ **the Union's** research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the ~~Community~~ **Union**.

Clause 110 (ex Article 165)

- 1. The ~~Community~~ **Union** and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and ~~Community~~ **the Union's** policy are mutually consistent.
- 2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Clause 111 (ex Article 166)

1. **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt a European law establishing a** multiannual framework programme, setting out all the activities of the ~~Community~~, ~~shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251~~ **Union. They shall act** after consulting the Economic and Social Committee.

The framework programme shall:

- (a) establish the scientific and technological objectives to be achieved by the activities provided for in [Article 164] and fix the relevant priorities;

- (b) indicate the broad lines of such activities;
 - (c) fix the maximum overall amount and the detailed rules for ~~Community~~ **the Union's** financial participation in the framework programme and the respective shares in each of the activities provided for.
2. The framework programme shall be adapted or supplemented as the situation changes.
3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.
4. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission ~~and~~, **shall adopt by a qualified majority the measures establishing the specific programmes. It shall act** after consulting the European Parliament and the Economic and Social Committee ~~shall adopt the specific programmes.~~

Clause 112 (ex Article 167) ¹

For the implementation of the multiannual framework programme, **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt the measures determining:**

- (a) ~~determine~~ the rules for the participation of undertakings, research centres and universities;
- (b) ~~lay down~~ the rules governing the dissemination of research results.

They shall act after consulting the Economic and Social Committee.

Clause 113 (ex Article 168)

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

The **European Parliament and the Council, shall adopt in accordance with the legislative procedure, shall adopt the measures determining** the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. **They shall act after consulting the Economic and Social Committee.**

¹ With a view to clarity, the decision-making procedures currently in Article 172 TEC have been added to their respective legal bases (Articles 167, 168, 169 and 171).

Adoption of the supplementary programmes shall require the agreement of the Member States concerned.¹

Clause 114 (ex Article 169)

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

The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the measures necessary. They shall act after consulting the Economic and Social Committee.

Article 115 (ex Article 170)

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

The detailed arrangements for such cooperation may be the subject of agreements between the ~~Community~~ **Union** and the third parties concerned, which shall be negotiated and concluded in accordance with [Article 300].

Clause 116 (ex Article 171)

The ~~Community~~ **Union** may set up joint undertakings or any other structure necessary for the efficient execution of ~~Community~~ **the Union's** research, technological development and demonstration programmes. **The Council, on a proposal from the Commission, shall adopt by a qualified majority the measures necessary. It shall act after consulting the European Parliament and the Economic and Social Committee.**

Clause 117 (ex Article 172)²

~~The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.~~

¹ Paragraph taken from the final sentence of existing Article 172 TEC.

² With a view to clarity, the provisions of this Article have been fully incorporated in Articles 167, 168, 169 and 171 above.

~~The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.~~

Clause 118 (ex Article 173)

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

A4. INTERNAL SECURITY
AREA OF FREEDOM, SECURITY AND JUSTICE¹

*[TITLE IV*²

*VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES
RELATED TO FREE MOVEMENT OF PERSONS]*

Clause 119 (ex Article 61)

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;*
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;*

¹ This heading has been changed to take account of the latest draft currently being examined by the Praesidium on the area of freedom, security and justice (which includes both the provisions on visas, asylum, immigration, etc. and those on police and judicial cooperation in criminal matters).

² This Title will be re-examined by the Convention and is therefore not dealt with here.

- (c) *measures in the field of judicial cooperation in civil matters as provided for in Article 65;*
- (d) *appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;*
- (e) *measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.*

Clause 120 (ex Article 62)

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1. *measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;*
2. *measures on the crossing of the external borders of the Member States which shall establish:*
 - (a) *standards and procedures to be followed by Member States in carrying out checks on persons at such borders;*
 - (b) *rules on visas for intended stays of no more than three months, including:*
 - (i) *the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;*
 - (ii) *the procedures and conditions for issuing visas by Member States;*
 - (iii) *a uniform format for visas;*
 - (iv) *rules on a uniform visa;*
3. *measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.*

Clause 121 (ex Article 63)

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:*
 - (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,*
 - (b) minimum standards on the reception of asylum seekers in Member States,*
 - (c) minimum standards with respect to the qualification of nationals of third countries as refugees,*
 - (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;*
- 2. measures on refugees and displaced persons within the following areas:*
 - (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,*
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;*
- 3. measures on immigration policy within the following areas:*
 - (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,*
 - (b) illegal immigration and illegal residence, including repatriation of illegal residents;*
- 4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.*

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.

Clause 122 (ex Article 64)

- 1. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*
- 2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.*

Clause 123 (ex Article 65)

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:*
 - the system for cross-border service of judicial and extrajudicial documents;*
 - cooperation in the taking of evidence;*
 - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;*
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;*
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.*

Clause 124 (ex Article 66)

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this Title, as well as between those departments and the Commission.

Clause 125 (ex Article 67)

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

- the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;*
- the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.*

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:

- the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this Article, Community legislation defining the common rules and basic principles governing these issues;*
- the measures provided for in Article 65 with the exception of aspects relating to family law.*

Clause 126 (ex Article 68)

- 1. Article 234 shall apply to this Title under the following circumstances and conditions: where a question on the interpretation of this Title or on the validity or interpretation of acts of the institutions of the Community based on this Title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, 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.*
- 2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.*
- 3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this Title or of acts of the institutions of the Community based on this Title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become res judicata.*

Clause 127 (ex Article 69)

The application of this Title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

[TITLE VI¹

PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS]

Clause 128 (ex Article 29 TEU)

Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

¹ This Title will be re-examined by the Convention and is therefore not dealt with here.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32,*
- closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ("Eurojust"), in accordance with the provisions of Articles 31 and 32,*
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).*

Clause 129 (ex Article 30 TEU)

1. Common action in the field of police cooperation shall include:

- (a) operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;*
- (b) the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data;*
- (c) cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research;*
- (d) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.*

2. The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;*

- (b) *adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;*
- (c) *promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;*
- (d) *establish a research, documentation and statistical network on cross-border crime.*

Clause 130 (ex Article 31 TEU)

1. *Common action on judicial cooperation in criminal matters shall include:*
 - (a) *facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;*
 - (b) *facilitating extradition between Member States;*
 - (c) *ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;*
 - (d) *preventing conflicts of jurisdiction between Member States;*
 - (e) *progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.*
2. *The Council shall encourage cooperation through Eurojust by:*
 - (a) *enabling Eurojust to facilitate proper coordination between Member States' national prosecuting authorities;*
 - (b) *promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol;*
 - (c) *facilitating close cooperation between Eurojust and the European Judicial Network, particularly, in order to facilitate the execution of letters rogatory and the implementation of extradition requests.*

Clause 131 (ex Article 32 TEU)

The Council shall lay down the conditions and limitations under which the competent authorities referred to in Articles 30 and 31 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.

Clause 132 (ex Article 33 TEU)

This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Clause 133 (ex Article 34 TEU)

- 1. In the areas referred to in this title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.*
- 2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:*
 - (a) adopt common positions defining the approach of the Union to a particular matter;*
 - (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;*
 - (c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;*
 - (d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.*

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties.

3. *Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts of the Council shall require at least 62 votes in favour, cast by at least 10 members.*

4. *For procedural questions, the Council shall act by a majority of its members.*

Clause 134 (ex Article 35 TEU)

1. *The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them.*

2. *By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.*

3. *A Member State making a declaration pursuant to paragraph 2 shall specify that either:*

- (a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment; or*
- (b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.*

4. *Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 1.*

5. *The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*

6. *The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.*

7. *The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under Article 34(2) whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under Article 34(2)(d).*

Clause 135 (ex Article 36 TEU)

1. *A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:*

- give opinions for the attention of the Council, either at the Council's request or on its own initiative,*
- contribute, without prejudice to Article 207 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in Article 29.*

2. *The Commission shall be fully associated with the work in the areas referred to in this title.*

Clause 136 (ex Article 37 TEU)

Within international organisations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of this title.

Articles 18 and 19 shall apply as appropriate to matters falling under this title.

Clause 137 (ex Article 39 TEU)

1. *The Council shall consult the European Parliament before adopting any measure referred to in Article 34(2)(b), (c) and (d). The European Parliament shall deliver its opinion within a time limit which the Council may lay down, which shall not be less than three months. In the absence of an opinion within that time limit, the Council may act.*

2. *The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this title.*

3. *The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in the areas referred to in this title.*

Clause 138 (ex Article 40 TEU)

1. *Enhanced cooperation in any of the areas referred to in this title shall have the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice, while respecting the powers of the European Community and the objectives laid down in this title.*

2. *Articles 29 to 39 and Articles 40a to 41 shall apply to the enhanced cooperation provided for by this article, save as otherwise provided in Article 40a and in Articles 43 to 45.*

3. *The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice and the exercise of those powers shall apply to this article and to Articles 40a and 40b.*

Clause 139 (ex Article 40a TEU)

1. *Member States which intend to establish enhanced cooperation between themselves under Article 40 shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so. Those Member States may then submit an initiative to the Council designed to obtain authorisation for the enhanced cooperation concerned.*

2. *The authorisation referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45, by the Council, acting by a qualified majority, on a proposal from the Commission or on the initiative of at least eight Member States, and after consulting the European Parliament. The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community.*

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

Clause 140 (ex Article 40b TEU)

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 40a shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the cooperation in question. The Council shall take

a decision on the request within four months of the date of receipt of that notification. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

For the purposes of this Article, the Council shall act under the conditions set out in Article 44(1).

Clause 141 (ex Article 41 TEU)

- 1. Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.*
- 2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.*
- 3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.*
- 4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.*

Clause 142 (ex Article 42 TEU)

The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.

A5. AREAS WHERE THE UNION MAY TAKE SUPPORTING ACTION

I. EMPLOYMENT ¹

Clause 143 (ex Article 125)

Member States and the ~~Community~~ **Union** shall, in accordance with this [Title], work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in [~~Article 2 of the Treaty on European Union and in Article 2...~~] ² of ~~this Treaty~~ **the Constitution**.

Clause 144 (ex Article 126)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in [Article 125] in a way consistent with the broad guidelines of the economic policies of the Member States and of the ~~Community~~ **Union** adopted pursuant to [Article 99(2)].
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of [Article 128].

Clause 145 (ex Article 127)

1. The ~~Community~~ **Union** shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of ~~Community~~ **Union** policies and activities. ³

¹ The content of this Title may need to be reconsidered in the light of the Convention's conclusions on the report of Working Group XI on Social Europe (CONV 516/03).

² Insert reference to draft article on the Union's objectives in Part One (Article 3 CONV 528/03).

³ This provision, applying horizontally for all policies, could be grouped with other, similar provisions in a single article (see footnote re Article 3(2)).

Clause 146 (ex Article 128)

1. The European Council shall each year consider the employment situation in the ~~Community~~**Union** and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.
 2. On the basis of the conclusions of the European Council, the Council, ~~acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130,~~ shall each year ~~draw up~~**adopt by a qualified majority** guidelines which the Member States shall take into account in their employment policies. **It shall act after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee.**
- These guidelines shall be consistent with the broad guidelines adopted pursuant to [Article 99(2)].
3. Each Member State shall provide the Council and the Commission with an annual report on the principal ~~measures~~**steps** taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.
 4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, ~~acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make~~**adopt by a qualified majority** recommendations **which it shall address** to Member States.
 5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the ~~Community~~**Union** and on the implementation of the guidelines for employment.

Clause 147 (ex Article 129)

The European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. **The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

These measures shall not include harmonisation of the laws and regulations of the Member States.

Clause 148 (ex Article 130)

The Council, ~~after consulting the European Parliament~~, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. **It shall act after consulting the European Parliament.**

The tasks of the Committee shall be:

- (a) to monitor the employment situation and employment policies in the Member States and the ~~Community~~ **Union**;
- (b) without prejudice to [Article 207], to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in [Article 128].

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

II. PUBLIC HEALTH ¹

Clause 149 (ex Article 152) ²

1. A high level of human health protection shall be ensured in the definition and implementation of all ~~Community~~ **the Union's** policies and activities. ³

~~Community~~ **Action by the Union**, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

¹ Inclusion of this chapter on public health here, under A5, which brings together areas for supporting action, is in line with what was indicated in the draft structure of the Constitutional Treaty of 28 October 2002 (CONV 369/02) and not what was indicated in the draft article on "shared competences" in Part One (CONV 528/03), which inserted public health among shared competences.

² Working Group XI on Social Europe proposed that the scope of this Article be extended to "cover matters such as grave cross-border threat, communicable diseases, bioterrorism and WHO Agreements" (CONV 516/03, point 35).

³ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

The ~~Community~~**Union** shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The ~~Community~~**Union** shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination.

3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions~~ **in accordance with the legislative procedure** shall contribute to the achievement of the objectives referred to in this Article through adopting:

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) by way of derogation from [Article 37], measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
- (c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.

The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.

For the purposes set out in this Article, the Council, ~~acting by a qualified majority on a proposal from the Commission~~, may also adopt recommendations **by a qualified majority** ~~for the purposes set out in this Article~~.

5. ~~Community~~**Union** action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

III. INDUSTRY

Clause 150 (ex Article 157)

1. The ~~Community~~**Union** and the Member States shall ensure that the conditions necessary for the competitiveness of the ~~Community's~~**Union's** industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- (a) speeding up the adjustment of industry to structural changes;
- (b) encouraging an environment favourable to initiative and to the development of undertakings throughout the ~~Community~~**Union**, particularly small and medium-sized undertakings;
- (c) encouraging an environment favourable to cooperation between undertakings;
- (d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination.

3. The ~~Community~~**Union** shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of ~~this Treaty~~ **the Constitution**.¹ **The European Parliament and the Council, in accordance with the legislative procedure, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, may decide on adopt specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1. They shall act after consulting the Economic and Social Committee.**

This Title shall not provide a basis for the introduction by the ~~Community~~**Union** of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

IV. CULTURE

Clause 151 (ex Article 151)

1. The ~~Community~~**Union** shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.
2. Action by the ~~Community~~**Union** shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:
 - (a) improvement of the knowledge and dissemination of the culture and history of the European peoples;
 - (b) conservation and safeguarding of cultural heritage of European significance;
 - (c) non-commercial cultural exchanges;
 - (d) artistic and literary creation, including in the audiovisual sector.
3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.
4. The ~~Community~~**Union** shall take cultural aspects into account in its action under other provisions of ~~this treaty~~**the Constitution**, in particular in order to respect and to promote the diversity of its cultures.¹
5. In order to contribute to the achievement of the objectives referred to in this Article ~~the Council~~:
 - (a) ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions~~**the European Parliament and the Council, in accordance with the legislative procedure**, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. ~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~**They shall act after consulting the Committee of the Regions;**
 - (b) ~~the Council acting unanimously~~ on a proposal from the Commission, shall adopt recommendations **unanimously**.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

V. EDUCATION, VOCATIONAL TRAINING AND YOUTH

Clause 152 (ex Article 149)

1. The ~~Community~~**Union** shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.
2. ~~Community~~**Union** action shall be aimed at:
 - (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
 - (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
 - (c) promoting cooperation between educational establishments;
 - (d) developing exchanges of information and experience on issues common to the education systems of the Member States;
 - (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
 - (f) encouraging the development of distance education.
3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.
4. In order to contribute to the achievement of the objectives referred to in this Article,
 - (a) ~~the European Parliament and the Council, acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions~~**in accordance with the legislative procedure**, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. **They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**
 - (b) ~~the Council, acting by a qualified majority~~ on a proposal from the Commission, shall adopt recommendations **by a qualified majority**.

Clause 153 (ex Article 150)

1. The ~~Community~~**Union** shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.
2. ~~Community~~**Union** action shall aim to:
 - (a) facilitate adaptation to industrial changes, in particular through vocational training and retraining;
 - (b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
 - (c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;
 - (d) stimulate cooperation on training between educational or training establishments and firms;
 - (e) develop exchanges of information and experience on issues common to the training systems of the Member States.
3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.
4. **The European Parliament and the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, in accordance with the legislative procedure, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

B. EXTERNAL ACTION¹

I. COMMERCIAL POLICY²

Clause 154 (ex Article 131)

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Clause 155 (ex Article 132)

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, insofar as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

¹ This entire chapter must be examined by the Convention.

² This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here.

Clause 156 (ex Article 133)

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, insofar as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Community law and other relevant international agreements.

6. *An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.*

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. *Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property insofar as they are not covered by paragraph 5.*

Clause 157 (ex Article 134)

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

II. DEVELOPMENT COOPERATION ¹

Clause 158 (ex Article 177)

1. *Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:*
 - *the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;*
 - *the smooth and gradual integration of the developing countries into the world economy;*
 - *the campaign against poverty in the developing countries.*
2. *Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.*
3. *The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.*

Clause 159 (ex Article 178)

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Clause 160 (ex Article 179)

1. *Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.*
2. *The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.*
3. *The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.*

¹ This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here.

Clause 161 (ex Article 180)

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Clause 162 (ex Article 181)

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

**[II A. ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION
WITH THIRD COUNTRIES]¹**

Clause 163 (ex Article 181a)

1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

¹ This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here. It has been inserted here although it does not appear in the structure of 28 October 2002.

2. *The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.*

3. *Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.*

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

III. EXTERNAL ASPECTS OF POLICIES COVERED IN CHAPTERS A1 TO A4¹

[...]

IV. COMMON FOREIGN AND SECURITY POLICY²

- [1. FOREIGN POLICY**
- 2. CRISIS MANAGEMENT]**

Clause 164 (ex Article 11 TEU)

1. *The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:*

- *to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;*

¹ This title has been left blank pending decisions to be taken by the Convention on the details it wishes to be included.

² The Group has not broken down the various aspects of the common foreign and security policy for the purposes of this report (except for the provision on the conclusion of international agreements), since on the one hand these provisions, as they stand, are very difficult to dissociate, and follow a different logic from that indicated in the structure of 28 October 2002 and, on the other, all these provisions are or will be subject to an in-depth examination by the Convention.

- *to strengthen the security of the Union in all ways;*
 - *to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;*
 - *to promote international cooperation;*
 - *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.*
2. *The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.*

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Clause 165 (ex Article 12 TEU)

The Union shall pursue the objectives set out in Article 11 by:

- *defining the principles of and general guidelines for the common foreign and security policy;*
- *deciding on common strategies;*
- *adopting joint actions;*
- *adopting common positions;*
- *strengthening systematic cooperation between Member States in the conduct of policy.*

Clause 166 (ex Article 13 TEU)

1. *The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.*
2. *The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.*

Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3. The Council shall 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.

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

The Council shall ensure the unity, consistency and effectiveness of action by the Union.

Clause 167 (ex Article 14 TEU)

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

2. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.

3. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.

4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.

5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.

7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.

Clause 168 (ex Article 15 TEU)

The Council shall adopt common positions. 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.

Clause 169 (ex Article 16 TEU)

Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.

Clause 170 (ex Article 17 TEU)

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, in accordance with the second subparagraph, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.

2. Questions referred to in this Article shall include humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking.

3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.

4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this Title.

5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.

Clause 171 (ex Article 18 TEU)

- 1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.*
- 2. The Presidency shall be responsible for the implementation of decisions taken under this Title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.*
- 3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.*
- 4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.*
- 5. The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.*

Clause 172 (ex Article 19 TEU)

- 1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.*
- In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.*
- 2. Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.*

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Clause 173 (ex Article 20 TEU)

The diplomatic and consular missions of the Member States and the Commission delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.

Clause 174 (ex Article 21 TEU)

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Clause 175 (ex Article 22 TEU)

1. Any Member State or the Commission may refer to the Council any questions relating to the common foreign and security policy and may submit proposals to the Council.

2. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

Clause 176 (ex Article 23 TEU)

1. Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting joint actions, common positions or taking any other decision on the basis of a common strategy;*
- when adopting any decision implementing a joint action or a common position;*
- when appointing a special representative in accordance with Article 18(5).*

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

This paragraph shall not apply to decisions having military or defence implications.

3. For procedural questions, the Council shall act by a majority of its members.

Clause 177 (ex Article 25 TEU)

Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47.

Clause 178 (ex Article 26 TEU)

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.

Clause 179 (ex Article 27 TEU)

The Commission shall be fully associated with the work carried out in the common foreign and security policy field.

Clause 180 (ex Article 27a TEU)

1. Enhanced cooperation in any of the areas referred to in this title shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect:

- the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy,*
- the powers of the European Community, and*
- consistency between all the Union's policies and its external activities.*

2. Articles 11 to 27 and Articles 27b to 28 shall apply to the enhanced cooperation provided for in this article, save as otherwise provided in Article 27c and Articles 43 to 45.

Clause 181 (ex Article 27b TEU)

Enhanced cooperation pursuant to this title shall relate to implementation of a joint action or a common position. It shall not relate to matters having military or defence implications.

Clause 182 (ex Article 27c TEU)

Member States which intend to establish enhanced cooperation between themselves under Article 27b shall address a request to the Council to that effect.

The request shall be forwarded to the Commission and, for information, to the European Parliament. The Commission shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies. Authorisation shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.

Clause 183 (ex Article 27d TEU)

Without prejudice to the powers of the Presidency and of the Commission, the Secretary-General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.

Clause 184 (ex Article 27e TEU)

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 27c shall notify its intention to the Council and inform the Commission. The Commission shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Council shall take a decision on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

For the purposes of this Article, the Council shall act by a qualified majority. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the members of the Council concerned as those laid down in the third subparagraph of Article 23(2).

Clause 185 (ex Article 28 TEU)

- 1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.*
- 2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.*

3. *Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.*

In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

4. *The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.*

V. THE CONCLUSION OF INTERNATIONAL AGREEMENTS

Clause 186 (ex Article 300) ¹

1. *Where this Treaty provides for the conclusion of agreements between the Community 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 it 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 the 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, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.*

¹ The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here.

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

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

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.

6. The European Parliament, 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 this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.

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

Clause 187 (ex Article 24 TEU)

- 1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency.*
- 2. The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions.*
- 3. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2).*
- 4. The provisions of this Article shall also apply to matters falling under Title VI. When the agreement covers an issue for which a qualified majority is required for the adoption of internal decisions or measures, the Council shall act by a qualified majority in accordance with Article 34(3).*
- 5. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally.*
- 6. Agreements concluded under the conditions set out by this Article shall be binding on the institutions of the Union.*

Clause 188 (ex Article 38 TEU)

The agreements referred to in Article 24 may cover matters falling under this Title.

[Va. OTHER PROVISIONS]¹

Clause 189 (ex Article 3 TEU)

[...] ²

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers. ³

Clause 190 (ex Article 60) ⁴

1. *If, in the cases envisaged in [Article 301], action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in [Article 301], take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned* ⁵.

2. *Without prejudice to [Article 297] and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.*

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

¹ Suggested new heading which is not in the structure of 28 October 2002.

² The first paragraph of this article is included in the addendum to this document.

³ This point should be examined by the Convention in the context of external relations and is therefore not dealt with here.

⁴ This article should be examined by the Convention in the context of external relations and is therefore not dealt with here. It is suggested that consideration be given to whether it would be appropriate to merge this article with Article 301.

⁵ The fact that only "countries" are mentioned currently prevents this article being used for sanctions against individuals or non-State entities (for example sanctions against the Taliban and terrorists mentioned by name). This omission makes it necessary at present to have additional recourse to Article 308 TEC. It is therefore suggested that consideration be given to whether it would be useful to extend the scope of this Article (see also suggestion re Article 301).

Clause 191 (ex Article 301) ¹

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries ², the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

Clause 192 (ex Article 302) ³

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.

The Commission shall also maintain such relations as are appropriate with all international organisations.

Clause 193 (ex Article 303)

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

Clause 194 (ex Article 304)

The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.

Clause 195 (ex Article 310) ⁴

The Community 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 The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here. Nevertheless, the Convention may wish to consider whether it would be appropriate to amalgamate it with current Article 60 of the EC Treaty.

² The reference only to "countries" currently precludes use of this Article for sanctions against individuals or non-State entities. See footnote to Article 60 for developments and suggestions on this subject.

³ The Convention should consider Articles 302 to 304 in the context of external relations questions; they are therefore not dealt with here.

⁴ The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here.

C. DEFENCE¹

D. THE FUNCTIONING OF THE UNION

This section has been subject to technical amendments in accordance with the remit. They are without prejudice to any substantive amendments which could be made by the Convention.

Moreover, as stated in CONV 369/02 (page 7, footnote 1):

"The extent of the institutional and procedural provisions in this (2nd) Part will depend on the degree of detail in Part 1. One could also envisage that such provisions in this Part would deal only with inter-institutional procedures: provisions concerning arrangements internal to the institutions could be set out in Protocols."

[TITLE I

PROVISIONS GOVERNING THE INSTITUTIONS]

[CHAPTER 1

THE INSTITUTIONS]

[SECTION 1

THE EUROPEAN PARLIAMENT]

Clause 196 (ex Article 189)

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.

The number of Members of the European Parliament shall not exceed 732.

¹ This Title has been left blank for the reasons set out in the footnote to Chapter B. IV (common foreign and security policy).

Clause 197 (ex Article 190)

1. *The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.*

2. *The number of representatives elected in each Member State shall be as follows:*

<i>Belgium</i>	<i>25</i>
<i>Denmark</i>	<i>16</i>
<i>Germany</i>	<i>99</i>
<i>Greece</i>	<i>25</i>
<i>Spain</i>	<i>64</i>
<i>France</i>	<i>87</i>
<i>Ireland</i>	<i>15</i>
<i>Italy</i>	<i>87</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>31</i>
<i>Austria</i>	<i>21</i>
<i>Portugal</i>	<i>25</i>
<i>Finland</i>	<i>16</i>
<i>Sweden</i>	<i>22</i>
<i>United Kingdom</i>	<i>87</i>

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3. *Representatives shall be elected for a term of five years.*

4. *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 Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. *The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.*

Clause 198 (ex Article 191)

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251, shall in accordance with the legislative procedure, shall adopt the measures laying down~~ the regulations governing political parties at European level and in particular the rules regarding their funding.

Clause 199 (ex Article 192)

Insofar as provided in ~~this Treaty~~ **the Constitution**, the European Parliament shall participate in the process leading up to the adoption of ~~Community~~ **Union** acts by exercising its powers under the ~~procedures laid down in Articles 251 and 252~~ **legislative procedure** and by giving its assent or delivering advisory opinions.¹

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

Clause 200 (ex Article 193)

In the course of its duties, the European Parliament may, at the request of a quarter of its **component** Members³, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by ~~this Treaty~~ **the Constitution** on other institutions or bodies, alleged contraventions or maladministration in the implementation of ~~Community~~ **Union**⁴ law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

¹ This general description of the Parliament's tasks should be supplemented by a reference to its budgetary, supervisory and appointing powers; it also exercises autonomous decision-making powers (see Annex II to this report).

² Unless special provisions apply, replacement of the word "Community" by "Union" could involve extending the scope of this Article (request for submission of a proposal) to matters currently falling under the second and third pillars.

³ Clarification, in accordance with the wording of most of the other provisions of the EC Treaty which require a majority of Members of Parliament for the adoption of a decision.

⁴ Unless special provisions apply, the replacement of the word "Community" by "Union" could involve extending the scope of this Article (temporary Committee of Inquiry) to matters currently falling under the second and third pillars.

The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord ¹ of the European Parliament, the Council and the Commission.

Clause 201 (ex Article 194)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a 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 the ~~Community's~~ **Union's** ² fields of activity and which affects him, her or it directly ³.

Clause 202 (ex Article 195)

1. The European Parliament shall appoint an Ombudsman ⁴ 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 in the activities of the ~~Community~~ **Union's** ⁵ institutions or bodies, with the exception of the Court of Justice ~~and~~, the Court of First Instance **and the judicial panels** ⁶ acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

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.

¹ This act does not fall within the typology established in the draft article "The legal acts of the Union" in Part One (Article 24 CONV 571/03).

² Unless special provision is made, the replacement of the word "Community" by "Union" could involve extending the field of application of this Article (right of petition) to matters currently falling under the second and third pillars.

³ The Convention could examine whether to add to this article a specific legal basis for adopting the procedure for exercising the right of petition.

⁴ In accordance with standard practice, the term "the European Ombudsman" could be used here.

⁵ Unless special provision is made, the replacement of the word "Community" by "Union" could involve extending the field of application of this Article (Ombudsman) to matters currently falling under the second and third pillars.

⁶ Even though the judicial panels will be "attached to the Court of First Instance", they should be expressly mentioned here.

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.

4. The European Parliament shall **adopt the measures** ¹ laying down the regulations and general conditions governing the performance of the Ombudsman's duties. **It shall act** after seeking an opinion from the Commission and with the approval of the Council **which shall give an opinion** ~~acting~~ by a qualified majority.

Clause 203 (ex Article 196)

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary **part-session** ² at the request of a majority of its Members or at the request of the Council or of the Commission.

Clause 204 (ex Article 197)

The European Parliament shall elect its President and its officers from among its Members.

Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

Clause 205 (ex Article 198)

Save as otherwise provided in ~~this Treaty~~ **the Constitution**, the European Parliament shall act by an ~~absolute~~ majority ³ of the votes cast.

The Rules of Procedure shall determine the quorum.

¹ The draft Title V of Part One of the Constitution (CONV 571/03) does not provide for the possibility for the Parliament alone to adopt normative acts (see Annex II to this report).

² The current terminology does not correspond to practice or to the terminology of the preceding subparagraph; the distinction between "session" and "part-session" is taken from Article 10 of the Rules of Procedure of the Parliament.

³ The word "absolute" risks creating confusion between the majority of votes and the (qualified) majority of members composing the Parliament (see Annex II to this report).

Clause 206 (ex Article 199)

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

Clause 207 (ex Article 200)

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Clause 208 (ex Article 201)

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 accordance with [Article 214]. 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.

[SECTION 2

THE COUNCIL]

Clause 209 (ex Article 202)

To ensure that the objectives set out in ~~this Treaty~~ **the Constitution** are attained the Council shall, in accordance with the provisions of ~~this Treaty~~ **the Constitution**:

- (a) ensure coordination of the general economic policies of the Member States;
- (b) have power to take decisions;

- (c) *confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.*¹

Clause 210 (ex Article 203)

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.

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.

Clause 211 (ex Article 204)

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

Clause 212 (ex Article 205)

- 1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.*
- 2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:*

<i>Belgium</i>	<i>5</i>
<i>Denmark</i>	<i>3</i>
<i>Germany</i>	<i>10</i>
<i>Greece</i>	<i>5</i>
<i>Spain</i>	<i>8</i>
<i>France</i>	<i>10</i>
<i>Ireland</i>	<i>3</i>
<i>Italy</i>	<i>10</i>
<i>Luxembourg</i>	<i>2</i>
<i>Netherlands</i>	<i>5</i>
<i>Austria</i>	<i>4</i>
<i>Portugal</i>	<i>5</i>
<i>Finland</i>	<i>3</i>
<i>Sweden</i>	<i>4</i>
<i>United Kingdom</i>	<i>10.</i>

¹ See draft Article on "implementing acts" in Part One (Article 28(3) CONV 571/03).

For their adoption, acts of the Council shall require at least:

- *62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,*
- *62 votes in favour, cast by at least 10 members, in other cases.*

3. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Clause 213 (ex Article 206)

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

Clause 214 (ex Article 207)

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by a qualified majority.

The Council shall decide on the organisation of the General Secretariat.

3. The Council shall adopt its Rules of Procedure.

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

Clause 215 (ex Article 208)

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

Clause 216 (ex Article 209)

The Council shall, ~~after receiving an opinion from the Commission, determine~~ **adopt the measures laying down** the rules governing the committees provided for in ~~this Treaty~~ **the Constitution**. It **shall act after consulting the Commission**.

Clause 217 (ex Article 210)

The Council shall, ~~acting~~ **adopt** by a qualified majority, ~~determine~~ **the measures laying down** the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the Court of First Instance. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

[SECTION 3

THE COMMISSION]

Clause 218 (ex Article 211) ¹

[In order to ensure the proper functioning and development of the ~~common~~ **internal market**] ², the Commission shall:

- (a) ensure that the ~~provisions of this Treaty~~ **Constitution** and the measures ~~taken~~ **adopted** by the institutions pursuant thereto are applied;
- (b) formulate recommendations or deliver opinions on matters dealt with in ~~this Treaty~~ **the Constitution**, if it expressly so provides or if the Commission considers it necessary;
- (c) have its own power of decision and participate in the shaping of measures taken by **the European Parliament and the Council** and ~~by the European Parliament~~ in the manner provided for in ~~this Treaty~~ **the Constitution**;
- (d) exercise the powers conferred on it by **the European Parliament and the Council, or by the Council**, for the implementation of the ~~rules laid down~~ **measures adopted** by ~~the latter~~ **them**.

¹ Since the division into pillars is to be abolished, it could be that, unless specific provision is made, the scope of this provision might be extended to matters currently covered by the second and third pillars.

² A question arises as to whether this phrase is consistent with the scope of the Commission's powers referred to in the following points (a) to (d).

Clause 219 (ex Article 212)

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the ~~Community~~ **Union**.

Clause 220 (ex Article 213)

1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

The number of Members of the Commission may be altered by the Council, acting unanimously.

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

The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.

2. The Members of the Commission shall, in the **Union's** general interest ~~of the Community~~, 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.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with [Article 216] or deprived of his right to a pension or other benefits in its stead.

Clause 221 (ex Article 214)

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.

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 the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.

Clause 222 (ex Article 215)

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

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member appointed by the Council, acting by a qualified majority. The Council may, ~~acting unanimously,~~ decide **unanimously** that such a vacancy need not be filled.

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

Save in the case of compulsory retirement under [Article 216], Members of the Commission shall remain in office until they have been replaced or until the Council has decided **unanimously** that the vacancy need not be filled, ~~as provided for in the second paragraph of this Article.~~

Clause 223 (ex Article 216)

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.

Clause 224 (ex Article 217)

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.
2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.

4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.

Clause 225 (ex Article 218)

1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation ¹.

2. The Commission shall adopt its Rules of Procedure so as to ensure ~~that both it and both its own operation and that of its departments operate in accordance with the provisions of this Treaty~~. It shall ensure that these rules are published.

Clause 226 (ex Article 219)

The Commission shall act by a majority of the number of Members provided for in [Article 213].

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

[SECTION 4

THE COURT OF JUSTICE]²

The provisions of this section might have to be adapted following the proceedings of the discussion circle on the Court of Justice (CONV 543/03)

Clause 227 (ex Article 220)

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

¹ A question arises regarding the usefulness of this paragraph, which is purely declaratory.

² The removal of the division into pillars could have an impact on the extent of the jurisdiction of the Court of Justice. For the current situation, see existing Article 46 of the EU Treaty. Annex II contains additional observations on this subject.

In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in [Article 225a] in order to exercise, in certain specific areas, the judicial competence laid down in ~~this Treaty~~ **the Constitution**.

Clause 228 (ex Article 221)

The Court of Justice shall consist of one judge per Member State.

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

Clause 229 (ex Article 222)

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may 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.

Clause 230 (ex Article 223)

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

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

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure ¹. Those Rules shall require the approval of the Council, acting by a qualified majority.

Clause 231 (ex Article 224)

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 of First Instance to be assisted by Advocates-General.

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 high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.

The Court of First Instance shall appoint its Registrar and ~~lay down~~ **adopt** the rules governing his service.

The Court of First Instance shall ~~establish~~ **adopt** its Rules of Procedure in agreement with the Court of Justice ². ~~Those Rules shall require~~ **It shall act after obtaining** the approval of the Council, acting by a qualified majority.

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

Clause 232 (ex Article 225)

1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [Article 225a].

¹ This subparagraph provides for a legislative power vested in the Court of Justice. At present the draft Title V "Exercise of Union competence" in Part One (CONV 571/03) does not provide for the possibility for the Court to adopt normative acts.

² See footnote re Article 223.

Decisions given by the Court of First Instance under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of ~~Community~~ **Union** law being affected.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [Article 234], in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of ~~Community~~ **Union** law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of ~~Community~~ **Union** law being affected.

Clause 233 (ex Article 225a)

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission,~~ may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas. **It shall act unanimously either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission. In both cases it shall act after consulting the European Parliament.**

The ~~decision measure~~ ¹ establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the ~~decision measure~~ establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

The members of the judicial panels shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

¹ The term "decision" seems to be used in the generic sense here, since it does not correspond to the definition of "decision" in the current Article 249 of the EC Treaty (i.e. an act with one or more specific addressees). The Convention should indicate whether it wishes to specify a particular instrument.

The judicial panels shall ~~establish~~ **adopt** their Rules of Procedure in agreement with the Court of Justice ¹. ~~Those Rules shall require~~ **They shall act after obtaining** the approval of the Council, acting by a qualified majority.

Unless the ~~decision measure~~ establishing the judicial panel provides otherwise, the provisions of ~~this Treaty~~ **the Constitution** relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

Clause 234 (ex Article 226)

If the Commission considers that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, 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.

Clause 235 (ex Article 227)

A Member State which considers that another Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution** may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under ~~this Treaty~~ **the Constitution**, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

Clause 236 (ex Article 228)

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, the State shall be required to take the necessary ~~measures~~ **steps** to comply with the judgment of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such ~~measures~~ **steps** it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

¹ See footnote concerning Article 223.

If the Member State concerned fails to take the necessary ~~measures~~ **steps** to comply with the Court's judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [Article 227].

Clause 237 (ex Article 229)

~~Regulations adopted jointly by~~ **European laws of** the European Parliament and **of** the Council, and ~~by~~ **European laws/European regulations** ¹ of the Council, **adopted** pursuant to the ~~provisions of this Treaty~~ **Constitution**, may give the Court of Justice unlimited jurisdiction ~~with regard to~~ **for** the penalties provided for in such ~~regulations~~ **laws**.

Clause 238 (ex Article 229a)

Without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament,~~ **may adopt provisions to confer** ~~may adopt unanimously measures conferring~~ jurisdiction, ~~to the extent that it shall determine,~~ on the Court of Justice in disputes relating to the application of acts adopted on the basis of ~~this Treaty~~ **the Constitution** which create ~~Community~~ [industrial] ² property rights **at Union level**. The Council ~~shall~~ **shall act after consulting the European Parliament. It shall** recommend those ~~provisions~~ **measures** to the Member States for adoption in accordance with their respective constitutional requirements.

¹ Since the draft Articles in Title V ("Exercise of Union competence") of Part One (Articles 25 and 26 CONV 571/03) provide that the Council may adopt either laws or regulations, the Convention would need to identify those cases in which, in those area covered by this Article, the Council may adopt either or both of these two types of act (see explanatory comments in Annex II to this report).

² This concept is somewhat restrictive and its relevance may be queried; Article 133(7) of the EC Treaty refers to the broader concept of "intellectual property".

Clause 239 (ex Article 230) ¹

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB ², other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. ³

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

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

*Any natural or legal person may, under the same conditions, institute proceedings against a **European** decision addressed to that person or against a decision which, although in the form of **[a European law]**, ⁴ a **European** regulation or a **European** decision addressed to another person, is of direct and individual concern to the former.*

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Clause 240 (ex Article 231)

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

~~In the case of a regulation, however, the Court of Justice~~ ⁵ ~~it shall, if it considers this necessary, state which of the effects of the regulation~~ **act** which it has declared void shall be considered as definitive.

¹ This Article is the subject of specific consideration by the discussion circle on the Court of Justice and is therefore not dealt with here.

² See footnote concerning Article 8 on the appropriateness of using abbreviations in the Constitution and the possible alternative.

³ During the discussions on the Court of Justice, the Convention could consider whether the Court's jurisdiction as referred to in this Article should be extended to cover acts which are adopted by Community agencies and other bodies with the intention of producing legal effects vis-à-vis third parties. At present, such jurisdiction is provided for in certain Regulations setting up agencies.

⁴ Inserting the word "law" would constitute a substantive amendment.

⁵ Replacement of the term "regulation" by "act" is a necessary adjustment to bring this paragraph into line with the case-law whereby the Court of Justice has upheld the effects of acts other than regulations.

Clause 241 (ex Article 232)

Should the European Parliament, the Council or the Commission, in infringement of ~~this Treaty~~ **the Constitution**, fail ¹ to act, the Member States and the other **Union** institutions ~~of the Community~~ 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. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an **Union** institution ~~of the Community~~ 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 and in actions or proceedings brought against the latter.

Clause 242 (ex Article 233)

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to ~~this Treaty~~ **the Constitution** shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of [the second paragraph of Article 288].

This Article shall also apply to the *ECB*.

Clause 243 (ex Article 234)

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

- (a) the interpretation of ~~this Treaty~~ **the Constitution**;
- (b) the validity and interpretation of acts of **Union** institutions ~~of the Community~~ and of the *ECB*;
- (c) the interpretation of the statutes of bodies established by an act [*of the Council*], where those statutes so provide ².

¹ See the footnote to Article 230 concerning the advisability of extending jurisdiction to agencies and other bodies.

² The question arises as to the scope of this point (c) in relation to the preceding point. In any event, the text would have to be adjusted to take account of bodies set up by a codecision act.

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.

Clause 244 (ex Article 235)

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in [the second paragraph of Article 288].

Clause 245 (ex Article 236)

The Court of Justice shall have jurisdiction in any dispute between the ~~Community~~ **Union** and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

Clause 246 (ex Article 237)

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by [Article 226];
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in [Article 230];
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in [Article 230], and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under ~~this Treaty~~ **the Constitution** and the Statute of the *ESCB*. In this connection the powers of the Council of the *ECB* in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by [Article 226]. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, that bank shall be required to take the necessary ~~measures~~ **steps** to comply with the judgment of the Court of Justice.

Clause 247 (ex Article 238)

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of ~~the Community~~ **the Union**, whether that contract be governed by public or private law.

Clause 248 (ex Article 239)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject-matter of ~~this Treaty~~ **the Constitution** if the dispute is submitted to it under a special agreement between the parties.

Clause 249 (ex Article 240)

Save where jurisdiction is conferred on the Court of Justice by ~~this Treaty~~ **the Constitution**, disputes to which the ~~Community~~ **Union** is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Clause 250 (ex Article 241)

Notwithstanding the expiry of the period laid down in [the fifth paragraph of Article 230], any party may, in proceedings in which a ~~regulation adopted jointly by~~ **European law of** the European Parliament and **of** the Council, or a **European** regulation of the Council, of the Commission, or of the *ECB* is at issue, plead the grounds specified in [the second paragraph of Article 230] in order to invoke before the Court of Justice the inapplicability of that ~~regulation act~~.

Clause 251 (ex Article 242)

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Clause 252 (ex Article 243)

The Court of Justice may in any cases before it prescribe any necessary interim measures.

Clause 253 (ex Article 244)

The judgments of the Court of Justice shall be enforceable under the conditions laid down in [Article 256].

Clause 254 (ex Article 245)

The Statute of the Court of Justice shall be laid down in a ~~separate~~ Protocol.

~~The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, may amend the provisions of the Statute, with the exception of Title I. It shall act unanimously either at the request of the Court of Justice after consulting the Commission or at the request of the Commission after consulting the Court of Justice. In both cases it shall act after consulting the European Parliament.~~

[SECTION 5

THE COURT OF AUDITORS]

Clause 255 (ex Article 246)

The Court of Auditors shall carry out the audit.

Clause 256 (ex Article 247)

1. *The Court of Auditors shall consist of one national 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 to 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 for a term of six years. **Their term of office shall be renewable.** ~~The Council, acting by a qualified majority after consulting the European Parliament, shall adopt by a qualified majority the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable. It shall act after consulting the European Parliament.~~¹
- ~~They~~ **The Members of the Court of Auditors** shall elect ~~their~~ President ~~of the Court of Auditors~~ from among their number for a term of three years. ~~The President~~ **He** may be re-elected.
4. The Members of the Court of Auditors shall, in the **Union's** general interest ~~of the Community~~, be completely independent in the performance of their duties.

¹ It seems more logical to start with the duration and renewal of the term of office and then go on to the election procedure.

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.

5. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

6. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

7. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

8. The Council, ~~acting by a qualified majority~~, shall determine **by a qualified majority** the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions, ~~It shall also, by the same majority, determine as well as~~ any payment to be made instead of remuneration.

9. The provisions of the Protocol on the privileges and immunities of the European Communities¹ applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors.²

Clause 257 (ex Article 248)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the ~~Community~~ **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.

¹ This Protocol will have to be renamed in the light of the Union's new designation.

² In the interests of simplification, it might perhaps be better for this paragraph to be inserted directly into the Protocol, as in the case of members of the other institutions.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of ~~Community~~ **Union** activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the ~~Community~~ **Union**.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions ~~of the Community~~, on the premises of any body which manages revenue or expenditure on behalf of the ~~Community~~ **Union** and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions ~~of the Community~~, any bodies managing revenue or expenditure on behalf of the ~~Community~~ **Union**, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing ~~Community~~ **Union** expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of ~~Community~~ **Union** expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions ~~of the Community~~ and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions ~~of the Community~~.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

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

The Court of Auditors shall ~~draw up~~ **adopt** its Rules of Procedure. ~~Those rules shall require It shall act after obtaining~~ the approval of the Council, acting by a qualified majority.

[CHAPTER 2

PROVISIONS COMMON TO SEVERAL INSTITUTIONS]

~~Article 249~~¹

~~In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.~~

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

~~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.~~

¹ This Article has been deleted and replaced by the draft Article on "the legal acts of the Union" in Title V of Part One (Article 24 CONV 571/03).

Clause 258 (ex Article 250) ¹

- 1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 251(4) and (5).*
- 2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.*

Clause 259 (ex Article 251) ²

- 1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.*
- 2. The Commission shall submit a proposal to the European Parliament and the Council.*

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

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;*
- if the European Parliament does not propose any amendments, may adopt the proposed act;*
- 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.*

¹ This Article ought to be examined by the Convention in connection with Part One of the Constitution and is therefore not dealt with here.

² This Article ought to be adjusted in the light of Article 250 of the EC Treaty and the recommendations of Working Group IX on Simplification. Accordingly, it is not dealt with here.

3. *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 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.*

4. *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.*

5. *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.*

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

7. *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 252¹

~~Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:~~

- ~~(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.~~
- ~~(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.~~

¹ Article deleted: see report of Working Group IX on Simplification, page 16.

- ~~— If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.~~
- ~~(c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.~~
- ~~— If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.~~
- ~~(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.~~
- ~~— The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.~~
- ~~(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.~~
- ~~— Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.~~
- ~~(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.~~
- ~~(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.~~

Article 253 ¹

~~Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.~~

¹ This Article has been deleted and replaced by the draft article on "principles common to acts of the Union" in Title V of Part One (Article 32 CONV 571/03).

Article 254 ¹

- ~~1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 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 European 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.~~
- ~~2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European 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.~~
- ~~3. Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.~~

Clause 260 (ex Article 255) ²

- 1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.*
- 2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.*
- 3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.*

Clause 261 (ex Article 256)

~~Decisions~~**Measures** ³ of the Council, ~~or~~ of the Commission **or of the European Central Bank** ⁴ which impose a pecuniary obligation on persons other than States shall be enforceable.

¹ This Article has been deleted and replaced by the draft article on publication and entry into force in Title V of Part One (Article 33 CONV 571/03).

² This Article could be included in Part One of the Constitution; see CONV 369/02. Accordingly, it is not dealt with here. Nevertheless, the Convention may wish to consider whether the obligation set out in this Article should be extended to agencies and other bodies. At present, some of the Regulations setting up agencies lay down an obligation along these lines.

³ The term "decision" is used here in the generic sense. It is therefore suggested that it be replaced by "measures" to reflect the fact that it may cover other types of act.

⁴ This addition means that the fourth subparagraph of Article 110(2) of the EC Treaty, which refers to this Article, can be deleted.

Enforcement shall be governed by the rules of civil procedure in force in the **Member** State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

[CHAPTER 3

THE ECONOMIC AND SOCIAL COMMITTEE]¹

Clause (ex Article 257)

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

The Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.

Clause 263 (ex Article 258)

The number of members of the Economic and Social Committee shall not exceed 350.

¹ The Convention may wish to consider whether the word "European" should be added here, in line with current usage at the Committee.

The number of members of the Committee shall be as follows:

<i>Belgium</i>	<i>12</i>
<i>Denmark</i>	<i>9</i>
<i>Germany</i>	<i>24</i>
<i>Greece</i>	<i>12</i>
<i>Spain</i>	<i>21</i>
<i>France</i>	<i>24</i>
<i>Ireland</i>	<i>9</i>
<i>Italy</i>	<i>24</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>12</i>
<i>Austria</i>	<i>12</i>
<i>Portugal</i>	<i>12</i>
<i>Finland</i>	<i>9</i>
<i>Sweden</i>	<i>12</i>
<i>United Kingdom</i>	<i>24.</i>

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 **Union's** general interest ~~of the Community~~.

The Council, ~~acting by a qualified majority~~, shall ~~determine~~ **adopt, by a qualified majority, measures determining** the allowances of members of the Committee.

Clause 264 (ex Article 259)

~~1.—The members of the Committee shall be appointed for four years, on proposals from the Member States~~¹. **Their term of office shall be renewable.** The Council, ~~acting by a qualified majority~~, shall adopt, **by a qualified majority**, the list of members drawn up in accordance with the proposals made by each Member State. ~~The term of office of the members of the Committee shall be renewable.~~²

~~2.—The Council shall consult~~ **It shall act after consulting** the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the **Union's** activities ~~of the Community~~ are of concern.

Clause 265 (ex Article 260)

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

¹ The reference to Member States' proposals duplicates the following sentence.

² The Group thought it more logical to deal with the duration and renewal of the members' term of office first, then with the appointment procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament,**¹ of the Council or of the Commission. It may also meet on its own initiative.

Clause 266 (ex Article 261)

The Committee shall include specialised sections for the principal fields covered by ~~this Treaty~~ **the Constitution**.

These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.

Clause 267 (ex Article 262)

The Committee must be consulted **by the European Parliament,** by the Council or by the Commission where ~~this Treaty~~ **the Constitution** so provides. ~~The Committee~~ **In all other cases, it** may be consulted by these institutions ~~in all cases in which they consider it appropriate~~. It may **also** issue an opinion on its own initiative in cases in which it considers such action appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to **the European Parliament,** the Council and to the Commission.

~~The Committee may be consulted by the European Parliament.~~²

¹ This amendment, like the amendments to Articles 262, 264 and 265, is required in order to put the European Parliament on an equal footing with the Council in the context of the legislative procedure, as recommended in the report from Working Group IX on Simplification, CONV 424/02, page 15.

² Deletion follows on from the other amendments to this Article; see footnote to Article 260.

[CHAPTER 4
THE COMMITTEE OF THE REGIONS]

Clause 268 (ex Article 263)

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

The number of members of the Committee of the Regions shall not exceed 350.

The number of members of the Committee shall be as follows:

<i>Belgium</i>	<i>12</i>
<i>Denmark</i>	<i>9</i>
<i>Germany</i>	<i>24</i>
<i>Greece</i>	<i>12</i>
<i>Spain</i>	<i>21</i>
<i>France</i>	<i>24</i>
<i>Ireland</i>	<i>9</i>
<i>Italy</i>	<i>24</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>12</i>
<i>Austria</i>	<i>12</i>
<i>Portugal</i>	<i>12</i>
<i>Finland</i>	<i>9</i>
<i>Sweden</i>	<i>12</i>
<i>United Kingdom</i>	<i>24</i>

The members of the Committee and an equal number of alternate members shall be appointed for four years, ~~on proposals from the respective Member States~~¹. Their term of office shall be renewable. The Council, ~~acting by a qualified majority~~, shall adopt, **by a qualified majority**, the list of members and alternate members drawn up in accordance with the proposals made by ~~each~~ **the respective** Member States. When the mandate referred to in the first paragraph on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

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 **Union's** general interest ~~of the Community~~.

¹ The reference to Member States' proposals duplicates the following sentence.

Clause 269 (ex Article 264)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament**, of the Council or of the Commission. It may also meet on its own initiative.

Clause 270 (ex Article 265)

The Committee of the Regions shall be consulted **by the European Parliament**, by the Council or by the Commission where ~~this Treaty~~ **the Constitution** 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.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to [Article 262], the Committee of the Regions shall be informed **by the European Parliament**, the Council or the Commission of the request for an opinion. [~~Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.~~] ¹

~~The Committee of the Regions may be consulted by the European Parliament.~~ ²

It may issue an opinion on its own initiative **when it considers that specific regional interests are at stake** ~~in cases in which it considers such action appropriate.~~

The opinion of the Committee, together with a record of the proceedings, shall be forwarded **to the European Parliament**, to the Council and to the Commission.

¹ Suggestion: amalgamate this sentence with the penultimate subparagraph of this Article, given that that subparagraph provides that the Committee may issue an opinion on its own initiative in any case.

² Deletion follows on from the other amendments to this Article; see footnote to Article 260.

[CHAPTER 5
THE EUROPEAN INVESTMENT BANK]

Clause 271 (ex Article 266)

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol ~~annexed to this Treaty~~. The Council ~~acting unanimously, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the European Investment Bank~~, may amend Articles 4, 11 and 12 and Article 18(5) of the Statute of the Bank. **It shall act unanimously, either at the request of the European Investment Bank and after consulting the Commission, or at the request of the Commission and after consulting the European Investment Bank. In both cases it shall act after consulting the European Parliament.**

Clause 272 (ex Article 267)

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~~ **internal** market in the **Union's** interest ~~of the Community~~. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the ~~common~~ **internal** market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other ~~Community~~ **Union** financial instruments.

[TITLE II ¹

FINANCIAL PROVISIONS]

Clause 273 (ex Article 268) ²

All items of revenue and expenditure of the Community, 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 by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs ³ shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

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

Clause 274 (ex Article 269)

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

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

Clause 275 (ex Article 270)

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.

¹ Some provisions of this Title could be moved to Part One of the Constitution; see CONV 369/02.

² The Convention should consider Articles 268 to 273 in the context of Part One; they are therefore not dealt with here.

³ This reference is not in line with the amendments to the EU Treaty made by the Treaty of Amsterdam; the correct heading is "provisions on police and judicial cooperation in criminal matters".

Clause 276 (ex Article 271)

The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to [Article 279] provide otherwise.

In accordance with conditions to be laid down pursuant to [Article 279], any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to [Article 279].

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Clause 277 (ex Article 272)

1. The financial year shall run from 1 January to 31 December.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

- (a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;*
- (b) with regard to the proposed modifications:*
 - where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;*
 - where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;*
 - where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.*

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. *Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.*

7. *When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.*

8. *However, the European Parliament, acting by a majority of its Members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.*

9. *A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.*

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;*
- the average variation in the budgets of the Member States;*

and

- the trend of the cost of living during the preceding financial year.*

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three-fifths of the votes cast.

10. *Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.*

Clause 278 (ex Article 273)

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one-twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Clause 279 (ex Article 274)

The Commission shall implement the budget, in accordance with ~~the provisions of the regulations made by the~~ **European laws/European** regulations **adopted** pursuant to [Article 279], on its own responsibility and within the limits of the appropriations **allocated**, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The European laws/European regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the **European laws/European** regulations ~~made~~ **adopted** pursuant to [Article 279], transfer appropriations from one chapter to another or from one subdivision to another.

Clause 280 (ex Article 275)

The Commission shall submit annually **to the European Parliament and to the Council** ~~and to the European Parliament~~ the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the **Union's** assets and liabilities ~~of the Community~~.

Clause 281 (ex Article 276)

1. The European Parliament, ~~acting on a recommendation from the Council~~ which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in [Article 275], the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in [Article 248(1), second subparagraph] and any relevant special reports by the Court of Auditors.
2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.
3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Clause 282 (ex Article 277)

The budget shall be drawn up in ~~the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279~~ **euro**.

Clause 283 (ex Article 278)

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of ~~this Treaty~~ **the Constitution**. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Clause 284 (ex Article 279)

1. The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors,~~ shall:

- (a) ~~make~~ **adopt European financial laws/European** Financial Regulations ¹ specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

The Council shall act unanimously and, from 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and. It shall act after consulting the European Parliament and obtaining the opinion of the Court of Auditors.

2. The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors,~~ **, shall unanimously adopt measures determining** ~~shall determine~~ the methods and procedure whereby the budget revenue provided under the arrangements relating to the ~~Community's~~ **Union's** own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements. **It shall act after consulting the European Parliament and the Court of Auditors.**

Clause 285 (ex Article 280)

1. The ~~Community~~ **Union** and the Member States shall counter fraud and any other illegal activities affecting the **Union's** financial interests ~~of the Community~~ through measures to be taken in accordance with this Article, 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~~ **steps** to counter fraud affecting the **Union's** financial interests ~~of the Community~~ as they take to counter fraud affecting their own financial interests.

¹ Since the draft Articles in Title V "Exercise of Union competence" in Part One (Articles 25 and 26 CONV 571/03) provide that the Council may adopt either laws or regulations, the Convention would need to identify those cases in which, in the area covered by each Article, the Council may adopt either or both of these two types of act (see explanatory comments in Annex II hereto).

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

4. The **European Parliament and the Council**, ~~acting in accordance with the legislative procedure referred to in Article 251, after consulting the Court of Auditors,~~ **shall adopt** the necessary measures in the fields of the prevention of and fight against fraud affecting the **Union's** financial interests ~~of the Community~~ with a view to affording effective and equivalent protection in the Member States. **They shall act after consulting the Court of Auditors.** These measures shall not concern the application of national criminal law or the national administration of justice.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures ~~taken~~ **and provisions adopted** for the implementation of this Article.

[OTHER PROVISIONS] ¹

Clause 286 (ex Article 11) ²

1. Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

2. Authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. When enhanced cooperation relates to an area covered by the procedure referred to in Article 251 of this Treaty, the assent of the European Parliament shall be required.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

3. The acts and decisions necessary for the implementation of enhanced cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided in this Article and in Articles 43 to 45 of the Treaty on European Union.

¹ Suggested new heading not contained in the structure proposed on 28 October 2002.

² Articles 11 and 11a will be examined by the Convention.

Clause 287 (ex Article 11a)

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 11 shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Commission shall take a decision on it, and on such specific arrangements as it may deem necessary.

Clause 288 (ex Article 282)

In each of the Member States, the ~~Community~~ **Union** shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the ~~Community~~ **Union** shall be represented by the Commission.

Clause 289 (ex Article 283)

The Council, ~~shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down,~~ **shall adopt by a qualified majority** the Staff Regulations of **Union** officials of the ~~European Communities~~ and the Conditions of Employment of other servants of those ~~Communities~~ **of the Union**. **It shall act after consulting the other institutions concerned.**

Clause 290 (ex Article 284)

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of ~~this Treaty~~ **the Constitution**, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Clause 291 (ex Article 285)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, **the European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251, shall adopt** measures for the production of statistics where necessary for the performance of the **Union's** activities of the ~~Community~~.
2. The production of ~~Community~~ **Union** statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

Clause 292 (ex Article 286) ¹

1. ~~From 1 January 1999, Community~~ **Union** acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, ~~this Treaty~~ **the Constitution**.
2. ~~Before the date referred to in paragraph 1,~~ **The European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251, shall adopt measures setting up** ~~shall establish~~ an independent supervisory body responsible for monitoring the application of ~~the such Community acts referred to in paragraph 1 to Community Union~~ institutions and bodies and ~~shall adopt any other relevant measures provisions as appropriate~~.

Clause 293 (ex Article 287) ²

The members of the **Union's** institutions ~~of the Community~~, the members of committees, and the officials and other **Union** servants ~~of the Community~~ shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Clause 294 (ex Article 288)

The **Union's** contractual liability ~~of the Community~~ shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the ~~Community~~ **Union** ³ shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the *ECB* or by its servants in the performance of their duties.

The personal liability of its servants towards the ~~Community~~ **Union** shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

¹ With abolition of the division into pillars, the scope of this provision might extend to matters currently covered by the second and third pillars, unless specific provision is made.

² It might perhaps be advisable to extend the obligation referred to in this Article to agencies and other bodies, bearing in mind also the possible extension of the obligation laid down in Article 255 of the EC Treaty.

³ Replacing "Community" by "Union" could involve extending the scope of this Article (non-contractual liability) to matters currently covered by the second and third pillars, unless specific provision is made.

Clause 295 (ex Article 289)

The seat of the **Union's** institutions ~~of the Community~~ shall be determined by common accord of the Governments of the Member States.

Clause 296 (ex Article 290)

The **Council shall unanimously adopt measures laying down the** rules governing the languages of the **Union's** institutions ~~of the Community shall~~, without prejudice to ~~provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.~~

Clause 297 (ex Article 291)

The ~~Community~~ **Union** shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities ¹. The same shall apply to the European Central Bank, ~~the European Monetary Institute,~~ and the European Investment Bank.

Clause 298 (ex Article 292) ²

Member States undertake not to submit a dispute concerning the interpretation or application of ~~this Treaty~~ **the Constitution** to any method of settlement other than those provided for therein.

Clause 299 (ex Article 307)

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by ~~the provisions of this Treaty~~ **the Constitution**.

To the extent that such agreements are not compatible with ~~this Treaty~~ **the Constitution**, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

¹ See footnote to Article 247 (change of name of the protocol).

² With abolition of the division into pillars, the scope of this provision might extend to matters currently covered by the second and third pillars, unless specific provision is made.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under ~~this Treaty~~ **the Constitution** by each Member State form an integral part of the ~~establishment of the Community Union~~ and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

* * *

**Provisions of the EC and EU Treaties
not included in Part Two
of the draft Constitution**

*To be included either in Part One or in Part Three
(general and final provisions) ¹*

¹ For the record: some articles appear in strike-out, either because they are the subject of draft articles proposed by the Praesidium, or because they are obsolete. The articles in italics are those whose substance is (or will be) under scrutiny by the Convention (see Annex I to the report).

[Provisions taken from the EC Treaty]

Article 1¹

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.~~

Article 2

~~The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.~~

Article 3

~~1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:~~

- ~~(a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;~~
- ~~(b) a common commercial policy;~~
- ~~(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;~~
- ~~(d) measures concerning the entry and movement of persons as provided for in Title IV;~~
- ~~(e) a common policy in the sphere of agriculture and fisheries;~~

¹ Articles 1, 2 and 3(1) have been deleted and replaced by draft articles (establishment, values and objectives of the Union) in Part One (Articles 1, 2 and 3 CONV 528/03).

- ~~(f) — a common policy in the sphere of transport;~~
- ~~(g) — a system ensuring that competition in the internal market is not distorted;~~
- ~~(h) — the approximation of the laws of Member States to the extent required for the functioning of the common market;~~
- ~~(i) — the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;~~
- ~~(j) — a policy in the social sphere comprising a European Social Fund;~~
- ~~(k) — the strengthening of economic and social cohesion;~~
- ~~(l) — a policy in the sphere of the environment;~~
- ~~(m) — the strengthening of the competitiveness of Community industry;~~
- ~~(n) — the promotion of research and technological development;~~
- ~~(o) — encouragement for the establishment and development of trans-European networks;~~
- ~~(p) — a contribution to the attainment of a high level of health protection;~~
- ~~(q) — a contribution to education and training of quality and to the flowering of the cultures of the Member States;~~
- ~~(r) — a policy in the sphere of development cooperation;~~
- ~~(s) — the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;~~
- ~~(t) — a contribution to the strengthening of consumer protection;~~
- ~~(u) — measures in the spheres of energy, civil protection and tourism.~~

2. [...] ¹

Article 5 ²

~~The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.~~

¹ This paragraph appears above under "common provisions" at the beginning of the supplementary version.

² Article 5 has been deleted and replaced by the draft article entitled "Fundamental principles" in Part One (Article 8 CONV 528/03).

~~In areas which do not fall within its exclusive competence, the Community 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.~~

~~Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.~~

Article 7¹

1. The tasks entrusted to the Community shall be carried out by the following institutions:

- a EUROPEAN PARLIAMENT,*
- a COUNCIL,*
- a COMMISSION,*
- a COURT OF JUSTICE,*
- a COURT OF AUDITORS.*

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. 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 8²

A European System of Central Banks (hereinafter referred to as "ESCB") and a European Central Bank (hereinafter referred to as "ECB") shall be established in accordance with the procedures laid down in this Treaty; they shall act within the limits of the powers conferred upon them by this Treaty and by the Statute of the ESCB and of the ECB (hereinafter referred to as "Statute of the ESCB") annexed thereto.

¹ Articles 7 to 10 are or will be covered by Part One.

² It is questionable whether the Constitution should contain abbreviations ("ECB" for "European Central Bank" for example) or whether it would not be clearer for readers if the normal name of the institution or body concerned were used. The European Investment Bank (Article 9) is not abbreviated to "EIB" in the Articles of the Treaty. If it is the intention to use such abbreviations, an explanatory list of them should be included at some point in the Constitution.

Article 9

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

Article 10

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

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

Article 17¹

~~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 enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.~~

[PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES]²

Article 182

~~The Member States agree to associate with the Community the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom~~ **shall be associated with the Union.** These countries and territories (hereinafter called the "countries and territories") are listed in [Annex II] ~~to this Treaty.~~

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the ~~Community~~ **Union** as a whole.

¹ Article 17 has been deleted and replaced by the draft article on citizenship in Part One (Article 7(1) CONV 528/03).

² The OCT section concerns partial application of TEC arrangements to the countries and territories concerned. It could be placed in the final provisions which deal with the territorial application of the Constitution. There should also be a reference to association arrangements in Part One of the Constitution

In accordance with the principles set out ~~in the Preamble to this Treaty...~~¹, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 183

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to ~~this Treaty~~ **the Constitution**.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the ~~Community~~ **Union**, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the [Chapter] relating to the right of establishment and on a non-discriminatory basis, subject to any special ~~provisions laid down~~ **measures adopted** pursuant to [Article 187].

Article 184

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States ~~in accordance with the provisions of this Treaty~~ **provided for by the Constitution**.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with ~~the provisions of~~ [Article 25].
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

¹ The principles in question, which are currently in the preamble to the TEC, should be incorporated in the Constitution and, if appropriate, in this provision.

The duties referred to in the ~~preceding first~~ subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 185

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when ~~the provisions of~~ [Article 184(1)] ~~have~~ **has** been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States ~~the measures needed that they take the necessary steps~~ to remedy the situation.

Article 186 ¹

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

Article 187

The Council ~~acting unanimously~~, shall **adopt unanimously** ², on the basis of the experience acquired under the association of the countries and territories with the **Community Union** and of the principles set out ~~in this Treaty ...~~ ³, ~~lay down provisions~~ measures as regards the detailed rules and the procedure for the association of the countries and territories with the **Community Union**.

¹ This Article should be adapted to take account of the Union's competence to regulate freedom of movement for third-country workers in the Member States (see Article 187 below). Moreover, it should be noted that Working Group X on Freedom, Security and Justice recommended abolishing the use of agreements between Member States as a legal instrument for achieving the Union's objectives.

² It should be noted that here the Council acts without a Commission proposal.

³ See footnote re the third paragraph of Article 182 TEC above.

Article 188

~~The provisions of Articles 182 to 187 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this Treaty.~~

PART SIX

GENERAL AND FINAL PROVISIONS

~~Article 281~~¹

~~The Community shall have legal personality.~~

[Article 293²

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

- the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals;
- the abolition of double taxation within the Community;
- the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries;
- the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.]

¹ This Article has been deleted and replaced by the draft article on "legal personality" in Title I of Part I (Article 4, CONV 528/03).

² Given the recommendations of Working Groups IX on Simplification and X on Freedom, Security and Justice, that the convention instrument should be abolished, the Convention may wish to consider what to do about this Article.

Article 299

1. ~~This Treaty~~ **The Constitution**¹ shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland².

2. ~~The provisions of this Treaty~~ **The Constitution** shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, ~~acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament,~~ shall adopt **by a qualified majority** specific measures aimed, in particular, at laying down the conditions of application of the ~~present Treaty~~ **Constitution** to those regions, including common policies. **It shall act after consulting the European Parliament.**

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal ~~Community~~ **Union** programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the ~~Community~~ **Union** legal order, including the internal market and common policies.

3. The special arrangements for association set out in [Part Four] of ~~this Treaty~~ **the Constitution** shall apply to the overseas countries and territories listed in [Annex II] ~~to this Treaty~~.

~~This Treaty~~ **The Constitution** shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the ~~mentioned~~ list **in Annex II**.

4. The ~~provisions of this Treaty~~ **Constitution** shall apply to the European territories for whose external relations a Member State is responsible.

¹ Article 299 applies only to the TEC; replacement of the word "Treaty" by "Constitution" raises the question of the Constitution's territorial scope.

² This paragraph will need to be adjusted in line with the Act of Accession.

5. The ~~provisions of this Treaty~~ **Constitution** shall apply to the Åland Islands in accordance with the provisions set out in Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

- (a) ~~this Treaty~~ **the Constitution** shall not apply to the Faroe Islands;
- (b) ~~this Treaty~~ **the Constitution** shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) ~~the provisions of this Treaty~~ **the Constitution** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

Article 305 ¹

~~1. The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.~~

~~2. The provisions of this Treaty~~ The **Constitution** shall not derogate from ~~those of the Treaty~~ establishing the European Atomic Energy Community.

Article 306

The ~~provisions of this Treaty~~ **Constitution** shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of ~~this Treaty~~ **the Constitution**.

¹ This Article might be re-examined, depending on how the question of the EURATOM Treaty is dealt with.

Article 308 ¹

~~If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.~~

Article 309 ²

1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with Article 7(3) of the Treaty on European Union, these voting rights shall also be suspended with regard to this Treaty.

2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has been determined in accordance with Article 7(2) of that Treaty, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. 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 this Treaty shall in any case continue to be binding on that State.

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

4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).

This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.

¹ This Article has been deleted and replaced by the draft article on the "flexibility clause" in Title III of Part One (Article 16 CONV 528/03).

² The Convention should consider this Article in the context of Part One; it is therefore not dealt with here.

Article 311¹

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.

Article 312

This Treaty is concluded for an unlimited period.

FINAL PROVISIONS

ARTICLE 313

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

Article 314

This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.

¹ Articles 311 to 314 are to be incorporated into Part Three (see CONV 369/02) and are accordingly not dealt with here.

[Provisions taken from the EU Treaty]

~~Article 1~~¹

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union".~~

~~This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.~~

~~The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.~~

~~Article 2~~

~~The Union shall set itself the following objectives:~~

- ~~— to promote economic and social progress and a high level of employment 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, ultimately including a single currency in accordance with the provisions of this Treaty;~~
- ~~— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17;~~
- ~~— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;~~
- ~~— to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;~~

¹ Articles 1 and 2 are deleted and replaced by draft articles (Establishment of the Union, the Union's values and the Union's objectives) of Part One (Articles 1, 2 and 3 CONV 528/03).

~~to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.~~

~~The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.~~

Article 3

*The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire* .*¹

*[...]*²

*Article 4*³

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

Article 5

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, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.

¹ This point will be covered by Title IV (institutions) of Part One.

² This paragraph is included under Chapter B.Va above (external action, other provisions) of the supplementary version.

³ Articles 4 and 5 will be covered by Title IV (institutions) of Part One.

Article 6¹

- ~~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.~~
- ~~2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.~~
- ~~3. The Union shall respect the national identities of its Member States.~~
4. [The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.]²

Article 7³

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 principles mentioned in Article 6(1), 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 the 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 principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.

¹ Paragraph 1 is deleted and replaced by the draft article on "values" of Part One (Article 2 CONV 528/03); Paragraph 2 is deleted and replaced by the draft article on "fundamental rights" of Part One (Article 5(3) CONV 528/03); Paragraph 3 is deleted and replaced by the draft article on "Establishment of the Union" of Part One (Article 1(2) CONV 528/03).

² It is suggested that this paragraph be covered in practice by Part One, and that it could therefore be deleted.

³ This Article is to be examined by the Convention in the context of Part One and is therefore not dealt with here.

3. *Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this 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 this 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 3 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 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.*

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

6. *For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.*

Article 43

Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community provided that the proposed cooperation:

- (a) is aimed at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration;*
- (b) respects the said Treaties and the single institutional framework of the Union;*
- (c) respects the *acquis communautaire* and the measures adopted under the other provisions of the said Treaties;*
- (d) remains within the limits of the powers of the Union or of the Community and does not concern the areas which fall within the exclusive competence of the Community;*
- (e) does not undermine the internal market as defined in Article 14(2) of the Treaty establishing the European Community, or the economic and social cohesion established in accordance with Title XVII of that Treaty;*

- (f) *does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them;*
- (g) *involves a minimum of eight Member States;*
- (h) *respects the competences, rights and obligations of those Member States which do not participate therein;*
- (i) *does not affect the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union;*
- (j) *is open to all the Member States, in accordance with Article 43b.*

Article 43a

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 Treaties.

Article 43b

When enhanced cooperation is being established, it shall be open to all Member States. It shall also be open to them at any time, in accordance with Articles 27e and 40b of this Treaty and with Article 11a of the Treaty establishing the European Community, 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 44

1. For the purposes of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation referred to in Article 43, the relevant institutional provisions of this Treaty and of the Treaty establishing the European Community 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 shall be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members concerned as laid down in Article 205(2) of the Treaty establishing the European Community, and in the second and third subparagraphs of Article 23(2) of this Treaty as regards enhanced cooperation established on the basis of Article 27c. 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 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.*

Article 44a

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 consulting the European Parliament, decide otherwise.

Article 45

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 the Community, and shall cooperate to that end.

TITLE VIII¹

FINAL PROVISIONS

Article 46

The provisions of the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:

- (a) provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;*
- (b) provisions of Title VI, under the conditions provided for by Article 35;*
- (c) provisions of Title VII, under the conditions provided for by Articles 11 and 11a of the Treaty establishing the European Community and Article 40 of this Treaty;*

¹ This Title will appear in the general and final provisions (Part Three).

- (d) *Article 6(2) with regard to action of the institutions, insofar as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty;*
- (e) *the purely procedural stipulations in Article 7, with the Court acting at the request of the Member State concerned within one month from the date of the determination by the Council provided for in that Article;*
- (f) *Articles 46 to 53.*

Article 47

Subject to the provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, and to these final provisions, nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.

Article 48

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, 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 common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Article 49

Any European State which respects the principles set out in Article 6(1) 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.

The conditions of admission and the adjustments to the Treaties 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 50

- 1. Articles 2 to 7 and 10 to 19 of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Brussels on 8 April 1965, are hereby repealed.*
- 2. Article 2, Article 3(2) and Title III of the Single European Act signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 are hereby repealed.*

Article 51

This Treaty is concluded for an unlimited period.

Article 52

- 1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.*
- 2. This Treaty shall enter into force on 1 January 1993, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.*

Article 53

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

Pursuant to the Accession Treaty of 1994, the Finnish and Swedish versions of this Treaty shall also be authentic.

ANNEX I

to Volume I

of the consolidated report from the working party of experts of the Legal Services

Terminological and typographical conventions

Terminological and typographical conventions

I. Terminology

In accomplishing its task, the group of experts followed the guidelines given to it in the remit of 29 January 2003 and the report of Working Group IX on Simplification of 29 November 2002 (CONV 424/02). It also took account of the reports produced by other Convention working groups and information communicated by the Secretary-General of the Convention.

It agreed on the following formulae for presentation and the following drafting conventions.

1. The articles of the EU Treaty and the EC Treaty have been merged and ordered in line with the structure of the preliminary draft Constitutional Treaty dated 28 October 2002, as given in CONV 369/02.
2. The term "*Community*" used as a substantive or an adjective will be replaced by "*Union*", "*of the Union*" or "*by the Union*". As we shall see later, these changes may sometimes entail substantive changes (see Annex II).
3. Wherever there is currently a reference to the "*Treaty*" or "*this Treaty*", the term "*Constitution*" has been adopted (with the consequences which this change in form may have for the scope thus conferred on the Constitution; see Annex II).
4. The terms "*common market*" or "*single market*" are both replaced by the term "*internal market*".
5. The terms "*law*" and "*framework law*" replace respectively "*regulation*" and "*directive*". Where there is a need for a substantive decision to determine whether or not an act included in the draft Constitution is legislative, the group has used both the old and the new terms (for example "*law/regulation*"; see also Annex II).

Moreover, at the express request of the Secretary-General of the Convention, the adjective "*European*" has been added to the names of acts (laws, framework laws, regulations and decisions) as indicated in the draft Article on "the legal acts of the Union" in Part One (CONV 571/03).

6. Where there is room for discretion as regards the form of action or intervention by Union institutions, the term "*measure*" was chosen in preference to other expressions indicating either generic acts, such as "*decision*", or intervention methods which were not clearly defined. Use of this expression prompts some remarks in the light of draft Articles 24 to 33 (CONV 571/03 of 26 February 2003), to which we shall return in Annex II.

7. On the other hand, the term "*provision*" applies either to the national law of the Member States or, where appropriate, to international law, or to the existing legislative machinery.
8. In the same vein, the verb "*to adopt*" has been used uniformly to express decision-making by Union institutions, whereas the current Treaties alternate between different formulae.
9. Similarly, the substantive has been preferred to the verbal formula if the substantive corresponds to a known legal act, for example: "*address a decision*" rather than "*decide...*".
10. In order to reflect the guidelines in CONV 424/02, Part II B(c), it was agreed that adoption of measures by the codecision procedure (current Article 251 TEC) would be mentioned in the following terms:

"The European Parliament and the Council, in accordance with the legislative procedure, ... shall adopt a law/framework law/measure"

The fact that the expression "*legislative procedure*" is reserved only for joint action by the European Parliament and the Council calls for substantive legal comment, as well as comments on form and readability, and we shall return to these in Annex II below.

11. Where the Council adopts acts on its own, the following expression has been used, "*the Council, on a proposal from the Commission, shall adopt by a qualified majority/unanimously...*" (see also Annex II).
12. Where a measure is adopted after consultation or after having obtained the opinion of an institution or body, that aspect is not kept in immediate proximity to the decision-making body, as is currently the case, but rather consigned to a closing sentence, in the following terms: "*It shall act after consulting the European Parliament, the Economic and Social Committee ...*".
13. In the interests of readability, the working party preferred to delete indents within the structure of articles and replaced them by letters (a), (b), (c) or (i), (ii), (iii), depending on the degree of detail contained in the provisions in question.
14. Some terms have been made a little less specific. For example, instead of "*.... pursuant to the provisions of this Article*", we say "*... pursuant to Article ...*".
15. The French expression "*en vue de*" is replaced by "*pour*".

II. Typography

16. The words or phrases struck out are those which should be deleted.
17. The words or phrases in bold type are those which should be added.
18. The articles reproduced in italics are those which are to undergo substantive amendment by the Convention subsequently. It was thought preferable to leave them as they appear currently in the Treaty on European Union and the Treaty establishing the European Community.
19. The words or phrases in square brackets may be adapted subsequently to take account of new provisions resulting from the Convention's proceedings.
20. The articles in Part Two of the preliminary draft Constitution have been renumbered and, in order to avoid any confusion at this preliminary stage of Convention proceedings, are followed by the previous numbering. New articles are called "Clauses". Articles from the EC Treaty are followed by "(ex article)" and those from the EU Treaty are followed by "(ex article ... TEU)".
21. Cross-references are also placed in square brackets to take account of the need to change them in the light of future renumbering.
22. The headings of the current intermediary titles and sections of the EU and EC Treaties have been retained for ease of reading and placed between square brackets to indicate their provisional nature pending decisions to be taken by the Convention on a more detailed structure.

* * *

ANNEX II

to Volume I

of the consolidated report from the working party of experts of the Legal Services

Comments and suggestions

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Introduction

1. Annex II to the report contains suggestions and comments relating to the fourth and fifth indents of point 4 of the remit to the working party of experts.

In most cases, these are comments that amplify the footnotes introduced to explain the choices and proposals made concerning the various provisions of the EC and EU Treaties contained in Volumes I and II.

I. GENERAL CONSIDERATIONS

A. Extension of the scope of certain provisions

2. The application of certain simplification conventions – such as replacing "Community" with "Union" and "Treaty" with "Constitution" – sometimes involves extending the scope of certain provisions of the EC Treaty, in particular:
 - horizontal clauses for the integration of certain policies;
 - provisions on the powers of the Parliament, the Commission and the Court of Justice;
 - the final Articles of the EC Treaty (protection of personal data, obligation of confidentiality, territorial application, etc.).

As a result of the terminological changes in question, the application of these provisions – currently confined to the scope of the EC Treaty – would be extended to the fields covered by the second and third pillars, concerning the common foreign and security policy and judicial and police cooperation in criminal matters.

The consequences of such extension need to be examined.

B. Use of abbreviations

3. The current Treaties use abbreviations in only a very few cases, such as "ECB" (European Central Bank) and "ESCB" (European System of Central Banks).

The question arises as to whether such abbreviations should be used in the Constitution, or whether it might not be easier for readers if the official name of the institution or body concerned were used. For example, unlike the European Central Bank, the European Investment Bank is not abbreviated to EIB in the current EC Treaty. In any case, if such abbreviations were to be used, the appropriate explanations would have to be clearly set out in the Constitution.

C. Structure of Part Two of the Convention

4. The incorporation of the EC and EU Treaties into Part Two of the Constitution has raised a number of questions to which the working party would draw the Convention's attention, namely:
- the fact that certain provisions have no place in the structure dated 28 October 2002, such as, for example, the provisions having general application (Articles 3(2), 6, 16, 295 and 296 of the EC Treaty), the provisions on non-discrimination and citizenship (Articles 12, 13 and 18 to 22), those on taxation (Articles 90 to 93), customs cooperation (Article 135) or economic, financial and technical cooperation with third countries (Article 181a). The working party has therefore made suggestions regarding where they should be placed in Part Two;
 - the fact that the structure dating from October 2002 should be updated to take account of Convention work in progress. Thus:
 - the structure dating from October 2002 groups the areas of competence without reference to their classification by category, except with regard to areas for supporting action;
 - certain competences proposed in the meantime by the Praesidium and examined by the Convention are not contained in the structure, such as energy, space, humanitarian aid, protection against disasters and sport. The Convention could consider the advisability of providing for specific legal bases in these areas;
 - in the structure dating from October 2002, public health appears under "supporting action" while the Praesidium has in the meantime proposed that it be a "shared competence";
 - the entirely provisional nature of certain groupings of Articles such as, for example, in the area of external relations, owing to the fact that these groupings would first require substantive choices to be made by the Convention;
 - the scope of Chapter D on the functioning of the Union, where the working party has at this stage taken over the institutional and budgetary provisions of the EC Treaty in their entirety pending Convention decisions on the matter. Similarly, the working party has inserted some EC Treaty provisions having general application, such as Articles 282 to 292 as well as Articles 11 and 11a on enhanced cooperation, into Chapter D.

II. SUGGESTED TECHNICAL SIMPLIFICATIONS

A. Suggested deletions

a. deletions on grounds of obsolescence

5. Some provisions of the EC Treaty refer to dates or events that have been superseded. For example, Article 14 TEC (and, by referral, Article 93 TEC) refers to 31 December 1992, the date set for the completion of the internal market, and Article 37(1) TEC refers to a conference that took place in Stresa in 1958, the outcome of which now forms part of the *acquis*. These references are obsolete.

b. deletions in accordance with the conclusions of Working Group IX on Simplification

6. The report of Working Group IX on Simplification proposes that the cooperation procedure provided for in Article 252 TEC be discontinued (CONV 424/02, page 16).

c. other possible deletions

7. Some current provisions of the EC Treaty do not seem to be in conformity with proposals already made to the Convention: Article 293 TEC advocates the conclusion of agreements between Member States, whereas the conclusions of Working Group IX on Simplification and Working Group X on Freedom, Security and Justice propose that this type of instrument should be abolished.

Doubts may also remain concerning Articles 78 and 87(2)(c) TEC, on the special arrangements to take account of the division of Germany.

It was felt that the Convention should have these points brought to its attention and that it should be asked to consider whether they should be maintained or deleted.

B. Suggested mergers/splits

a. Mergers and splits carried out

8. In the interests of simplification, the working party made a number of mergers between articles or paragraphs where this did not affect the meaning of the provisions in any way. For example, it merged Articles 28 and 29 TEC, which prohibited – in identical terms – quantitative restrictions on both imports and exports.

The same applies to Article 56(1) and Article 56(2) TEC, which prohibit – in identical terms – restrictions on, respectively, capital movements and payments between Member States and between Member States and third countries.

9. The working party also split up provisions where this made the text clearer without altering the meaning. For example, Article 172 TEC, which sets out procedural rules for the adoption of certain legal acts concerning research and technological development, has been split up so that the procedural rules are linked to each of the legal bases concerned, namely Articles 167, 168, 169 and 171 TEC.

b. Suggested mergers

10. In other cases, and to keep within its remit, the working party confined itself to raising the possibility of a merger without actually effecting it in the text itself. This applies to the following four cases:

(i) Article 19(1) and Article 19(2) TEC

11. Article 19(1) and Article 19(2) TEC provide the legal basis for adopting the arrangements for exercising the right to vote in and stand for both municipal and European Parliament elections. Although these provisions are formulated in almost identical terms and the relevant rights are brought together in the second indent of Article 7(2) of the draft of Part One of the Constitution (CONV 528/03 of 6 February 2003), the working party considered that any merger between them raised questions to which a political response would be necessary. Firstly, the right to vote in municipal elections and the right to vote in "European" elections raise different questions; moreover, the two issues have been dealt with separately in the past. Secondly, the fact that the right to vote in European elections as referred to in Article 19(2) TEC is expressed "[without] prejudice to Article 19(4)" TEC makes it more difficult to merge these provisions given the texts as they stand at present.

(ii) Articles 60 and 301 TEC

12. The working party did not propose any change to Article 60 TEC or Article 301 TEC because these provisions both come within the sphere of the Union's external relations, which will be dealt with by the Convention at a later stage. As these two Articles concern financial and economic measures against third countries, they might be appropriately combined in a single article in the future chapter on external relations.

(iii) Articles 70 and 80 TEC

13. Article 70 TEC establishes a common transport policy, while Article 80 TEC determines its scope and in particular the procedure for applying it to sea and air transport. The working party noted that, after successive amendments to the EC Treaty, the empowerment of the Council by the first subparagraph of Article 80(2) would be difficult to reconcile with the second subparagraph. Moreover, it appears that the first subparagraph of Article 80(2) TEC has not been used in practice. Since the Single European Act of 1986, sea and air transport provisions have been adopted directly without prior empowerment.

14. A clearer and more concise simplification would be for paragraph 2 to read as follows:
"Appropriate measures may be taken for sea and air transport, in accordance with the procedure laid down in Article 71".
15. Combining Articles 70 and 80 TEC would give a more substantial change; since there would be a basic alteration, the following is simply a suggested wording for Article 70:

"As regards transport, the objectives of the Constitution shall be pursued by means of a common policy.

The common transport policy provided for in this Title shall apply to transport by rail, road and inland waterway.

It may include appropriate measures relating to sea and air transport."

(iv) Articles 94 and 95 TEC

16. The Convention's attention is also drawn to the question of the relationship between Articles 94 and 95 of the EC Treaty. While Article 94 TEC is the legal basis for the approximation of national laws which "*directly affect*" the establishment and functioning of the common (internal) market, Article 95 TEC is the legal basis for the approximation of national laws which "*have as their object*" the establishment and functioning of the internal market.

It will be noted that the procedures for deciding to apply the two provisions differ: Article 94 TEC calls for unanimity in the Council and simply an Opinion from the European Parliament, while Article 95 TEC provides for codecision and hence a qualified majority in the Council.

17. There are historic reasons why this is the case: former Article 100a (now Article 95 TEC) was inserted in the Treaty for the purposes of completing the internal market and at the time was meant as an exception, albeit a very wide-ranging one, to Article 100 (now Article 94 TEC). However, Article 95 has been used far more frequently than Article 94 TEC.

Although Article 95 TEC applies, as the Article itself states, "by way of derogation from Article 94", the institutions in practice use Article 95 TEC to adopt measures to improve the functioning of the internal market, except in the case of those provisions excluded under paragraph 2 of the Article (fiscal provisions, those relating to the free movement of persons and those relating to the rights and interests of employed persons).

The Convention might therefore consider adapting the texts to reflect the fact that Article 95 TEC is now the general rule and Article 94 TEC the exception.

C. General horizontal clauses

18. The current version of the EC Treaty contains a number of provisions which are general in scope, i.e. operate at every level of the Community's activity, irrespective of the policy sector concerned.

These clauses are to be found in either Part One ("Principles") or Part Three ("Policies") of the EC Treaty, in particular:

- Article 3(2), which aims *"to eliminate inequalities, and to promote equality, between men and women"*;
- Article 6, which provides that *"Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities..."*;
- Article 127(2), according to which *"a high level of employment shall be taken into consideration in the formulation and implementation of Community policies..."*;
- Article 151(4), to the effect that *"the Community shall take cultural aspects into account ...and... the diversity of its cultures"*;
- Article 152(1), which states that *"A high level of human health protection shall be ensured"* in the implementation of policies;
- Article 153(4), which makes the same provision in relation to *"consumer protection requirements"*.

The same concept applies in relation to the competitiveness of industry in the Community (Article 157(3) TEC), economic and social cohesion (Article 159 TEC) and development cooperation (Article 178 TEC).

19. Two solutions could be envisaged for simplification. The first option would be to bring together in a single article in Part One of the Constitution the two types of clause currently contained in Part One of the EC Treaty, i.e. Articles 3(2) and 6 TEC. The other solution would be to bring together all of the above points at the beginning of Part Two in the form of a general *"horizontal clause"*.
20. For the purposes of illustration, possible versions of each of these two options are given below.

Option A (short, Article 3(2) and Article 6 in the "Principles" part of the EC Treaty)

"The following requirements shall be integrated into the definition and implementation of the Union policies and activities referred to in this Part:

- a. elimination of inequalities and promotion of equality between men and women;*
- b. environmental protection, in particular with a view to promoting sustainable development."*

Option B (long, all the horizontal provisions of the EC Treaty)

"The following requirements shall be integrated into the definition and implementation of the Union policies and activities referred to in this Part:

- a. elimination of inequalities and promotion of equality between men and women;*
- b. environmental protection, in particular with a view to promoting sustainable development;*
- c. human health protection.*

The Union shall take the following objectives into account in the formulation and implementation of the policies and activities referred to in this Part:

- a. achievement of a high level of employment;*
- b. cultural aspects, in particular in order to respect and promote the diversity of cultures;*
- c. consumer protection;*
- d. achievement of the conditions necessary for the competitiveness of the Union's industry;*
- e. strengthening of the Union's economic and social cohesion and the objectives of this policy;*
- f. the objectives of development cooperation when policies and activities are likely to affect developing countries."*

D. Rearrangement of certain Articles

21. Certain limited changes have been made in Volume I:

- a. Article 4 TEC could be moved to the beginning of the Title on "Economic and monetary policy".
- b. Articles 14 and 15 could head up a new title or chapter on the internal market, which would also comprise Articles 94 to 97 TEC.
- c. if the words "*and fisheries*" were added after "*Agriculture*" in Title II so as to reflect the scope of Article 32(1) TEC, the text of this Article should be adapted accordingly.

- d. Part Four of the EC Treaty, on the association of overseas countries and territories, aims at the partial application of the Treaty's provisions to the countries and territories concerned. This suggests that it should be closer to the Treaty clause on territorial application.

III. SUGGESTED SIMPLIFICATIONS

A. Acts not referred to in draft Articles 24 to 33 of the Constitution

- 22. Certain provisions of the EC Treaty which are likely to appear in Part Two of the Constitution provide for procedures and acts that are not currently referred to in Articles 24 to 33 of the draft (CONV 571/03 of 26 February 2003).

It might conceivably be advisable to intervene in order to make the general approach and the specific provisions mutually compatible.

a. acts of the European Parliament

- 23. The European Parliament has decision-making powers that are not referred to in the draft Articles in question and which do not come under its power to organise itself.

In accordance with Article 195(1) TEC, "*the European Parliament shall appoint an Ombudsman*" and "*shall, after seeking an opinion from the Commission and with the approval of the Council ..., lay down the regulations and general conditions governing the performance of the Ombudsman's duties.*" (Article 195(4) TEC). Similarly, in accordance with Article 190(5) TEC, the European Parliament "*after seeking an opinion from the Commission and with the approval of the Council ..., shall lay down the regulations and general conditions governing the performance of the duties of its Members.*".

The fact that these acts are adopted "*with the approval of the Council*" in no way detracts from the decision-making power conferred on the Parliament in this instance.

Furthermore, in the budgetary procedure, "*the President of the European Parliament shall declare that the budget has been finally adopted*" (Article 272(7) TEC). Lastly, the Parliament still has the competence to give, on its own, a discharge to the Commission in respect of the implementation of the budget, "*acting on a recommendation from the Council*" (Article 276(1) TEC).

b. acts of general scope adopted by the judicial bodies of the Union

- 24. In accordance with the sixth paragraph of Article 226 TEC, "*The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council ...*". The same applies to the Court of First Instance and the judicial panels, pursuant to the fifth paragraph of Article 224 TEC and the fifth paragraph of Article 225a TEC respectively.

This is a clear case of a decision-making power assigned to the judicial bodies of the Union, as the Rules of Procedure of such bodies cannot be assimilated to a set of internal rules of business.

c. acts adopted by common accord

25. In accordance with the third paragraph of Article 193 of the EC Treaty, *"the detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission."*

The same applies to the agreement between the Court of Auditors, the European Investment Bank and the Commission in accordance with the third subparagraph of Article 248(3) TEC, concerning the Court's right of access to information held by the Bank.

B. Decision-making procedures

a. European Parliament

26. Where the Parliament votes by a majority usually called *"simple"* or *"relative"* – which is the general rule – EC Treaty terminology uses the phrase *"acting by an absolute majority of the votes cast"* (first paragraph of Article 198, Article 251(5), Article 272(4), etc.). Where it votes by a majority usually known as an absolute majority, the French version of the Treaty speaks of *"majorité des membres qui le composent"*. It also uses the expression *"majority of its members"* or *"majority of the Members of the European Parliament"*. This is also the expression used in the English and German versions.

Use of the adjective *"absolute"* may therefore be misleading, whereas what is involved is only a relative majority.

It is therefore proposed to use the terms *"majority of the votes cast"*, on the one hand, and *"majority of the Members of the European Parliament"* or *"majority of its Members"* on the other hand.

b. Council

27. The current voting rule under which *"the Council shall act by a majority of its members"* (Article 205(1) TEC) should possibly be replaced by the expression *"the Council shall act by a qualified majority"*.

Indeed, we know that the Council acts mainly by a qualified majority, and more rarely unanimously or by a simple majority. The result is that, in principle, the qualified-majority voting rule corresponds to the majority of instances, and such an amendment would contribute considerably to the clarity of the text of the Constitution.

Thus, any reference to the Council in the Constitution would no longer be accompanied by the terms *"acting by a qualified majority"*, as the voting rule (simple majority or unanimity) would be expressly mentioned in the exceptional instances.

c. *Commission*

28. The working party of experts also questions the need to repeat the various institutional phases of the complex process making up the legislative procedure of the Union in each operational article of the Constitution providing a legal basis.

Therefore, given the Commission's almost universal power of initiative for any normative action by the Community, it is legitimate to ask whether automatic replication of the wording "*on a proposal from the Commission*" in each instrument might not be abandoned.

It would suffice, in the article in Part One of the Constitution devoted to the Commission, or perhaps in the article in Part Two specifically concerning the functioning of the Commission, to use wording such as: "*Except where specifically stated otherwise, an act by the Union may be adopted only on a proposal from the Commission*".

In other cases it might for example be stated that "*The Council, on its own initiative/on the initiative of a Member State/on a recommendation from the Commission, shall adopt...*"¹.

C. Designation of legislative acts

29. In accordance with the conclusions of Working Group IX on Simplification (CONV 424/02, Part II(D)(c), the working party of experts has used the term "*legislative procedure*" whenever acts adopted by codecision are referred to. The wording used draws on that chosen by the Praesidium in the draft of Article 28(3) of the Constitution: "*The Parliament and the Council, in accordance with the legislative procedure, shall adopt ...*".

In exceptional cases laid down by the Constitution, the Council alone would also have legislative competence (see draft of Article 25(2)).

It cannot be denied that a risk of confusion exists since certain laws/framework laws, namely laws/framework laws of the Council, would be adopted by a procedure other than the legislative procedure.

¹ The suggestions contained in the second, third and fourth subparagraphs of paragraph 28 do not have the support of the members of the working party appointed by the Council Legal Service, who felt that they needed additional scrutiny.

D. Breakdown between legislative and non-legislative acts of the Council

30. It emerges from the draft of Article 25(1) of Part One of the Constitution and from the comments accompanying it that the general rule for the adoption of legislative acts is the codecision procedure.

Paragraph 2 of that Article indicates that, as an exception to that rule, the Council alone may also adopt legislative acts. The cases in which the Council has sole legislative power must be explicitly laid down in the Constitution.

Since the list of these exceptions has not yet been drawn up by the Convention, the working party of experts was unable to take account of this when drawing up this report.

31. Similarly, if the Convention were to consider that, in the context of a particular policy or action, the Council should at the same time have legislative competence under draft Article 25(2) (adoption of a law or framework law) and non-legislative competence under draft Article 26 (adoption of a regulation or decision), the cases in which the Council would have legislative competence and those in which it would have non-legislative competence would have to be precisely indicated in the context of that policy or action.
32. More generally, the working party of experts would like to draw the Convention's attention to the need to make a precise breakdown between the Council's legislative and non-legislative competences as provided for in draft Articles 25(2) and 26 of the Constitution.

In this respect it notes that the exercise by the Council of legislative competences would lead, at this stage in the Convention's proceedings, to two procedural consequences: firstly, the Council is obliged to meet in public (draft Article 25(3)); secondly, under the draft Protocol on Subsidiarity, the "*early warning mechanism*" applies to legislative proposals only.

E. Designation of the assent procedure

33. As regards the specific power of giving assent attributed to the European Parliament, it is debatable whether this term could not be replaced by that of "*approval*", which would not change the nature of the act required of the institution being consulted. This function of approval already appears in the EC Treaty, notably in Article 214, in relation to the appointment of Members of the Commission.

When the prior assent of the Council is required before the adoption of an act by another institution, the Council also expresses itself by giving "*approval*" (see for example Articles 190(5) and 195(4) TEC).

In this context it should be noted that the German version of the Treaty, for example, uses the same word "*Zustimmung*" for both "*assent*" and "*approval*".

The word "*approval*" also seems more easily comprehensible to the citizen than the word "*assent*".

F. Clarification of legal bases

34. The report by Working Group V on Complementary Competences (CONV 375/1/02 REV 1 of 4 November 2002) recommends reducing recourse to Article 308 TEC, by introducing the necessary legal bases to enable the Union to act in those areas where it cannot currently become involved except by recourse to that provision. For example:
- the extension of the "social security" Regulation to the self-employed, since Article 42 TEC is the appropriate legal basis only for employed workers;
 - economic and financial sanctions against individuals or against associations outside the Union, since Articles 60 and 301 of the EC Treaty apply only to "third countries";
 - acts relating to the completion of the internal market which go beyond the approximation of national legislation (see Articles 94 and 95 TEC), including those relating to intellectual property rights at Union level.
35. If the Convention wished to limit cases of recourse to Article 308 TEC, it could stipulate a specific legal basis in all appropriate cases. In each case, different solutions could be envisaged. For example, regarding the extension of the "social security" Regulation to the self-employed, a legal basis might be provided in the "establishment" chapter.

For acts relating to the completion of the internal market going beyond the approximation of national legislation, including the creation of intellectual property rights at Union level, either the reference to the approximation of legislation in Articles 94 and 95 TEC might be adjusted or a specific legal basis created.

G. Annual sessions of the European Parliament

36. The Parliament holds one annual session (the first paragraph of Article 196 TEC). Since the Treaty of Rome, it has decided, under its powers to organise itself, to arrange its working timetable on the basis of "*part-sessions*", a situation which has been broadly confirmed by the case-law of the Court of Justice.

Since the wording in the second paragraph of Article 196 TEC "*the European Parliament may meet in extraordinary session*" may easily give rise to confusion and puzzle citizens, it is proposed that in this specific case the wording used by the Parliament's Rules of Procedure since 1958, namely "*the part-session*", should be retained.

The working party accordingly suggests that the second paragraph of Article 196 should be amended as follows: "*The European Parliament may meet in extraordinary part-session ...*".

* * *

VOLUME II

PRELIMINARY DRAFT CONSTITUTIONAL TREATY

Suggestions for technical adaptations to the provisions of the EC and EU Treaties

Text following the original structure of the EC and EU Treaties

Part A of this Volume contains the provisions of the EC Treaty (pages 2 to 140)

Part B of this Volume contains the provisions of the EU Treaty (pages 141 to 170)

This Volume should be read in the light of Annexes I and II to Volume I.

Part A

Provisions of the Treaty establishing the European Community (EC Treaty)

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PART ONE

PRINCIPLES

Article 1¹

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.~~

Article 2

~~The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.~~

Article 3

~~1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:~~

- ~~(a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;~~
- ~~(b) a common commercial policy;~~
- ~~(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;~~
- ~~(d) measures concerning the entry and movement of persons as provided for in Title IV;~~
- ~~(e) a common policy in the sphere of agriculture and fisheries;~~
- ~~(f) a common policy in the sphere of transport;~~

¹ Articles 1, 2 and 3(1) have been deleted and replaced by draft articles (establishment, values and objectives of the Union) in Part One (Articles 1, 2 and 3 CONV 528/03).

- ~~(g) — a system ensuring that competition in the internal market is not distorted;~~
- ~~(h) — the approximation of the laws of Member States to the extent required for the functioning of the common market;~~
- ~~(i) — the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;~~
- ~~(j) — a policy in the social sphere comprising a European Social Fund;~~
- ~~(k) — the strengthening of economic and social cohesion;~~
- ~~(l) — a policy in the sphere of the environment;~~
- ~~(m) — the strengthening of the competitiveness of Community industry;~~
- ~~(n) — the promotion of research and technological development;~~
- ~~(o) — encouragement for the establishment and development of trans-European networks;~~
- ~~(p) — a contribution to the attainment of a high level of health protection;~~
- ~~(q) — a contribution to education and training of quality and to the flowering of the cultures of the Member States;~~
- ~~(r) — a policy in the sphere of development cooperation;~~
- ~~(s) — the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;~~
- ~~(t) — a contribution to the strengthening of consumer protection;~~
- ~~(u) — measures in the spheres of energy, civil protection and tourism.~~

~~2.~~ In all the activities referred to in this ~~Article Part~~, the ~~Community Union~~ shall aim to eliminate inequalities, and to promote equality, between men and women.¹

¹ This paragraph, which applies horizontally to all the policies, could be incorporated into a single article with Article 6 (environment) and even with the other similar provisions to be found in the various chapters, and entitled "common provisions" for example. It will also be noted that the reference to "this Part" – insofar as it would contain subjects currently coming under the second and third pillars – would broaden the scope of the horizontal paragraph(s) concerned.

Article 4 ¹

1. For the purposes set out in [Article 2] ², the activities of the Member States and the ~~Community Union~~ shall include; as provided in ~~this Treaty~~ **the Constitution** [and in accordance with the timetable set out therein] ³, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.
2. Concurrently with the foregoing, and as provided in ~~this Treaty~~ **the Constitution** and in accordance with [the timetable and] ⁴ the procedures set out therein, these activities shall include ~~the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU euro,~~ and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the ~~Community Union~~, in accordance with the principle of an open market economy with free competition.
3. These activities of the Member States and the ~~Community Union~~ shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

~~Article 5~~ ⁵

~~The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.~~

~~In areas which do not fall within its exclusive competence, the Community 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.~~

~~Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.~~

¹ It is suggested that this Article should head up the Chapter on Economic and Monetary Policy.

² Article 2 is deleted and replaced by the draft article entitled "The Union's objectives" in Part One (Article 3(2) in CONV 528/03).

³ It is debatable whether there is any point in keeping this reference ("the timetable").

⁴ It is debatable whether there is any point in keeping this reference ("the timetable....").

⁵ Article 5 has been deleted and replaced by the draft article entitled "Fundamental principles" in Part One (Article 8 CONV 528/03).

Article 6¹

Environmental protection requirements must be integrated into the definition and implementation of the ~~Community~~ **Union** policies and activities referred to in ~~Article 3~~ **this Part**, in particular with a view to promoting sustainable development.

Article 7²

1. *The tasks entrusted to the Community shall be carried out by the following institutions:*

- *a EUROPEAN PARLIAMENT,*
- *a COUNCIL,*
- *a COMMISSION,*
- *a COURT OF JUSTICE,*
- *a COURT OF AUDITORS.*

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. *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 8³

A European System of Central Banks (hereinafter referred to as "ESCB") and a European Central Bank (hereinafter referred to as "ECB") shall be established in accordance with the procedures laid down in this Treaty; they shall act within the limits of the powers conferred upon them by this Treaty and by the Statute of the ESCB and of the ECB (hereinafter referred to as "Statute of the ESCB") annexed thereto.

¹ This Article, which applies horizontally to all the policies, could be incorporated into a single article with others of the same type (see footnote to Article 3(2)). The same comment regarding the use of "this Part" applies.

² Articles 7 to 11a are or will be covered by Part One.

³ It is questionable whether the Constitution should contain abbreviations ("ECB" for "European Central Bank" for example) or whether it would not be clearer for readers if the normal name of the institution or body concerned were used. The European Investment Bank (Article 9) is not abbreviated to "EIB" in the Articles of the Treaty. If it is the intention to use such abbreviations, an explanatory list of them should be included at some point in the Constitution.

Article 9

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

Article 10

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

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

Article 11

1. Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

2. Authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. When enhanced cooperation relates to an area covered by the procedure referred to in Article 251 of this Treaty, the assent of the European Parliament shall be required.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

3. The acts and decisions necessary for the implementation of enhanced cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided in this Article and in Articles 43 to 45 of the Treaty on European Union.

Article 11a

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 11 shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Commission shall take a decision on it, and on such specific arrangements as it may deem necessary.

Article 12

~~Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.~~

The European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251, may adopt rules any measure designed to prohibit such discrimination on grounds of nationality as referred to in [Article (.....)]¹.

Article 13

1. Without prejudice to the other provisions of ~~this Treaty~~ **the Constitution** and within the limits of the powers conferred by it upon the ~~Community Union~~, the Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament,~~ may ~~take appropriate action~~ **unanimously adopt the necessary measures** to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **The Council shall act after consulting the European Parliament.**

2. By way of derogation from paragraph 1, ~~when the Council adopts Community~~ **the Union's** incentive measures, excluding any harmonisation of the laws and regulations of the Member States, ~~to which~~ support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, ~~it shall act in accordance with the procedure referred to in paragraph 1~~ **shall be adopted by the European Parliament and the Council in accordance with the legislative procedure.**

Article 14²

1. The ~~Community Union~~ shall adopt measures with the aim of progressively establishing the internal market ~~over a period expiring on 31 December 1992~~³, in accordance with the provisions of this Article, [Articles 15 and 26] [Article 47(2)] **and** [Articles 49, 80, 93 and 95] and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**.

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of ~~this Treaty~~ **the Constitution**.

¹ Insert a reference to the draft Article entitled "Non-discrimination on grounds of nationality" in Part One (Article 6 CONV 528/03).

² Articles 14 and 15 could be moved to the beginning of current Part Three "Community policies". There might also be a case for including a title or chapter entitled "Internal market" opening with these two articles.

³ The reference to this period is obsolete. The suggestion is to delete it.

3. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, shall ~~determine~~ **adopt by a qualified majority measures laying down** the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned ¹.

Article 15 ²

When drawing up its proposals with a view to achieving the objectives set out in [Article 14], the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain ~~during the period of~~ **for the** establishment of the internal market and it may propose appropriate ~~provisions~~ **measures**.

If these ~~provisions~~ **measures** take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the ~~common~~ **internal** market.

Article 16

Without prejudice to [Articles 73, 86 and 87], and given the place occupied by services of general economic interest in the [shared values] ³ of the Union as well as their role in promoting social and territorial cohesion, the ~~Community~~ **Union** and the Member States, each within their respective powers and within the scope of application of ~~this Treaty~~ **the Constitution**, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

¹ It appears that this paragraph has never been used. Should it be deleted?

² Deleting the reference to the period of establishment of the internal market has been suggested (see footnote to Article 14). However, deletion could result in perpetuating the possible derogations provided for in Article 15, which are applicable only during the period in question.

³ This concept of "shared values" is questionable when "values" are defined in the draft Article in Part One entitled "The Union's values" (Article 2 CONV 528/03) in terms of human rights values. The suggestion is to find another term.

PART TWO
CITIZENSHIP OF THE UNION

Article 17 ¹

~~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 enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.~~

Article 18

~~1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.~~ ²

2. If action by the ~~Community~~ **Union** should prove necessary to attain ~~this~~ **the** objective, **referred to in [Article (.....)]** ³, **of the right of every Union citizen to move and reside freely** and ~~this Treaty~~ **the Constitution** has not provided the necessary powers, the **European Parliament and the Council, in accordance with the legislative procedure**, may adopt ~~provisions~~ **measures** with a view to facilitating the exercise of ~~the rights~~ **that right** referred to in paragraph 1. ~~The Council shall act in accordance with the procedure referred to in Article 251.~~

3. [Paragraph 2] shall not apply to ~~provisions~~ **measures concerning** passports, identity cards, residence permits or any other such document or to provisions on social security or social protection. ⁴

¹ Article 17 has been deleted and replaced by the draft article on citizenship in Part One (Article 7(1) CONV 528/03).

² Article 18(1) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

³ Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

⁴ The suggestion is to clarify whether this paragraph has as its purpose to exclude all competence under this Article in the areas listed or whether the aim is to exclude codecision or just qualified majority voting in the Council. In the latter case, the Convention should examine whether a specific legal basis should be introduced for the measures referred to in paragraph 3.

Article 19 ¹

1. ~~Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right² shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament~~ **The Council, on a proposal from the Commission, shall unanimously adopt the measures determining the detailed arrangements for exercising the right, referred to in [Article (...)³], for every Union citizen to vote and to stand as a candidate at municipal elections in the Member State in which he resides. It shall act after consulting the European Parliament.** These arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to [Article 190(4)] ⁴ and to the ~~provisions~~ **measures** adopted for its implementation, ~~every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; the Council, on a proposal from the Commission, shall unanimously adopt the measures determining the detailed arrangements for exercising the right, referred to in [Article (...)⁵], for every Union citizen to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides. It shall act after consulting the European Parliament.~~ These arrangements may provide for derogations where warranted by problems specific to a Member State.

¹ A merger of these two paragraphs is suggested as they are virtually identical, subject to a solution being found to the reference to Article 190(4) (see footnote to Article 19(2) below).

² The first sentence of Article 19(1) and (2) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03).

³ Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03).

⁴ The reference to Article 190 (the uniform electoral procedure for Members of the European Parliament, to be covered in Part One) referred to the right (to vote and to stand as a candidate in European elections) and not to the procedure for adopting provisions for exercising that right (as laid down here). The draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03), which embodies this right, no longer refers to Article 190. Leaving the reference to Article 190 here, linked to the procedure alone, would therefore amend the scope of the reference, unless it were made into a separate sentence specifying that it applied solely to the right to vote or stand as a candidate.

⁵ Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 2nd indent, CONV 528/03).

Article 20 ¹

~~Every citizen of the Union shall, in the territory of a third country in which the Member State of which he 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 State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection~~ **the diplomatic and consular protection of Union citizens in third countries, as referred to in [Article (...)]** ²

Article 21 ³

~~Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194.~~

~~Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195.~~

The languages in which every citizen of the Union may write to any of the institutions or bodies pursuant to [Article (...)] ⁴ referred to in this Article or Article 7 in one of the languages mentioned in Article 314, and have an answer in the same language, are those listed in Article 314. The institutions and bodies referred to in this Article are those listed in [Article] and also the Ombudsman ⁵.

Article 22

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of **[Article (...)] ⁶ and of** [this Part]. This report shall take account of the development of the Union.

¹ The first sentence of Article 20 is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), third indent, CONV 528/03). To follow up that provision, Member States held negotiations in the Council and concluded an international agreement among themselves. The Convention could examine whether it would be appropriate to change the procedure under which the rules laid down in this Article are to be established, and in particular the possibility of no longer using an agreement (see report by Working Group IX on Simplification, page 5).

² Insert reference to the draft Article on citizenship in Part One (Article 7(2), 3rd indent, CONV 528/03).

³ The first two paragraphs, which are not operational and merely refer to Articles 194 and 195, should be deleted as the right they provide for is set out in the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

⁴ Insert reference to the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

⁵ Insert reference to the draft Article in Part One that will contain the list of institutions and the two advisory bodies (Economic and Social Committee and Committee of the Regions).

⁶ Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).

On this basis, and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Council, ~~acting unanimously~~ on a proposal from the Commission ~~and after consulting the European Parliament~~, may **unanimously** adopt ~~provisions~~ **measures** to strengthen or to add to the rights laid down in ~~this Part~~ **[Article (....)]¹**, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. **The Council shall act after consulting the European Parliament.**

PART THREE

~~COMMUNITY~~**UNION** POLICIES

TITLE I

FREE MOVEMENT OF GOODS

Article 23

1. The ~~Community~~ **Union** shall ~~be based upon~~ **comprise** a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. ~~The provisions of~~ [Article 25] and ~~of~~ [Chapter 2] of [this title] shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 24

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

¹ Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).

CHAPTER 1

THE CUSTOMS UNION

Article 25

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 26

~~Common Customs Tariff duties shall be fixed by the Council acting by a qualified majority on a proposal from the Commission.~~ **The Council, on a proposal from the Commission, shall adopt by a qualified majority the measures fixing Common Customs Tariff duties.**

Article 27

In carrying out the tasks entrusted to it under [this chapter] the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the ~~Community~~ **Union** insofar as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the ~~Community~~ **Union** as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the ~~Community~~ **Union**.

CHAPTER 2

PROHIBITION OF QUANTITATIVE RESTRICTIONS

Article 28 ¹

Quantitative restrictions on imports **and exports** and all measures having equivalent effect shall be prohibited between Member States.

Article 29

~~Quantitative restrictions on exports and all measures having equivalent effect shall be prohibited between Member States.~~

Article 30

~~The provisions of [Articles 28] and 29~~ shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 31

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

~~The provisions of~~ This Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. ~~These provisions~~ It shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in [paragraph 1] or which restricts the scope of the Articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

¹ Suggestion: merge this Article with Article 29.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying ~~the rules contained in~~ this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

TITLE II

AGRICULTURE ¹

Article 32

1. The ~~common~~ **internal** market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.
2. Save as otherwise provided in [Articles 33 to 38], the rules laid down for the establishment of the ~~common~~ **internal** market shall apply to agricultural products.
3. The products **listed in [Annex I] shall be** subject to ~~the provisions of~~ Articles 33 to 38 ². ~~are listed in Annex I to this Treaty.~~
4. The operation and development of the ~~common~~ **internal** market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 33

1. The objectives of the common agricultural policy shall be:
 - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to stabilise markets;
 - (d) to assure the availability of supplies;
 - (e) to ensure that supplies reach consumers at reasonable prices.

¹ Suggestion: should "AND FISHERIES" be added to the title. If so, Article 32 would have to be adapted.

² Suggestion: delete these redundant words, as a reference to the Annex could only refer to the Constitution.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article 34

1. In order to attain the objectives set out in [Article 33], a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 33, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in [Article 33] and shall exclude any discrimination between producers or consumers within the ~~Community~~ **Union**.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article 35

To enable the objectives set out in [Article 33] to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

Article 36

The ~~provisions of the~~ Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of [Article 37(2) and (3)] and in accordance with the procedure laid down therein, account being taken of the objectives set out in [Article 33].

The Council may, in particular, ~~authorise~~ **adopt measures authorising** the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

Article 37

~~1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.¹~~

~~2. Having taken into account the work of the Conference provided for in paragraph 1, After consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in [Article 34(1)], and for implementing the measures specified referred to in [this Title].~~

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

¹ This paragraph is obsolete. The conference took place in Stresa in 1958. Its outcome is therefore already part of the *acquis*.

~~The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make~~ **The Council, on a proposal from the Commission, shall adopt by a qualified majority laws/regulations¹, framework laws, issue directives or take decisions and without prejudice to any recommendations it may also make. It shall act after consulting the European Parliament.**

3. ~~The Council may, acting by a qualified majority and-~~² In accordance with paragraph 2, ~~replace~~ the national market organisations **may be replaced** by the common organisation provided for in [Article 34(1)] if:

- (a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
- (b) such an organisation ensures conditions for trade within the ~~Community~~ **Union** similar to those existing in a national market.

4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the ~~Community~~ **Union**.

Article 38

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

¹ Since, according to the draft Articles in Title V "Exercise of Union competence" in Part One (Articles 25 and 26 CONV 571/03), the Council may adopt either laws or regulations, the Convention should identify the cases in which, in the area covered by this Article, the Council might adopt one or the other or both types of act (see explanation in Annex II to this report).

² The deleted text is redundant since the procedure to be applied is already indicated by the reference to Article 37(2).

TITLE III

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1 WORKERS

Article 39

1. ~~Freedom of movement for workers shall be secured~~ **Workers shall have the right to move freely within the Community Union.** ¹
2. ~~Such freedom of movement shall entail the abolition of~~ Any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment **shall be prohibited.** ²
3. ~~It shall entail~~ **Workers shall have** ³ the right, subject to limitations justified on grounds of public policy, public security or public health:
 - (a) to accept offers of employment actually made;
 - (b) to move freely within the territory of Member States for this purpose;
 - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in ~~implementing~~ regulations ~~to be drawn up~~ **adopted** by the Commission.
4. ~~The provisions of~~ This Article shall not apply to employment in the public service.

¹ This wording is more direct, clearer, and does not change substance.

² This wording is more direct, clearer, and does not change substance.

³ This wording is more direct, clearer, and does not change substance.

Article 40

~~The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the laws or framework laws** required to bring about freedom of movement for workers, as defined in [Article 39] ~~in particular~~ **They shall act after consulting the Economic and Social Committee. These laws and framework laws shall aim, in particular, to:**

- (a) ~~by ensuring~~ **ensure** close cooperation between national employment services;
- (b) ~~by abolishing~~ **abolish** those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
- (c) ~~by abolishing~~ **abolish** all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) ~~by setting up~~ **set up** appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 41

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.¹

Article 42

~~The Council shall, acting in accordance with the procedure referred to in Article 251~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall** adopt such measures in the field of social security as are necessary to provide freedom of movement for workers²; to this end, ~~it~~ **they** shall make arrangements to secure for migrant workers and their dependants:

¹ Suggestion: examine this provision to see whether it could usefully be "modernised" by providing competence for the Union of some nature to be defined.

² This legal basis allows the adoption of measures only for "workers", i.e. for the employed. Extension of the "social security" Regulation to the self-employed has taken place on the basis of Article 308 TEC. If the Convention wanted to limit cases of recourse to Article 308, it could consider whether it would be appropriate to provide a specific legal basis covering this subject in the "establishment" chapter, which applies to the self-employed.

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

The Council shall act unanimously throughout the procedure referred to in Article 251.¹

CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 43

Within the framework of the provisions **[this Chapter]**, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

~~Freedom of establishment shall include the right~~ **Nationals of a Member State shall have the right, in the territory of another Member State,** to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of [the second paragraph of Article 48], under the conditions laid down for its own nationals by the law of the ~~country~~ **Member State** where such establishment is effected, subject to the provisions of the [chapter] relating to capital.²

Article 44

1. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt framework laws in order to attain freedom of establishment as regards a particular activity ~~the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by means of directives. They shall act after consulting the Economic and Social Committee.~~

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions paragraph 1, in particular:

¹ Removal of unanimity by the Council (see report by Working Group IX on Simplification, page 14).

² This wording is more direct, clearer and does not change substance (see also Article 39 on workers).

- (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
- (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the ~~Community~~ **Union** of the various activities concerned;
- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in [Article 33(2)];
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of [the second paragraph of Article 48] with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 45

~~The provisions of~~ This chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.¹

The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, ~~rule that the provisions of this Chapter shall not apply to~~ **may adopt by a qualified majority measures exempting** certain activities **from application** of this Chapter.

¹ This wording is more direct, clearer and does not change anything in substance.

Article 46

1. ~~The provisions of [This chapter] and measures taken~~ **adopted** in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action **in Member States** providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. ~~The Council shall, acting in accordance with the procedure referred to in Article 251, issue directives~~ **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt framework laws** for the coordination of the ~~abovementioned~~ **national provisions referred to in paragraph 1.**

Article 47 ¹

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, ~~the Council shall acting in accordance with the procedure referred to in Article 251, issue directives~~ **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt framework laws** for:
 - (a) the mutual recognition of diplomas, certificates and other evidence of formal qualifications;
 - (b) the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.
2. ~~For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.~~ ²
3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

¹ There is a suggestion that paragraphs 1 and 2, which follow the same procedure, should be merged (following the abolition of unanimity in the Council as indicated in the report of Working Group IX on Simplification, page 14).

² Abolition of unanimity in the Council (see report by Working Group IX on Simplification, page 14).

Article 48

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the ~~Community~~ **Union** shall, for the purposes of [this Chapter], be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

CHAPTER 3

SERVICES

Article 49

Within the framework of ~~the provisions set out below~~ **[this Chapter]**, restrictions on freedom to provide services within the ~~Community~~ **Union** shall be prohibited in respect of nationals of Member States who are established in a **Member** State ~~of the Community~~ other than that of the person for whom the services are intended.

The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, **may adopt by a qualified majority measures designed to extend the provisions of this Chapter to nationals of a third country who provide services and who are established within the ~~Community~~ Union.**

Article 50

Services shall be considered to be "services" within the meaning of ~~this Treaty~~ **the Constitution** where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to ~~the provisions of~~ [chapter] relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the **Member States** where the service is provided, under the same conditions as are imposed by that **State** on its own nationals.

Article 51

1. Freedom to provide services in the field of transport shall be governed by the ~~provisions of~~ [title] relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 52

1. In order to achieve the liberalisation of a specific service, the Council, on a proposal from the Commission ~~and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority,~~ **shall adopt European framework laws by a qualified majority. It shall act after consulting the European Parliament and the Economic and Social Committee.**
2. As regards the ~~directives~~ **framework laws** referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 53 ¹

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the ~~directives issued~~ **framework laws adopted** pursuant to [Article 52(1)], if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 54 ²

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of [the first paragraph of Article 49].

¹ The relevance of retaining this provision may be questioned.

² In the interests of consistency, it may be questioned whether it would not be appropriate to introduce a provision of this kind for all four freedoms.

Article 55

~~The provisions of [Articles 45 to 48] shall apply to the matters covered by [this chapter].~~

CHAPTER 4

CAPITAL AND PAYMENTS

Article 56 ¹

1. Within the framework of ~~the provisions set out in this Chapter, all~~ restrictions **both** on the movement of capital **and on payments** between Member States and between Member States and third countries shall be prohibited.

~~2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.~~

Article 57

1. ~~The provisions of [Article 56] shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community~~ **Union** law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other [Chapters] of ~~this Treaty~~ **the Constitution**, the Council may, ~~acting by a qualified majority~~ on a proposal from the Commission, adopt measures **by a qualified majority** on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets. ~~Unanimity shall be required for~~ **The Council shall act unanimously when it adopts** measures under this paragraph which constitute a step back in ~~Community~~ **Union** law as regards the liberalisation of the movement of capital to or from third countries.

¹ It is suggested that paragraphs 1 and 2 be merged.

Article 58

1. ~~The provisions of~~ [Article 56] shall be without prejudice to the right of Member States:
 - (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;
 - (b) to take all requisite ~~measures~~ **steps** to prevent infringements of national ~~law and regulation~~ **provisions laid down by law or regulation**, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.
2. ~~The provisions of This [chapter]~~ shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with ~~this Treaty~~ **the Constitution**.
3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in [Article 56].

Article 59

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, ~~acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take~~ **may adopt by a qualified majority** safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary. **It shall act after consulting the ECB.** ¹

Article 60 ²

1. *If, in the cases envisaged in [Article 301], action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in [Article 301], take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned* ³.

¹ Question regarding the use of abbreviations in the Constitution (see footnote re Article 8 above).

² This article should be examined by the Convention in the context of external relations and is therefore not dealt with here. It is suggested that consideration be given to whether it would be appropriate to merge this article with Article 301.

³ The fact that only "countries" are mentioned currently prevents this article being used for sanctions against individuals or non-State entities (for example sanctions against the Taliban and terrorists mentioned by name). This omission makes it necessary at present to have additional recourse to Article 308 TEC. It is therefore suggested that consideration be given to whether it would be useful to extend the scope of this article (see also suggestion re Article 301).

2. *Without prejudice to [Article 297] and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.*

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

TITLE IV¹

VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATED TO FREE MOVEMENT OF PERSONS]

Article 61

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;*
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;*
- (c) measures in the field of judicial cooperation in civil matters as provided for in Article 65;*
- (d) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;*

¹ This Title will be re-examined by the Convention; it is therefore not dealt with here.

- (e) *measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.*

Article 62

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 1. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;*
- 2. measures on the crossing of the external borders of the Member States which shall establish:*
 - (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;*
 - (b) rules on visas for intended stays of no more than three months, including:*
 - (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;*
 - (ii) the procedures and conditions for issuing visas by Member States;*
 - (iii) a uniform format for visas;*
 - (iv) rules on a uniform visa;*
- 3. measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.*

Article 63

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:*

- (a) *criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,*
 - (b) *minimum standards on the reception of asylum seekers in Member States,*
 - (c) *minimum standards with respect to the qualification of nationals of third countries as refugees,*
 - (d) *minimum standards on procedures in Member States for granting or withdrawing refugee status;*
2. *measures on refugees and displaced persons within the following areas:*
- (a) *minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,*
 - (b) *promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;*
3. *measures on immigration policy within the following areas:*
- (a) *conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,*
 - (b) *illegal immigration and illegal residence, including repatriation of illegal residents;*
4. *measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.*

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.

Article 64

- 1. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*
- 2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.*

Article 65

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:*
 - the system for cross-border service of judicial and extrajudicial documents;*
 - cooperation in the taking of evidence;*
 - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;*
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;*
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.*

Article 66

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this Title, as well as between those departments and the Commission.

Article 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

- the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;*
- the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.*

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:

- the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this Article, Community legislation defining the common rules and basic principles governing these issues;*
- the measures provided for in Article 65 with the exception of aspects relating to family law.*

Article 68

1. Article 234 shall apply to this Title under the following circumstances and conditions: where a question on the interpretation of this Title or on the validity or interpretation of acts of the institutions of the Community based on this Title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, 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.

2. *In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.*

3. *The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this Title or of acts of the institutions of the Community based on this Title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become res judicata.*

Article 69

The application of this Title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

TITLE V

TRANSPORT

Article 70

The objectives of ~~this Treaty~~ **the Constitution** shall, in matters governed by this Title, be pursued by Member States¹ within the framework of a common transport policy.

Article 71

1. ~~For the purpose of implementing~~ **In order to implement** [Article 70], and taking into account the distinctive features of transport, ~~the European Parliament and the Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, in accordance with the legislative procedure, shall adopt measures. They shall act after consulting the Economic and Social Committee and the Committee of the Regions. Such measures shall include:~~

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;

¹ As this is a shared competence, it is suggested that this reference (which has no equivalent in the introduction to any other policy) should be deleted. See also the proposal to merge with Article 80 (below).

- (c) measures to improve transport safety;
- (d) any other appropriate ~~provisions~~ **measure**.

2. By way of derogation from the procedure provided for in [paragraph 1], where the application of ~~provisions~~ **measures** concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be ~~laid down~~ **adopted unanimously** by the Council ~~acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee~~. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the ~~common~~ **internal market**. **It shall act** after consulting the European Parliament and the Economic and Social Committee.

Article 72

Until the ~~provisions~~ **measures** referred to in [Article 71(1)] have been ~~laid down~~ **adopted**, no Member State may, ~~without the unanimous approval of~~ **unless** the Council **has unanimously adopted measures granting a derogation**, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article 73

Aids shall be compatible with ~~this Treaty~~ **the Constitution** if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 74

Any measures ~~taken~~ **adopted** within the framework of ~~this Treaty~~ **the Constitution** in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 75

1. In the case of transport within the ~~Community~~ **Union**, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the ~~country~~ **Member State** of origin or of destination of the goods in question shall be ~~abolished~~ **prohibited**.

2. Paragraph 1 shall not prevent the **European Parliament and the Council** from adopting other measures in pursuance of [Article 71(1)].

3. The Council, ~~shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules~~ **shall adopt by a qualified majority measures** for implementing ~~the provisions of paragraph 1.~~ **It shall act after consulting the Economic and Social Committee.**

The Council may in particular ~~lay down the provisions~~ **adopt the measures** needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission, ~~acting on its own initiative or on application by a Member State,~~ **shall** investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall ~~take~~ **adopt** the necessary decisions within the framework of the ~~rules laid down in accordance with the provisions of~~ **measures referred to in** paragraph 3.

Article 76

1. The imposition by a Member State, in respect of transport operations carried out within the ~~Community~~ **Union**, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by **a decision of** the Commission.

2. The Commission, ~~acting~~ on its own initiative or on application by a Member State, **shall** examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall ~~take~~ **adopt** the necessary **European** decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article 77

Charges or dues [in respect of the crossing of frontiers] which are charged by ¹ a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs ~~progressively~~.

The Commission may make recommendations to Member States for the application of this Article.

¹ It is legitimate to ask what kind of charges the carrier would be levying. Moreover, in an internal market without internal borders the reference to "the crossing of frontiers" seems obsolete. This article needs to be examined for obsolescence.

[Article 78 ¹

The provisions of this title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.]

Article 79

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters [without prejudice to the powers of the Economic and Social Committee] ².

Article 80

1. ~~The provisions of~~ This title shall apply to transport by rail, road and inland waterway.
2. **The European Parliament and the Council may, acting by a qualified majority, decided whether, to what extent and by what procedure appropriate provisions may be laid down in accordance with the legislative procedure, may adopt appropriate measures ³ for sea and air transport. ⁴ They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

~~The procedural provisions of Article 71 shall apply.~~

¹ The Convention may wish to consider whether this Article is still relevant (see also Article 87(2)(c)).

² It is suggested that this phrase, which is redundant, should be deleted, since it is obvious that consulting the Advisory Committee cannot prejudice the powers of the Economic and Social Committee.

³ The reference to "appropriate procedure" is pointless : paragraph 2 has already identified it as the codecision procedure.

⁴ After successive amendments to the EC Treaty the empowerment of the Council by the first subparagraph of Article 80(2) would be difficult to reconcile with the second subparagraph. Moreover, it appears that the first subparagraph of Article 80(2) has not been used in practice. Since the adoption of the Single European Act, sea and air transport provisions have been adopted directly. A clearer and more concise simplification would be for paragraph 2 to read as follows: "Appropriate measures may be adopted for sea and air transport, in accordance with the procedure laid down in Article 71.".

TITLE VI
COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

CHAPTER 1

RULES ON COMPETITION

SECTION 1

RULES APPLYING TO UNDERTAKINGS

Article 81

1. The following shall be prohibited as incompatible with the ~~common~~ **internal** market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the ~~common~~ **internal** market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. ~~The provisions of~~ Paragraph 1 may, however, be declared inapplicable in the case of:

- (a) any agreement or category of agreements between undertakings;
- (b) any decision or category of decisions by associations of undertakings;

(c) any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(d) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(e) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the ~~common~~ **internal** market or in a substantial part of it shall be prohibited as incompatible with the ~~common~~ **internal** market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 83

1. **The Council, on a proposal from the Commission, shall adopt by a qualified majority** ~~The appropriate the laws/regulations¹ or framework laws~~ to give effect to the principles set out in [Articles 81 and 82] ~~shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission. It shall act~~ after consulting the European Parliament.

¹ Since under the draft Articles of Title V of Part One "Exercise of Union Competence" (Articles 25 and 26 CONV 571/03), the Council may adopt laws or regulations, the Convention will need to identify the cases, in the area covered by this article, in which the Council may adopt either or both types of act (see explanations in Annex II to this report).

2. The **laws**/regulations or **framework laws** referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in [Article 81(1)] and in [Article 82] by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of [Article 81(3)], taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of [Articles 81 and 82];
- (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and ~~the provisions contained in this Section or~~ **measures** adopted pursuant to this Article.

Article 84

Until the entry into force of ~~the provisions~~ **laws/regulations or framework laws** adopted in pursuance of [Article 83], the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the ~~common~~ **internal** market in accordance with ~~the law of their country~~ **their internal law** and ~~with the provisions of~~ [Article 81, in particular paragraph 3, and of Article 82].

Article 85

1. Without prejudice to [Article 84], the Commission shall ensure the application of the principles laid down in [Articles 81 and 82]. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall ~~record such infringement of the principles in a reasoned decision~~ **adopt a reasoned decision recording the infringement of the principles**. The Commission may publish its decision and authorise Member States to take the ~~measures~~ **steps**, the conditions and details of which it shall determine, needed to remedy the situation.

Article 86

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the ~~rules contained in this Treaty~~ **provisions of the Constitution**, in particular to those provided for in [Article 12 and Articles 81 to 89].
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the ~~rules contained in this Treaty~~ **provisions of the Constitution**, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the ~~Community~~ **Union**.
3. The Commission shall ensure the application of ~~the provisions of this Article~~ and shall, where necessary, ~~address~~ **adopt** appropriate ~~directives~~ **[regulations¹]** or decisions to ~~Member States~~.

SECTION 2

AIDS GRANTED BY **MEMBER STATES**

Article 87

1. Save as otherwise provided in ~~this Treaty~~ **the Constitution**, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the ~~common~~ **internal** market.
2. The following shall be compatible with the ~~common~~ **internal** market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;

¹ Since directives no longer count among the instruments the Commission may adopt (see draft Title V of Part One, "Exercise of Union Competence" (CONV 571/03)), this leaves only decisions (see Article 26 of draft Title V) and regulations. However, unlike directives, regulations in principle leave Member States no room for manoeuvre. Providing for the adoption of regulations here represents a change in the status quo.

[(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.]¹

3. The following may be considered to be compatible with the ~~common~~ **internal** market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the ~~Community~~ **Union** to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by ~~decision of~~ **measures adopted by** the Council ~~acting~~ by a qualified majority **on the basis of** a proposal from the Commission.

Article 88

1. The Commission, in cooperation with Member States, **shall** keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the ~~common~~ **internal** market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a **Member** State or through State resources is not compatible with the ~~common~~ **internal** market having regard to [Article 87], or that such aid is being misused, it shall ~~decide that~~ **adopt a decision requiring** the State concerned to ~~shall~~ abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested **Member** State may, in derogation from ~~the provisions of~~ [Articles 226 and 227], refer the matter to the Court of Justice direct.

¹ The Convention may wish to consider whether this Article is still relevant (see also Article 78).

On application by a Member State, the Council may ~~acting unanimously decide~~ **adopt unanimously a decision** that aid which that State is granting or intends to grant shall be considered to be compatible with the ~~common~~ **internal** market, in derogation from ~~the provisions of~~ [Article 87] or from **laws/regulations** provided for in [Article 89], if such a European decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed **by the Member States**, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the ~~common~~ **internal** market having regard to [Article 87], it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final European decision.

Article 89

On a proposal from the Commission, the Council ~~, acting by a qualified majority on the proposal from the Commission and after consulting the European Parliament,~~ **may adopt by a qualified majority the laws/regulations**¹ for the application of [Articles 87 and 88] and may in particular determine the conditions in which [Article 88(3)] shall apply and the categories of aid exempted from this procedure. **It shall act after consulting the European Parliament.**

CHAPTER 2

FISCAL PROVISIONS

Article 90

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

¹ Since under the draft Articles of Title V of Part One "Exercise of Union Competence" (Articles 25 and 26 CONV 571/03), the Council may adopt laws or regulations, the Convention will need to identify the cases, in the area covered by this Article, in which the Council may adopt either or both types of act (see explanations in Annex II to this report).

Article 91

Where products are exported ¹ **by a Member State** to the territory of ~~any~~ **another** Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article 92

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the ~~measures~~ **provisions** contemplated have been previously approved for a limited period by a **decision adopted by the Council acting by a qualified majority** on a proposal from the Commission.

Article 93

The Council ~~shall, acting unanimously~~ on a proposal from the Commission ~~and after consulting the European Parliament and the Economic and Social Committee~~, shall adopt **unanimously provisions measures** for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market ~~within the time limit laid down in Article 14~~ ². **The Council shall act after consulting the European Parliament and the Economic and Social Committee.**

¹ The use of the word "exported" in the context of trade between Member States needs to be reconsidered.

² It has been proposed that the time-limit mentioned here (13.12.1992) should be deleted (see footnote re Article 14).

CHAPTER 3

APPROXIMATION OF LEGISLATION ¹

Article 94 ²

The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives~~ shall **adopt unanimously framework laws** for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the ~~common~~ **internal market. It shall act after consulting the European Parliament and the Economic and Social Committee.**

Article 95 ³

1. By way of derogation from [Article 94] and save where otherwise provided in ~~this Treaty~~ **this Article** shall apply for the achievement of the objectives set out in [Article 14]. ~~The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **The European Parliament and the Council in accordance with the legislative procedure, shall** adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. **They shall act after consulting the Economic and Social Committee.**
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

¹ The positioning of this chapter, which contains the general legal bases for establishing the internal market, could be looked at. It should perhaps be consigned to a possible new title or chapter on the "Internal market" (see also footnotes to Articles 14 and 15).

² At present only measures which represent an "approximation of laws" may be adopted on the basis of Articles 94 and 95. As a result, Article 308 is used in certain cases which relate to the internal market but which do not imply any harmonisation of national laws. This happens, for example, when action is taken to introduce a Community intellectual property instrument which is superposed on national instruments. Should it wish to limit the use of Article 308, the Convention could consider whether specific legal bases should be laid down or whether the reference to the "approximation of laws" in Articles 94 and 95 should be amended so as to permit the action in question. The Convention could also consider the matter of the relationship between Articles 94 and 95 (see explanation in Annex II to this report).

³ See suggestion in previous footnote.

4. If, after the adoption by the **European Parliament and the Council** or by the Commission ¹ of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in [Article 30], or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption by the **European Parliament and the Council** or by the Commission ² of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions ~~as well as the grounds for introducing them and the reasons for them.~~

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, ~~approve or reject~~ **adopt a decision approving or rejecting** the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to [paragraph 6], a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the **European Parliament and the Council**.

9. By way of derogation from the procedure laid down in [Articles 226 and 227], the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

¹ Note: the Commission adopts harmonisation measures only under the implementing powers conferred on it by Article 202.

² Same comment as in footnote re Article 95(4) above.

10. The harmonisation measures referred to ~~above~~ **in this Article** shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in [Article 30], provisional ~~measures~~ **steps** subject to a ~~Community~~ **Union** control procedure.

Article 96

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the ~~common~~ **internal** market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in ~~an agreement eliminating~~ **the elimination of** the distortion in question, the Council, on a proposal from the Commission, shall **adopt by a qualified majority the necessary framework laws**. The Commission and the Council may ~~take~~ **adopt** any other appropriate measures provided for in ~~this Treaty~~ **the Constitution**.

Article 97

1. Where there is a reason to fear that the adoption or amendment of a **national** provision laid down by law, regulation or administrative action may cause distortion within the meaning of [Article 96], a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall ~~recommend~~ **address** to the Member States concerned **a recommendation on** such measures as may be appropriate to avoid the distortion in question.

2. If a **Member** State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuance of [Article 96], to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, ~~the provisions of~~ [Article 96] shall not apply.

TITLE VII

ECONOMIC AND MONETARY POLICY

This Title will be the subject of an addendum to this report

TITLE VIII

EMPLOYMENT ¹

Article 125

Member States and the ~~Community~~ **Union** shall, in accordance with this [Title], work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in [~~Article 2 of the Treaty on European Union and in Article 2...~~]² of this Treaty **the Constitution**.

Article 126

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in [Article 125] in a way consistent with the broad guidelines of the economic policies of the Member States and of the ~~Community~~ **Union** adopted pursuant to [Article 99(2)].
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of [Article 128].

Article 127

1. The ~~Community~~ **Union** shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

¹ The content of this Title may need to be reconsidered in the light of the Convention's conclusions on the report of Working Group XI on Social Europe (CONV 516/03).

² Insert reference to draft article on the Union's objectives in Part One (Article 3 CONV 528/03).

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of ~~Community~~**Union** policies and activities.¹

Article 128

1. The European Council shall each year consider the employment situation in the ~~Community~~**Union** and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, ~~acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130,~~ shall each year ~~draw up~~**adopt by a qualified majority** guidelines which the Member States shall take into account in their employment policies. **It shall act after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee.**

These guidelines shall be consistent with the broad guidelines adopted pursuant to [Article 99(2)].

3. Each Member State shall provide the Council and the Commission with an annual report on the principal ~~measures~~**steps** taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, ~~acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make~~**adopt by a qualified majority** recommendations **which it shall address** to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the ~~Community~~**Union** and on the implementation of the guidelines for employment.

¹ This provision, applying horizontally for all policies, could be grouped with other, similar provisions in a single article (see footnote re Article 3(2)).

Article 129

The European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.

These measures shall not include harmonisation of the laws and regulations of the Member States.

Article 130

The Council, ~~after consulting the European Parliament~~, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. **It shall act after consulting the European Parliament.**

The tasks of the Committee shall be:

- (a) to monitor the employment situation and employment policies in the Member States and the ~~Community~~ **Union**;
- (b) without prejudice to [Article 207], to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in [Article 128].

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

TITLE IX ¹

COMMON COMMERCIAL POLICY

Article 131

By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.

Article 132

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, insofar as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

Article 133

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

¹ This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here.

3. *Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.*

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. *In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.*

5. *Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, insofar as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.*

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Community law and other relevant international agreements.

6. *An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.*

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property insofar as they are not covered by paragraph 5.

Article 134

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

TITLE X

CUSTOMS COOPERATION

Article 135

Within the scope of application of ~~this Treaty~~ **the Constitution, the European Parliament and the Council acting in accordance with the procedure referred to in Article 251 shall take, in accordance with the legislative procedure**, shall adopt measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

TITLE XI

SOCIAL POLICY, EDUCATION, VOCATIONAL TRAINING AND YOUTH

CHAPTER 1

SOCIAL PROVISIONS

Article 136

The ~~Community~~ **Union** and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the ~~Community~~ **Union** and the Member States shall ~~implement measures which take account in their action~~ of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the ~~Community~~ **Union's** economy.

They believe that such a development will ensue not only from the functioning of the ~~common~~ **internal** market, which will favour the harmonisation of social systems, but also from the procedures provided for in ~~this Treaty~~ **the Constitution** and from the approximation of provisions laid down by law, regulation or administrative action.¹

Article 137

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

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;

¹ The force of this paragraph would appear to be no more than declaratory.

- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in ~~Community~~ **Union** territory;
- (h) the integration of persons excluded from the labour market, without prejudice to [Article 150];
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. **The following may be adopted** to this end ~~the Council~~:

- (a) ~~May adopt~~ measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) ~~may adopt~~, in the fields referred to in paragraph 1(a) to (i), ~~by means of directives,~~ **framework laws laying down**, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such ~~directives~~ **framework laws** shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

In the fields referred to in paragraph 1(a), (b), (e), (i), (j) and (k), the European Parliament and the Council shall act in accordance with the legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.¹

In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously on a proposal from the Commission after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

2a. The Council, on a proposal from the Commission, may decide unanimously to render the legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act after consulting the European Parliament.

¹ In the interests of clarity, the following three subparagraphs reproduce the provisions of the current second subparagraph of Article 137(2) TEC.

~~The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this Article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this Article.~~¹

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

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

4. The ~~provisions~~ **measures** adopted pursuant to this Article:

- (a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;
- (b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with ~~this Treaty~~ **the Constitution**.

5. ~~The provisions of~~ This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article 138

1. The Commission shall have the task of promoting the consultation of management and labour at **Community Union** level and shall ~~take~~ **adopt** any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of **Community Union** action.

3. If, after such consultation, the Commission considers **Community Union** action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

¹ The whole of this paragraph has been incorporated above.

4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in [Article 139]. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 139

1. Should management and labour so desire, the dialogue between them at ~~Community~~ **Union** level may lead to contractual relations, including agreements.

2. Agreements concluded at ~~Community~~ **Union** level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by [Article 137], at the joint request of the signatory parties, by a Council ~~decision~~ **measure**¹ **adopted by a qualified majority** on a proposal from the Commission.

~~The Council shall act by qualified majority, except~~ Where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to [Article 137(2)]. ~~In that case, it~~ the Council shall act unanimously.

Article 140

With a view to achieving the objectives of [Article 136] and without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under [this chapter], particularly in matters relating to:

- (a) employment;
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;
- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

¹ The term "decision" seems to be used in its generic sense here, which is not in accordance with the definition of "decision" in the fourth paragraph of Article 249 TEC. The Convention should indicate whether it wishes to specify the legal act to be used, which hitherto has been a directive and should therefore be a framework law (see Annex II to this report).

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

Article 141

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

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

3. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee,~~ **in accordance with the legislative procedure, shall** adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value. **The European Parliament and the Council shall act after consulting the Economic and Social Committee.**

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 142

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes ¹.

¹ There are doubts about how this would work.

Article 143

The Commission shall draw up a report each year on progress in achieving the objectives of [Article 136], including the demographic situation in the ~~Community~~ **Union**. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

~~The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.~~¹

Article 144

The Council ~~, after consulting the European Parliament,~~ shall establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. **It shall act after consulting the European Parliament.** The tasks of the Committee shall be:

- (a) to monitor the social situation and the development of social protection policies in the Member States and the ~~Community~~ **Union**;
- (b) to promote exchanges of information, experience and good practice between Member States and with the Commission;
- (c) without prejudice to [Article 207], to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Article 145

The Commission shall include a separate chapter on social developments within the ~~Community~~ **Union** in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

¹ This paragraph is identical to the second paragraph of Article 145 and could therefore be deleted.

CHAPTER 2

THE EUROPEAN SOCIAL FUND

Article 146

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with ~~the provisions set out below~~ **this [chapter]**; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the ~~Community~~ **Union**, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article 147

~~The Fund shall be administered by The Commission~~ **shall administer the Fund.**

~~The Commission~~ **It** shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of ~~governments~~ **Member States**, trade unions and employers' organisations.

Article 148

The European Parliament and the Council, acting in accordance with the **legislative** procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing ~~decisions~~ **measures** ¹ relating to the European Social Fund. **They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

¹ The term "decision" seems to be used in its generic sense here, which is not in accordance with the definition of "decision" in the fourth paragraph of Article 249 TEC. The Convention should indicate whether it wishes to specify the legal act to be used.

CHAPTER 3

EDUCATION, VOCATIONAL TRAINING AND YOUTH

Article 149

1. The ~~Community~~**Union** shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

2. ~~Community~~ Action **by the Union** shall be aimed at:

- (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- (c) promoting cooperation between educational establishments;
- (d) developing exchanges of information and experience on issues common to the education systems of the Member States;
- (e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
- (f) encouraging the development of distance education.

3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article,

- (a) **the European Parliament and the Council, acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions in accordance with the legislative procedure, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**
- (b) **the Council, acting by a qualified majority on a proposal from the Commission, shall adopt recommendations by a qualified majority.**

Article 150

1. The ~~Community~~**Union** shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.
2. ~~Community~~**Union** action shall aim to:
 - (a) facilitate adaptation to industrial changes, in particular through vocational training and retraining;
 - (b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
 - (c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;
 - (d) stimulate cooperation on training between educational or training establishments and firms;
 - (e) develop exchanges of information and experience on issues common to the training systems of the Member States.
3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.
4. ~~The European Parliament and the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions,~~ **in accordance with the legislative procedure**, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. **The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

TITLE XII

CULTURE

Article 151

1. The ~~Community~~**Union** shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the ~~Community~~**Union** shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- (a) improvement of the knowledge and dissemination of the culture and history of the European peoples;
- (b) conservation and safeguarding of cultural heritage of European significance;
- (c) non-commercial cultural exchanges;
- (d) artistic and literary creation, including in the audiovisual sector.

3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The ~~Community~~**Union** shall take cultural aspects into account in its action under other provisions of ~~this treaty~~**the Constitution**, in particular in order to respect and to promote the diversity of its cultures.¹

5. In order to contribute to the achievement of the objectives referred to in this Article ~~the Council~~:

- (a) ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions~~**the European Parliament and the Council, in accordance with the legislative procedure**, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. ~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~**They shall act after consulting the Committee of the Regions;**
- (b) ~~the Council, acting unanimously~~ on a proposal from the Commission, shall adopt recommendations **unanimously**.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

TITLE XIII
PUBLIC HEALTH

Article 152¹

1. A high level of human health protection shall be ensured in the definition and implementation of all ~~Community~~**the Union's** policies and activities.²

~~Community~~**Union** action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

The ~~Community~~**Union** shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The ~~Community~~**Union** shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination.

3. The ~~Community~~**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions~~ **in accordance with the legislative procedure**, shall contribute to the achievement of the objectives referred to in this Article through adopting:

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) by way of derogation from [Article 37], measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

¹ Working Group XI on Social Europe proposed that the scope of this article be extended to "cover matters such as grave cross-border threat, communicable diseases, bioterrorism and WHO Agreements" (CONV 516/03, point 35).

² This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

- (c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.

The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.

For the purposes set out in this Article, the Council, ~~acting by a qualified majority on a proposal from the Commission,~~ may also adopt recommendations **by a qualified majority ~~for the purposes set out in this Article.~~**

5. ~~Community~~ **Union** action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

TITLE XIV

CONSUMER PROTECTION

Article 153

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the ~~Community~~ **Union** shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.
2. Consumer protection requirements shall be taken into account in defining and implementing other ~~Community~~ **Union** policies and activities.¹
3. The ~~Community~~ **Union** shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to [Article 95] in the context of the completion of the internal market;
 - (b) measures which support, supplement and monitor the policy pursued by the Member States.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

4. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **in accordance with the legislative procedure**, shall adopt the measures referred to in paragraph 3(b). **They shall act after consulting the Economic and Social Committee.**

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective ~~measures~~ **provisions**. Such ~~measures~~ **provisions** must be compatible with ~~this Treaty~~ **the Constitution**. The Commission shall be notified of them.

TITLE XV

TRANS-EUROPEAN NETWORKS

Article 154

1. To help achieve the objectives referred to in [Articles 14 and 158] and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the ~~Community~~ **Union** shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the ~~Community~~ **Union** shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the ~~Community~~ **Union**.

Article 155

1. In order to achieve the objectives referred to in Article 154, the ~~Community~~ **Union**:
- (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
 - (b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;

- (c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in ~~the first indent~~ **point (a)**, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the ~~Community~~ **Union** may also contribute, through the Cohesion Fund ~~set up pursuant to Article 164~~ to the financing of specific projects in Member States in the area of transport infrastructure.

The ~~Community's~~ **Union's** activities shall take into account the potential economic viability of the projects.

2. The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and paragraph 1. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned. ¹

3. Member States, in liaison with the Commission, **shall** coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in [Article 154]. The Commission, in close cooperation with the Member State, **may** take any useful initiative to promote such coordination.

4. The ~~Community~~ **Union** may ~~decide to~~ cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

~~Article 156~~

~~The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.~~

~~Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned. ²~~

¹ With a view to simplification, new paragraph 2, which provides the legal basis for action by the Union concerning trans-European networks, takes over the full text of Article 156; the changes shown are those proposed for the existing text of that Article.

² This article could be deleted; see previous footnote.

TITLE XVI

INDUSTRY

Article 157

1. The ~~Community~~**Union** and the Member States shall ensure that the conditions necessary for the competitiveness of the ~~Community's~~**Union's** industry exist. For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- (a) speeding up the adjustment of industry to structural changes;
- (b) encouraging an environment favourable to initiative and to the development of undertakings throughout the ~~Community~~**Union**, particularly small and medium-sized undertakings;
- (c) encouraging an environment favourable to cooperation between undertakings;
- (d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination.

3. The ~~Community~~**Union** shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of ~~this Treaty~~**the Constitution**.¹ **The European Parliament and the Council, in accordance with the legislative procedure, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, may decide on adopt** specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1. **They shall act after consulting the Economic and Social Committee.**

This Title shall not provide a basis for the introduction by the ~~Community~~**Union** of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

TITLE XVII

ECONOMIC AND SOCIAL COHESION

Article 158

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

In particular, the ~~Community~~ **Union** shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

Article 159

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in [Article 158]. The formulation and implementation of the ~~Community's~~ **Union's** policies and actions and the implementation of the internal market shall take into account the objectives set out in [Article 158] and shall contribute to their achievement.¹ The ~~Community~~ **Union** shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

~~If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon~~ **The European Parliament and the Council, in accordance with the legislative procedure, may adopt any specific measure** necessary outside the Funds ~~and~~ without prejudice to the measures ~~decided upon~~ **adopted** within the framework of the **Union's** other ~~Community~~ policies, ~~such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and~~. **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

¹ This provision, which applies across the board for all policies, could be combined with others of the same type in a single article (see footnote re Article 3(2)).

Article 160

The European Regional Development Fund is intended to help to redress the main regional imbalances in the ~~Community~~ **Union** through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 161

Without prejudice to [Article 162], ~~the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the European Parliament and the Council, in accordance with the legislative procedure, shall adopt measures~~ ¹ defining:

- (a) the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds, **and**
- (b) ~~the Council, acting by the same procedure, shall also define~~ the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

The European Parliament and the Council shall act after consulting the Economic and Social Committee and the Committee of the Regions.

In accordance with the same procedure, they shall adopt measures setting up a Cohesion Fund ~~set up by the Council in accordance with the same procedure shall provide~~ **which** provides a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.~~

¹ Change in the decision-making procedure from assent to codecision ("legislative procedure") in accordance with the report from Working Group IX on Simplification (CONV 424/02, p. 17).

Article 162

The European Parliament and the Council, in accordance with the legislative procedure, shall adopt implementing decisions measures relating to the European Regional Development Fund ~~shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and.~~ **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, [Articles 37 and 148] respectively shall ~~continue to~~ apply.

TITLE XVIII

RESEARCH AND TECHNOLOGICAL DEVELOPMENT

Article 163

1. The ~~Community~~ **Union** shall have the objective of strengthening the scientific and technological bases of ~~Community~~ **Union's** industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of ~~this Treaty~~ **the Constitution**.
2. For this purpose the Community shall, throughout the ~~Community~~ **Union**, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.
3. All ~~Community~~ **the Union's** activities under ~~this Treaty~~ **the Constitution** in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with ~~the provisions of~~ [this Title].

Article 164

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

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of ~~Community~~ **the Union's** research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in ~~Community~~ **the Union's** research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the ~~Community~~ **Union**.

Article 165

1. The ~~Community~~ **Union** and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and ~~Community~~ **the Union's** policy are mutually consistent.
2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 166

1. **The European Parliament and the Council, in accordance with the legislative procedure, shall adopt a European law establishing a multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 Union. They shall act** after consulting the Economic and Social Committee.

The framework programme shall:

- (a) establish the scientific and technological objectives to be achieved by the activities provided for in [Article 164] and fix the relevant priorities;
 - (b) indicate the broad lines of such activities;
 - (c) fix the maximum overall amount and the detailed rules for ~~Community~~ **the Union's** financial participation in the framework programme and the respective shares in each of the activities provided for.
2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission ~~and~~, **shall adopt by a qualified majority the measures establishing the specific programmes. It shall act** after consulting the European Parliament and the Economic and Social Committee ~~shall adopt the specific programmes.~~

Article 167 ¹

For the implementation of the multiannual framework programme, **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt the measures determining:**

- (a) ~~determine~~ the rules for the participation of undertakings, research centres and universities;
- (b) ~~lay down~~ the rules governing the dissemination of research results.

They shall act after consulting the Economic and Social Committee.

Article 168

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

The **European Parliament and the Council, shall adopt in accordance with the legislative procedure, shall adopt the measures determining** the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. **They shall act after consulting the Economic and Social Committee.**

Adoption of the supplementary programmes shall require the agreement of the Member States concerned. ²

¹ With a view to clarity, the decision-making procedures currently in Article 172 TEC have been linked up to their respective legal bases (Articles 167, 168, 169 and 171).

² Paragraph taken from the final sentence of existing Article 172 TEC.

Article 169

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

The European Parliament and the Council, in accordance with the legislative procedure, shall adopt the measures necessary. They shall act after consulting the Economic and Social Committee.

Article 170

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

The detailed arrangements for such cooperation may be the subject of agreements between the ~~Community~~ **Union** and the third parties concerned, which shall be negotiated and concluded in accordance with [Article 300].

Article 171

The ~~Community~~ **Union** may set up joint undertakings or any other structure necessary for the efficient execution of ~~Community~~ **the Union's** research, technological development and demonstration programmes. **The Council, on a proposal from the Commission, shall adopt by a qualified majority the measures necessary. It shall act after consulting the European Parliament and the Economic and Social Committee.**

Article 172 ¹

~~The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.~~

~~The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.~~

¹ With a view to clarity, the provisions of this Article have been fully incorporated in Articles 167, 168, 169 and 171 above.

Article 173

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

TITLE XIX

ENVIRONMENT

Article 174

1. ~~Community~~ **The Union's** policy on the environment shall contribute to pursuit of the following objectives:

- (a) preserving, protecting and improving the quality of the environment;
- (b) protecting human health;
- (c) prudent and rational utilisation of natural resources;
- (d) promoting measures at international level to deal with regional or worldwide environmental problems.

2. ~~Community~~ **The Union's** policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the ~~Community~~ **Union**. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional ~~measures~~ **steps**, for non-economic environmental reasons, subject to a ~~Community inspection~~ **procedure of inspection by the Union**.

3. In preparing its policy on the environment, the ~~Community~~ **Union** shall take account of:

- (a) available scientific and technical data;
- (b) environmental conditions in the various regions of the ~~Community~~ **Union**;
- (c) the potential benefits and costs of action or lack of action;

- (d) the economic and social development of the ~~Community~~ **Union** as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the ~~Community~~ **Union** and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for ~~Community~~ **the Union's** cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with [Article 300].

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 175

1. The **European Parliament and the Council**, ~~acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in accordance with the legislative procedure, shall adopt measures~~ in order to achieve the objectives referred to in [Article 174]. **They shall act after consulting the Economic and Social Committee and the Committee of the Regions.**

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

- (a) ~~provisions~~ **measures** primarily of a fiscal nature;
- (b) measures affecting:
 - (i) town and country planning;
 - (ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;
 - (iii) land use, with the exception of waste management;
- (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council shall act after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

In accordance with the same procedure, the Council may ~~, under the conditions laid down in the first subparagraph,~~ define those matters referred to in this paragraph on which ~~decisions are to be taken~~ **it acts** by a qualified majority.

3. In other areas ¹, **the European Parliament and the Council, in accordance with the legislative procedure, shall adopt measures establishing** general action programmes ~~which setting out set out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and.~~ **They shall act** after consulting the Economic and Social Committee and the Committee of the Regions.

~~The Council, acting under the terms of~~ **The measures necessary for the implementation of these programmes shall be adopted following the procedure provided for in** paragraph 1 or paragraph 2 **respectively** ~~according to the case, shall adopt the measures necessary for the implementation of these programmes.~~

4. Without prejudice to certain measures ~~of a Community nature~~ **adopted by the Union**, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, ~~the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of~~ **such a measure shall provide in appropriate form for:**

(a) temporary derogations, and/or

(b) financial support from the Cohesion Fund ~~set up pursuant to Article 161~~ ².

Article 176

The protective ~~measures~~ **provisions** adopted pursuant to [Article 175] shall not prevent any Member State from maintaining or introducing more stringent protective ~~measures~~ **provisions**. Such ~~measures~~ **provisions** must be compatible with ~~this Treaty~~ **the Constitution**. They shall be notified to the Commission.

TITLE XX

DEVELOPMENT COOPERATION ³

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

¹ This phrase could be deleted since in practice the European Parliament and the Council adopt framework programmes of general scope.

² This clarification is unnecessary as there is only one Cohesion Fund.

³ This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here.

- *the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;*
 - *the smooth and gradual integration of the developing countries into the world economy;*
 - *the campaign against poverty in the developing countries.*
2. *Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.*
 3. *The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.*

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179

1. *Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.*
2. *The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.*
3. *The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.*

Article 180

1. *The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.*
2. *The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.*

Article 181

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

TITLE XXI¹

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article 181a

1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.

3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

¹ This title is to be examined by the Convention in connection with the Union's external relations and is therefore not dealt with here.

PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES ¹

Article 182

The ~~Member States agree to associate with the Community~~ the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom **shall be associated with the Union**. These countries and territories (hereinafter called the "countries and territories") are listed in [Annex II] ~~to this Treaty~~.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the ~~Community~~ **Union** as a whole.

In accordance with the principles set out ~~in the Preamble to this Treaty...~~ ², association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 183

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to ~~this Treaty~~ **the Constitution**.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the ~~Community~~ **Union**, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.

¹ The OCT section concerns partial application of TEC arrangements to the countries and territories concerned. It could be placed in the final provisions which deal with the territorial application of the Constitution. There should also be a reference to association arrangements in Part One of the Constitution

² The principles in question, which are currently in the preamble to the TEC, should be incorporated in the Constitution and, if appropriate, in this provision.

5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the [Chapter] relating to the right of establishment and on a non-discriminatory basis, subject to any special ~~provisions laid down~~ **measures adopted** pursuant to [Article 187].

Article 184

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States ~~in accordance with the provisions of this Treaty~~ **provided for by the Constitution**.
2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with ~~the provisions of~~ [Article 25].
3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the ~~preceding first~~ subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.
5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 185

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when ~~the provisions of~~ [Article 184(1)] ~~have~~ **has** been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States ~~the measures needed~~ **that they take the necessary steps** to remedy the situation.

Article 186¹

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

Article 187

The Council ~~acting unanimously~~, shall **adopt unanimously**², on the basis of the experience acquired under the association of the countries and territories with the ~~Community~~ **Union** and of the principles set out ~~in this Treaty ...~~³, ~~lay down provisions~~ measures as regards the detailed rules and the procedure for the association of the countries and territories with the ~~Community~~ **Union**.

Article 188

~~The provisions of Articles 182 to 187 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this Treaty.~~

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- ¹ This Article should be adapted to take account of the Union's competence to regulate freedom of movement for third-country workers in the Member States (see Article 187 below). Moreover, it should be noted that Working Group X on Freedom, Security and Justice recommended abolishing the use of agreements between Member States as a legal instrument for achieving the Union's objectives.
- ² It should be noted that here the Council acts without a Commission proposal.
- ³ See footnote re the third paragraph of Article 182 TEC above.

Consolidated report by the working party of Legal Service experts of 13 March 2003 – Volume II – Part A (EC Treaty)

PART FIVE

INSTITUTIONS OF THE ~~COMMUNITY~~UNION

This section has been subject to technical amendments in accordance with the remit. They are without prejudice to any substantive amendments which could be made by the Convention.

In particular, the provisions relating to the composition of the institutions and bodies are in italics, since they are reproduced in Part One.

TITLE I

PROVISIONS GOVERNING THE INSTITUTIONS

CHAPTER 1

THE INSTITUTIONS

SECTION 1

THE EUROPEAN PARLIAMENT

Article 189

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.

The number of Members of the European Parliament shall not exceed 732.

Article 190

1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.

2. *The number of representatives elected in each Member State shall be as follows:*

<i>Belgium</i>	<i>25</i>
<i>Denmark</i>	<i>16</i>
<i>Germany</i>	<i>99</i>
<i>Greece</i>	<i>25</i>
<i>Spain</i>	<i>64</i>
<i>France</i>	<i>87</i>
<i>Ireland</i>	<i>15</i>
<i>Italy</i>	<i>87</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>31</i>
<i>Austria</i>	<i>21</i>
<i>Portugal</i>	<i>25</i>
<i>Finland</i>	<i>16</i>
<i>Sweden</i>	<i>22</i>
<i>United Kingdom</i>	<i>87</i>

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3. *Representatives shall be elected for a term of five years.*

4. *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 Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. *The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.*

Article 191

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

The European Parliament and the Council, acting in accordance with the procedure referred to in Article 251, shall in accordance with the legislative procedure, shall adopt the measures laying down the regulations governing political parties at European level and in particular the rules regarding their funding.

Article 192

Insofar as provided in ~~this Treaty~~ **the Constitution**, the European Parliament shall participate in the process leading up to the adoption of ~~Community Union~~ acts by exercising its powers under the ~~procedures laid down in Articles 251 and 252~~ **legislative procedure** and by giving its assent or delivering advisory opinions.¹

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

Article 193

In the course of its duties, the European Parliament may, at the request of a quarter of its **component** Members³, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by ~~this Treaty~~ **the Constitution** on other institutions or bodies, alleged contraventions or maladministration in the implementation of ~~Community Union~~⁴ law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord⁵ of the European Parliament, the Council and the Commission.

¹ This general description of the Parliament's tasks should be supplemented by a reference to its budgetary, supervisory and appointing powers; it also exercises autonomous decision-making powers (see Annex II to this report).

² Unless special provisions apply, replacement of the word "Community" by "Union" could involve extending the scope of this Article (request for submission of a proposal) to matters currently falling under the second and third pillars.

³ Clarification, in accordance with the wording of most of the other provisions of the EC Treaty which require a majority of Members of Parliament for the adoption of a decision.

⁴ Unless special provisions apply, the replacement of the word "Community" by "Union" could involve extending the scope of this Article (temporary Committee of Inquiry) to matters currently falling under the second and third pillars.

⁵ This act does not fall within the typology established in the draft article "The legal acts of the Union" in Part One (Article 24 CONV 571/03).

Article 194

Any citizen of the Union, and any natural or legal person residing or having its registered office in a 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 the ~~Community's~~ **Union's**¹ fields of activity and which affects him, her or it directly².

Article 195

1. The European Parliament shall appoint an Ombudsman³ 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 in the activities of the ~~Community~~ **Union's**⁴ institutions or bodies, with the exception of the Court of Justice ~~and~~, the Court of First Instance **and the judicial panels**⁵ acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

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.

¹ Unless special provision is made, the replacement of the word "Community" by "Union" could involve extending the field of application of this Article (right of petition) to matters currently falling under the second and third pillars.

² The Convention could examine whether to add to this article a specific legal basis for adopting the procedure for exercising the right of petition.

³ In accordance with standard practice, the term "the European Ombudsman" could be used here.

⁴ Unless special provision is made, the replacement of the word "Community" by "Union" could involve extending the field of application of this Article (Ombudsman) to matters currently falling under the second and third pillars.

⁵ Even though the judicial panels will be "attached to the Court of First Instance", they should be expressly mentioned here.

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.

4. The European Parliament shall **adopt the measures** ¹ laying down the regulations and general conditions governing the performance of the Ombudsman's duties. **It shall act** after seeking an opinion from the Commission and with the approval of the Council **which shall give an opinion** ~~acting~~ by a qualified majority.

Article 196

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary **part-session** ² at the request of a majority of its Members or at the request of the Council or of the Commission.

Article 197

The European Parliament shall elect its President and its officers from among its Members.

Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

Article 198

Save as otherwise provided in ~~this Treaty~~ **the Constitution**, the European Parliament shall act by an ~~absolute~~ majority ³ of the votes cast.

The Rules of Procedure shall determine the quorum.

¹ The draft Title V of Part One of the Constitution (CONV 571/03) does not provide for the possibility for the Parliament alone to adopt normative acts (see Annex II to this report).

² The current terminology does not correspond to practice or to the terminology of the preceding subparagraph; the distinction between "session" and "part-session" is taken from Rule 10 of the Rules of Procedure of the Parliament.

³ The word "absolute" risks creating confusion between the majority of votes and the (qualified) majority of members composing the Parliament (see Annex II to this report).

Article 199

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

Article 200

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Article 201

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 accordance with [Article 214]. 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.

SECTION 2

THE COUNCIL

Article 202

To ensure that the objectives set out in ~~this Treaty~~ **the Constitution** are attained the Council shall, in accordance with the provisions of ~~this Treaty~~ **the Constitution**:

- (a) ensure coordination of the general economic policies of the Member States;
- (b) have power to take decisions;

- (c) *confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.*¹

Article 203

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.

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.

Article 204

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

Article 205

- 1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.*
- 2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:*

<i>Belgium</i>	<i>5</i>
<i>Denmark</i>	<i>3</i>
<i>Germany</i>	<i>10</i>
<i>Greece</i>	<i>5</i>
<i>Spain</i>	<i>8</i>
<i>France</i>	<i>10</i>
<i>Ireland</i>	<i>3</i>
<i>Italy</i>	<i>10</i>
<i>Luxembourg</i>	<i>2</i>
<i>Netherlands</i>	<i>5</i>
<i>Austria</i>	<i>4</i>
<i>Portugal</i>	<i>5</i>
<i>Finland</i>	<i>3</i>
<i>Sweden</i>	<i>4</i>
<i>United Kingdom</i>	<i>10.</i>

¹ See draft Article on "implementing acts" in Part One (Article 28(3) CONV 571/03).

For their adoption, acts of the Council shall require at least:

- *62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,*
- *62 votes in favour, cast by at least 10 members, in other cases.*

3. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Article 206

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

Article 207

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by a qualified majority.

The Council shall decide on the organisation of the General Secretariat.

3. The Council shall adopt its Rules of Procedure.

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

Article 208

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

Article 209

The Council shall, ~~after receiving an opinion from the Commission, determine~~ **adopt the measures laying down** the rules governing the committees provided for in ~~this Treaty~~ **the Constitution**. **It shall act after consulting the Commission.**

Article 210

The Council shall, ~~acting~~ **adopt** by a qualified majority, ~~determine~~ **the measures determining** the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the Court of First Instance. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

SECTION 3

THE COMMISSION

Article 211 ¹

[In order to ensure the proper functioning and development of the ~~common~~ **internal market**] ², the Commission shall:

- (a) ensure that the ~~provisions of this Treaty~~ **Constitution** and the measures ~~taken~~ **adopted** by the institutions pursuant thereto are applied;
- (b) formulate recommendations or deliver opinions on matters dealt with in ~~this Treaty~~ **the Constitution**, if it expressly so provides or if the Commission considers it necessary;
- (c) have its own power of decision and participate in the shaping of measures taken by **the European Parliament and the Council** and ~~by the European Parliament~~ in the manner provided for in ~~this Treaty~~ **the Constitution**;
- (d) exercise the powers conferred on it by **the European Parliament and the Council, or by the Council**, for the implementation of the ~~rules laid down~~ **measures adopted by the latter** them.

¹ Since the division into pillars is to be abolished, it could be that, unless specific provision is made, the scope of this provision might be extended to matters currently covered by the second and third pillars.

² A question arises as to whether this phrase is consistent with the scope of the Commission's powers referred to in the following points (a) to (d).

Article 212

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the ~~Community~~ **Union**.

Article 213

1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

The number of Members of the Commission may be altered by the Council, acting unanimously.

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

The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.

2. The Members of the Commission shall, in the **Union's** general interest ~~of the Community~~, 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.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with [Article 216] or deprived of his right to a pension or other benefits in its stead.

Article 214

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.

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 the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.

Article 215

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

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member appointed by the Council, acting by a qualified majority. The Council may, ~~acting unanimously,~~ decide **unanimously** that such a vacancy need not be filled.

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

Save in the case of compulsory retirement under [Article 216], Members of the Commission shall remain in office until they have been replaced or until the Council has decided **unanimously** that the vacancy need not be filled, ~~as provided for in the second paragraph of this Article.~~

Article 216

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.

Article 217

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.
2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.

4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.

Article 218

1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation ¹.

2. The Commission shall adopt its Rules of Procedure so as to ensure ~~that both it and both its own operation and that of its departments operate in accordance with the provisions of this Treaty~~. It shall ensure that these rules are published.

Article 219

The Commission shall act by a majority of the number of Members provided for in [Article 213].

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

SECTION 4

THE COURT OF JUSTICE ²

The provisions of this section might have to be adapted following the proceedings of the discussion circle on the Court of Justice (CONV 543/03)

Article 220

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

¹ A question arises regarding the usefulness of this paragraph, which is purely declaratory.

² The removal of the division into pillars could have an impact on the extent of the jurisdiction of the Court of Justice. For the current situation, see existing Article 46 of the EU Treaty. Annex II contains additional observations on this subject.

In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in [Article 225a] in order to exercise, in certain specific areas, the judicial competence laid down in ~~this Treaty~~ **the Constitution**.

Article 221

The Court of Justice shall consist of one judge per Member State.

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

Article 222

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may 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.

Article 223

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

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

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure¹. Those Rules shall require the approval of the Council, acting by a qualified majority.

Article 224

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 of First Instance to be assisted by Advocates-General.

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 high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.

The Court of First Instance shall appoint its Registrar and ~~lay down~~ **adopt** the rules governing his service.

The Court of First Instance shall ~~establish~~ **adopt** its Rules of Procedure in agreement with the Court of Justice². ~~Those Rules shall require~~ **It shall act after obtaining** the approval of the Council, acting by a qualified majority.

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

Article 225

1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [Article 225a].

¹ This subparagraph provides for a legislative power vested in the Court of Justice. At present the draft Title V "Exercise of Union competence" in Part One (CONV 571/03) does not provide for the possibility for the Court to adopt normative acts.

² See footnote re Article 223.

Decisions given by the Court of First Instance under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of ~~Community~~ **Union** law being affected.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [Article 234], in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of ~~Community~~ **Union** law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of ~~Community~~ **Union** law being affected.

Article 225a

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission,~~ may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas. **It shall act unanimously either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission. It both cases it shall act after consulting the European Parliament.**

The ~~decision~~ **measure** ¹ establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the ~~decision~~ **measure** establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

The members of the judicial panels shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The judicial panels shall ~~establish~~ **adopt** their Rules of Procedure in agreement with the Court of Justice ². ~~Those Rules shall require~~ **They shall act after obtaining** the approval of the Council, acting by a qualified majority.

¹ The term "decision" seems to be used in the generic sense here, since it does not correspond to the definition of "decision" in the current Article 249 of the EC Treaty (i.e. an act with one or more specific addressees). The Convention should indicate whether it wishes to specify a particular instrument.

² See footnote concerning Article 223.

Unless the ~~decision~~ **measure** establishing the judicial panel provides otherwise, the provisions of ~~this Treaty~~ **the Constitution** relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

Article 226

If the Commission considers that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, 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.

Article 227

A Member State which considers that another Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution** may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under ~~this Treaty~~ **the Constitution**, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

Article 228

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, the State shall be required to take the necessary ~~measures~~ **steps** to comply with the judgment of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such ~~measures~~ **steps** it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary ~~measures~~ **steps** to comply with the Court's judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [Article 227].

Article 229

~~Regulations adopted jointly by~~ **Laws of** the European Parliament and ~~of the Council, and by laws/regulations~~ ¹ **of the Council, adopted** pursuant to the ~~provisions of this Treaty~~ **Constitution**, may give the Court of Justice unlimited jurisdiction ~~with regard to~~ **for** the penalties provided for in such ~~regulations~~ **laws**.

Article 229a

Without prejudice to the other provisions of ~~this Treaty~~ **the Constitution**, the Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament,~~ **may adopt unanimously measures conferring** jurisdiction, ~~to the extent that it shall determine,~~ on the Court of Justice in disputes relating to the application of acts adopted on the basis of ~~this Treaty~~ **the Constitution** which create ~~Community~~ [industrial] ² property rights **at Union level**. The Council shall **act after consulting the European Parliament**. **It shall** recommend those ~~provisions~~ **measures** to the Member States for adoption in accordance with their respective constitutional requirements.

¹ Since the draft Articles in Title V ("Exercise of Union competence") of Part One (Articles 25 and 26 CONV 571/03) provide that the Council may adopt either laws or regulations, the Convention would need to identify those cases in which, in those area covered by this Article, the Council may adopt either or both of these two types of act (see explanatory comments in Annex II to this report).

² This concept is somewhat restrictive and its relevance may be queried; Article 133(7) of the EC Treaty refers to the broader concept of "intellectual property".

Article 230¹

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB², other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.³

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

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

*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 law]**,⁴ a regulation or a decision addressed to another person, is of direct and individual concern to the former.*

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 231

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

~~In the case of a regulation, however, the Court of Justice~~ **it** shall, if it considers this necessary, state which of the effects of the ~~regulation~~⁵ **act** which it has declared void shall be considered as definitive.

¹ This Article is the subject of specific consideration by the discussion circle on the Court of Justice and is therefore not dealt with here.

² See footnote concerning Article 8 on the appropriateness of using abbreviations in the Constitution and the possible alternative.

³ During the discussions on the Court of Justice, the Convention could consider whether the Court's jurisdiction as referred to in this Article should be extended to cover acts which are adopted by Community agencies and other bodies with the intention of producing legal effects vis-à-vis third parties. At present, such jurisdiction is provided for in certain Regulations setting up agencies.

⁴ Inserting the word "law" would constitute a substantive amendment.

⁵ Replacement of the term "regulation" by "act" is a necessary adjustment to bring this paragraph into line with the case-law whereby the Court of Justice has upheld the effects of acts other than regulations.

Article 232

Should the European Parliament, the Council or the Commission, in infringement of ~~this Treaty~~ **the Constitution**, fail ¹ to act, the Member States and the other **Union** institutions ~~of the Community~~ 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. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that ~~an Union institution of the Community~~ **an Union** institution 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 and in actions or proceedings brought against the latter.

Article 233

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to ~~this Treaty~~ **the Constitution** shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of [the second paragraph of Article 288].

This Article shall also apply to the *ECB*.

Article 234

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

- (a) the interpretation of ~~this Treaty~~ **the Constitution**;
- (b) the validity and interpretation of acts of ~~the institutions of the Community~~ **the** institutions ~~of the Community~~ and of the *ECB*;
- (c) the interpretation of the statutes of bodies established by an act [*of the Council*], where those statutes so provide ².

¹ See the footnote to Article 230 concerning the advisability of extending jurisdiction to agencies and other bodies.

² The question arises as to the scope of this point (c) in relation to the preceding point. In any event, the text would have to be adjusted to take account of bodies set up by a codecision act.

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.

Article 235

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in [the second paragraph of Article 288].

Article 236

The Court of Justice shall have jurisdiction in any dispute between the ~~Community~~ **Union** and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

Article 237

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by [Article 226];
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in [Article 230];
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in [Article 230], and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under ~~this Treaty~~ **the Constitution** and the Statute of the *ESCB*. In this connection the powers of the Council of the *ECB* in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by [Article 226]. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under ~~this Treaty~~ **the Constitution**, that bank shall be required to take the necessary ~~measures~~ **steps** to comply with the judgment of the Court of Justice.

Article 238

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of ~~the Community~~ **the Union**, whether that contract be governed by public or private law.

Article 239

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject-matter of ~~this Treaty~~ **the Constitution** if the dispute is submitted to it under a special agreement between the parties.

Article 240

Save where jurisdiction is conferred on the Court of Justice by ~~this Treaty~~ **the Constitution**, disputes to which the ~~Community~~ **Union** is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 241

Notwithstanding the expiry of the period laid down in [the fifth paragraph of Article 230], any party may, in proceedings in which a ~~regulation adopted jointly by~~ **law of** the European Parliament and of the Council, or a regulation of the Council, of the Commission, or of the *ECB* is at issue, plead the grounds specified in [the second paragraph of Article 230] in order to invoke before the Court of Justice the inapplicability of that ~~regulation~~ **act**.

Article 242

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 243

The Court of Justice may in any cases before it prescribe any necessary interim measures.

Article 244

The judgments of the Court of Justice shall be enforceable under the conditions laid down in [Article 256].

Article 245

The Statute of the Court of Justice shall be laid down in a ~~separate~~ Protocol.

The Council, ~~acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice,~~ may amend the provisions of the Statute, with the exception of Title I. **It shall act unanimously either at the request of the Court of Justice after consulting the Commission or at the request of the Commission after consulting the Court of Justice. It both cases it shall act after consulting the European Parliament.**

SECTION 5

THE COURT OF AUDITORS

Article 246

The Court of Auditors shall carry out the audit.

Article 247

1. *The Court of Auditors shall consist of one national 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 to 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 for a term of six years. **Their term of office shall be renewable.** The Council, ~~acting by a qualified majority after consulting the European Parliament,~~ shall adopt **by a qualified majority** the list of Members drawn up in accordance with the proposals made by each Member State. ~~The term of office of the Members of the Court of Auditors shall be renewable. It shall act after consulting the European Parliament.~~¹
- ~~They~~ **The Members of the Court of Auditors** shall elect ~~their~~ President ~~of the Court of Auditors~~ from among their number for a term of three years. ~~The President~~ **He** may be re-elected.
4. The Members of the Court of Auditors shall, in the **Union's** general interest ~~of the Community~~, be completely independent in the performance of their duties.

¹ It seems more logical to start with the duration and renewal of the term of office and then go on to the election procedure.

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.

5. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

6. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

7. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

8. The Council, ~~acting by a qualified majority~~, shall determine **by a qualified majority** the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions, ~~It shall also, by the same majority, determine as well as~~ any payment to be made instead of remuneration.

9. The provisions of the Protocol on the privileges and immunities of the European Communities ¹ applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors. ²

Article 248

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the ~~Community~~ **Union**. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the ~~Community~~ **Union** insofar as the relevant constituent instrument does not preclude such examination.

¹ This Protocol will have to be renamed in the light of the Union's new designation.

² In the interests of simplification, it might perhaps be better for this paragraph to be inserted directly into the Protocol, as in the case of members of the other institutions.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of ~~Community~~ **Union** activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the ~~Community~~ **Union**.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions ~~of the Community~~, on the premises of any body which manages revenue or expenditure on behalf of the ~~Community~~ **Union** and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions ~~of the Community~~, any bodies managing revenue or expenditure on behalf of the ~~Community~~ **Union**, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing ~~Community~~ **Union** expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of ~~Community~~ **Union** expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions ~~of the Community~~ and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions ~~of the Community~~.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

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

The Court of Auditors shall ~~draw up~~ **adopt** its Rules of Procedure. ~~Those rules shall require It shall act after obtaining~~ the approval of the Council, acting by a qualified majority.

CHAPTER 2

PROVISIONS COMMON TO SEVERAL INSTITUTIONS

~~Article 249~~¹

~~In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.~~

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

~~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.~~

¹ This Article has been deleted and replaced by the draft Article on "the legal acts of the Union" in Title V of Part One (Article 24 CONV 571/03).

Article 250¹

- 1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 251(4) and (5).*
- 2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.*

Article 251²

- 1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.*
- 2. The Commission shall submit a proposal to the European Parliament and the Council.*

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

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;*
- if the European Parliament does not propose any amendments, may adopt the proposed act;*
- 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.*

¹ This Article ought to be examined by the Convention in connection with Part One of the Constitution and is therefore not dealt with here.

² This Article ought to be adjusted in the light of Article 250 of the EC Treaty and the recommendations of Working Group IX on Simplification. Accordingly, it is not dealt with here.

3. *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 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.*
4. *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.*
5. *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.*
6. *Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.*
7. *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 252~~¹

~~Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:~~

- ~~(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.~~
- ~~(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.~~

¹ Article deleted: see report of Working Group IX on Simplification, page 16.

- ~~— If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.~~
- ~~(e) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.~~
- ~~— If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.~~
- ~~(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.~~
- ~~— The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.~~
- ~~(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.~~
- ~~— Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.~~
- ~~(f) In the cases referred to in points (e), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.~~
- ~~(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.~~

Article 253¹

~~Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.~~

¹ This Article has been deleted and replaced by the draft article on "principles common to acts of the Union" in Title V of Part One (Article 32 CONV 571/03).

Article 254 ¹

~~1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 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 European 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.~~

~~2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European 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.~~

~~3. Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.~~

Article 255 ²

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

Article 256

~~Decisions~~**Measures** ³ of the Council, ~~or~~ of the Commission **or of the European Central Bank** ⁴ which impose a pecuniary obligation on persons other than States shall be enforceable.

¹ This Article has been deleted and replaced by the draft article on publication and entry into force in Title V of Part One (Article 33 CONV 571/03).

² This Article could be included in Part One of the Constitution; see CONV 369/02. Accordingly, it is not dealt with here. Nevertheless, the Convention may wish to consider whether the obligation set out in this Article should be extended to agencies and other bodies. At present, some of the Regulations setting up agencies lay down an obligation along these lines.

³ The term "decision" is used here in the generic sense. It is therefore suggested that it be replaced by "measures" to reflect the fact that it may cover other types of act.

⁴ This addition means that the fourth subparagraph of Article 110(2) of the EC Treaty, which refers to this Article, can be deleted.

Enforcement shall be governed by the rules of civil procedure in force in the **Member** State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

THE ECONOMIC AND SOCIAL COMMITTEE ¹

Article 257

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

The Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.

Article 258

The number of members of the Economic and Social Committee shall not exceed 350.

¹ The Convention may wish to consider whether the word "European" should be added here, in line with current usage at the Committee.

The number of members of the Committee shall be as follows:

<i>Belgium</i>	<i>12</i>
<i>Denmark</i>	<i>9</i>
<i>Germany</i>	<i>24</i>
<i>Greece</i>	<i>12</i>
<i>Spain</i>	<i>21</i>
<i>France</i>	<i>24</i>
<i>Ireland</i>	<i>9</i>
<i>Italy</i>	<i>24</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>12</i>
<i>Austria</i>	<i>12</i>
<i>Portugal</i>	<i>12</i>
<i>Finland</i>	<i>9</i>
<i>Sweden</i>	<i>12</i>
<i>United Kingdom</i>	<i>24.</i>

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 **Union's** general interest ~~of the Community~~.

The Council, ~~acting by a qualified majority~~, shall **adopt, by a qualified majority, measures determining** the allowances of members of the Committee.

Article 259

~~1.—The members of the Committee shall be appointed for four years, on proposals from the Member States~~ ¹. **Their term of office shall be renewable.** The Council, ~~acting by a qualified majority~~, shall **adopt, by a qualified majority**, the list of members drawn up in accordance with the proposals made by each Member State. ~~The term of office of the members of the Committee shall be renewable.~~ ²

~~2.—The Council shall consult~~ **It shall act after consulting** the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the **Union's** activities ~~of the Community~~ are of concern.

Article 260

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

¹ The reference to Member States' proposals duplicates the following sentence.

² The Group thought it more logical to deal with the duration and renewal of the members' term of office first, then with the appointment procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament,**¹ of the Council or of the Commission. It may also meet on its own initiative.

Article 261

The Committee shall include specialised sections for the principal fields covered by ~~this Treaty~~ **the Constitution**.

These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.

Article 262

The Committee must be consulted **by the European Parliament,** by the Council or by the Commission where ~~this Treaty~~ **the Constitution** so provides. ~~The Committee~~ **In all other cases, it** may be consulted by these institutions ~~in all cases in which they consider it appropriate~~. It may **also** issue an opinion on its own initiative in cases in which it considers such action appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to **the European Parliament,** the Council and to the Commission.

~~The Committee may be consulted by the European Parliament.~~²

¹ This amendment, like the amendments to Articles 262, 264 and 265, is required in order to put the European Parliament on an equal footing with the Council in the context of the legislative procedure, as recommended in the report from Working Group IX on Simplification, CONV 424/02, page 15.

² Deletion follows on from the other amendments to this Article; see footnote to Article 260.

CHAPTER 4

THE COMMITTEE OF THE REGIONS

Article 263

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

The number of members of the Committee of the Regions shall not exceed 350.

The number of members of the Committee shall be as follows:

<i>Belgium</i>	<i>12</i>
<i>Denmark</i>	<i>9</i>
<i>Germany</i>	<i>24</i>
<i>Greece</i>	<i>12</i>
<i>Spain</i>	<i>21</i>
<i>France</i>	<i>24</i>
<i>Ireland</i>	<i>9</i>
<i>Italy</i>	<i>24</i>
<i>Luxembourg</i>	<i>6</i>
<i>Netherlands</i>	<i>12</i>
<i>Austria</i>	<i>12</i>
<i>Portugal</i>	<i>12</i>
<i>Finland</i>	<i>9</i>
<i>Sweden</i>	<i>12</i>
<i>United Kingdom</i>	<i>24.</i>

The members of the Committee and an equal number of alternate members shall be appointed for four years, ~~on proposals from the respective Member States~~¹. Their term of office shall be renewable. The Council, ~~acting by a qualified majority~~, shall adopt, **by a qualified majority**, the list of members and alternate members drawn up in accordance with the proposals made by ~~each~~ **the respective** Member States. When the mandate referred to in the first paragraph on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

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 **Union's** general interest ~~of the Community~~.

¹ The reference to Member States' proposals duplicates the following sentence.

Article 264

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request **of the European Parliament**, of the Council or of the Commission. It may also meet on its own initiative.

Article 265

The Committee of the Regions shall be consulted **by the European Parliament**, by the Council or by the Commission where ~~this Treaty~~ **the Constitution** 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.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to [Article 262], the Committee of the Regions shall be informed **by the European Parliament**, the Council or the Commission of the request for an opinion. ~~[Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.]~~¹

~~The Committee of the Regions may be consulted by the European Parliament.~~²

It may issue an opinion on its own initiative **when it considers that specific regional interests are at stake** ~~in cases in which it considers such action appropriate.~~

The opinion of the Committee, together with a record of the proceedings, shall be forwarded **to the European Parliament**, to the Council and to the Commission.

CHAPTER 5

THE EUROPEAN INVESTMENT BANK

Article 266

The European Investment Bank shall have legal personality.

¹ Suggestion: amalgamate this sentence with the penultimate subparagraph of this Article, given that that subparagraph provides that the Committee may issue an opinion on its own initiative in any case.

² Deletion follows on from the other amendments to this Article; see footnote to Article 260.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol ~~annexed to this Treaty~~. The Council ~~acting unanimously, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the European Investment Bank~~, may amend Articles 4, 11 and 12 and Article 18(5) of the Statute of the Bank. **It shall act unanimously, either at the request of the European Investment Bank and after consulting the Commission, or at the request of the Commission and after consulting the European Investment Bank. In both cases it shall act after consulting the European Parliament.**

Article 267

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~~ **internal** market in the **Union's** interest ~~of the Community~~. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the ~~common~~ **internal** market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other ~~Community~~ **Union** financial instruments.

TITLE II ¹

FINANCIAL PROVISIONS

Article 268 ²

All items of revenue and expenditure of the Community, 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 by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs ³ shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

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

Article 269

Without prejudice to other revenue, the budget shall be financed wholly from own resources. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 270

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.

¹ Some provisions of this Title could be moved to Part One of the Constitution; see CONV 369/02.

² The Convention should consider Articles 268 to 273 in the context of Part One; they are therefore not dealt with here.

³ This reference is not in line with the amendments to the EU Treaty made by the Treaty of Amsterdam; the correct heading is "provisions on police and judicial cooperation in criminal matters".

Article 271

The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to [Article 279] provide otherwise.

In accordance with conditions to be laid down pursuant to [Article 279], any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to [Article 279].

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 272

1. The financial year shall run from 1 January to 31 December.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

Consolidated report by the working party of Legal Service experts of 13 March 2003 – Volume II – Part A (EC Treaty)

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

- (a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;*
- (b) with regard to the proposed modifications:*
 - where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;*
 - where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;*
 - where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.*

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. *Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.*

7. *When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.*

8. *However, the European Parliament, acting by a majority of its Members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.*

9. *A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.*

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;*
- the average variation in the budgets of the Member States;*

and

- the trend of the cost of living during the preceding financial year.*

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three-fifths of the votes cast.

10. *Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.*

Article 273

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one-twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Article 274

The Commission shall implement the budget, in accordance with ~~the provisions of the regulations made by the~~ **laws/regulations adopted** pursuant to [Article 279], on its own responsibility and within the limits of the appropriations **allocated**, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The **laws/regulations** shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the **laws/regulations made adopted** pursuant to [Article 279], transfer appropriations from one chapter to another or from one subdivision to another.

Article 275

The Commission shall submit annually **to the European Parliament and to the Council** ~~and to the European Parliament~~ the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the **Union's** assets and liabilities ~~of the Community~~.

Article 276

1. The European Parliament, ~~acting on a recommendation from the Council~~ which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in [Article 275], the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in [Article 248(1), second subparagraph] and any relevant special reports by the Court of Auditors.
2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.
3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Article 277

The budget shall be drawn up in ~~the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279~~ **euro**.

Article 278

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of ~~this Treaty~~ **the Constitution**. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Article 279

1. The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors,~~ shall:

- (a) ~~make adopt financial laws/~~Financial Regulations ¹ specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

The Council shall act unanimously and, from 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and. It shall act after consulting the European Parliament and obtaining the opinion of the Court of Auditors.

2. The Council, ~~acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors,~~ **shall unanimously adopt measures determining** ~~shall determine~~ the methods and procedure whereby the budget revenue provided under the arrangements relating to the ~~Community's~~ **Union's** own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements. **It shall act after consulting the European Parliament and the Court of Auditors.**

Article 280

1. The ~~Community Union~~ and the Member States shall counter fraud and any other illegal activities affecting the **Union's** financial interests ~~of the Community~~ through measures to be taken in accordance with this Article, 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~~ **steps** to counter fraud affecting the **Union's** financial interests ~~of the Community~~ as they take to counter fraud affecting their own financial interests.

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

¹ Since the draft Articles in Title V "Exercise of Union competence" in Part One (Articles 25 and 26 CONV 571/03) provide that the Council may adopt either laws or regulations, the Convention would need to identify those cases in which, in the area covered by each Article, the Council may adopt either or both of these two types of act (see explanatory comments in Annex II hereto).

4. The **European Parliament and the Council**, ~~acting in accordance with the legislative procedure referred to in Article 251, after consulting the Court of Auditors,~~ **shall adopt** the necessary measures in the fields of the prevention of and fight against fraud affecting the **Union's** financial interests ~~of the Community~~ with a view to affording effective and equivalent protection in the Member States. **They shall act after consulting the Court of Auditors.** These measures shall not concern the application of national criminal law or the national administration of justice.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures ~~taken~~ **and provisions adopted** for the implementation of this Article.

PART SIX

GENERAL AND FINAL PROVISIONS

~~Article 281~~¹

~~The Community shall have legal personality.~~

Article 282

In each of the Member States, the ~~Community~~ **Union** shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the ~~Community~~ **Union** shall be represented by the Commission.

Article 283

The Council, ~~shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down,~~ **shall adopt by a qualified majority** the Staff Regulations of **Union** officials ~~of the European Communities~~ and the Conditions of Employment of other **Union** servants ~~of those Communities~~. **It shall act after consulting the other institutions concerned.**

¹ This Article has been deleted and replaced by the draft article on "legal personality" in Title I of Part One (Article 4, CONV 528/03).

Article 284

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of ~~this Treaty~~ **the Constitution**, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article 285

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, **the European Parliament and the Council**, ~~acting~~ in accordance with **the legislative** procedure ~~referred to in Article 251~~, **shall adopt** measures for the production of statistics where necessary for the performance of the **Union's** activities ~~of the Community~~.
2. The production of ~~Community~~ **Union** statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

Article 286 ¹

1. ~~From 1 January 1999, Community~~ **Union** acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, ~~this Treaty~~ **the Constitution**.
2. ~~Before the date referred to in paragraph 1, The European Parliament and the Council, acting in accordance with the legislative procedure referred to in Article 251, shall adopt measures setting up~~ **establish** an independent supervisory body responsible for monitoring the application of ~~the such Community acts referred to in paragraph 1 to Community~~ **Union** institutions and bodies and ~~shall adopt any other relevant measures provisions as appropriate.~~

¹ With abolition of the division into pillars, the scope of this provision might extend to matters currently covered by the second and third pillars, unless specific provision is made.

Article 287 ¹

The members of the **Union** institutions ~~of the Community~~, the members of committees, and the officials and other **Union** servants ~~of the Community~~ shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 288

The **Union's** contractual liability ~~of the Community~~ shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the ~~Community~~ **Union** ² shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the *ECB* or by its servants in the performance of their duties.

The personal liability of its servants towards the ~~Community~~ **Union** shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article 289

The seat of the **Union's** institutions ~~of the Community~~ shall be determined by common accord of the Governments of the Member States.

Article 290

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

¹ It might perhaps be advisable to extend the obligation referred to in this Article to agencies and other bodies, bearing in mind also the possible extension of the obligation laid down in Article 255 of the EC Treaty.

² Replacing "Community" by "Union" could involve extending the scope of this Article (non-contractual liability) to matters currently covered by the second and third pillars, unless specific provision is made.

Article 291

The ~~Community~~ **Union** shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities¹. The same shall apply to the European Central Bank, ~~the European Monetary Institute~~, and the European Investment Bank.

Article 292²

Member States undertake not to submit a dispute concerning the interpretation or application of ~~this Treaty~~ **the Constitution** to any method of settlement other than those provided for therein.

[Article 293³

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

- the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals;
- the abolition of double taxation within the Community;
- the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries;
- the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.]

Article 294⁴

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of [Article 48], without prejudice to the application of the other provisions of ~~this Treaty~~ **the Constitution**.

¹ See footnote to Article 247 (change of name of the protocol).

² With abolition of the division into pillars, the scope of this provision might extend to matters currently covered by the second and third pillars, unless specific provision is made.

³ Given the recommendations of Working Groups IX on Simplification and X on Freedom, Security and Justice, that the convention instrument should be abolished, the Convention may wish to consider what to do about this Article.

⁴ This provision covers freedom of establishment and the free movement of capital. It is proposed that it be moved to the title or chapter on these freedoms in the internal market.

Article 295

~~This Treaty~~ **The Constitution** shall in no way prejudice the rules in Member States governing the system of property ownership.

Article 296 ¹

1. ~~The provisions of this Treaty~~ **The Constitution** shall not preclude the application of the following rules:

- (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) any Member State may take such ~~measures~~ **steps** as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such ~~measures~~ **steps** shall not adversely affect the conditions of competition in the ~~common~~ **internal** market regarding products which are not intended for specifically military purposes.

2. The Council ~~may, acting unanimously~~ on a proposal from the Commission, may **unanimously** make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

Article 297

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the ~~common~~ **internal** market being affected by ~~measures~~ **steps** which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 298

If ~~measures~~ **steps** taken in the circumstances referred to in [Articles 296 and 297] have the effect of distorting the conditions of competition in the ~~common~~ **internal** market, the Commission shall, together with the State concerned, examine how these ~~measures~~ **steps** can be adjusted to the rules laid down in ~~the Treaty~~ **the Constitution**.

¹ The Convention may wish to consider this Article in the context of common defence questions.

By way of derogation from the procedure laid down in [Articles 226 and 227], the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in [Articles 296 and 297]. The Court of Justice shall give its ruling in camera.

Article 299

1. ~~This Treaty~~ **The Constitution**¹ shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland².

2. ~~The provisions of this Treaty~~ **The Constitution** shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, ~~acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament~~, shall adopt **by a qualified majority** specific measures aimed, in particular, at laying down the conditions of application of the ~~present Treaty~~ **Constitution** to those regions, including common policies. **It shall act after consulting the European Parliament.**

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal ~~Community~~ **Union** programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the ~~Community~~ **Union** legal order, including the internal market and common policies.

3. The special arrangements for association set out in [Part Four] of ~~this Treaty~~ **the Constitution** shall apply to the overseas countries and territories listed in [Annex II] ~~to this Treaty~~.

¹ Article 299 applies only to the TEC; replacement of the word "Treaty" by "Constitution" raises the question of the Constitution's territorial scope.

² This paragraph will need to be adjusted in line with the Act of Accession.

~~This Treaty~~ **The Constitution** shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the ~~aforementioned~~ list in **Annex II**.

4. The ~~provisions of this Treaty~~ **Constitution** shall apply to the European territories for whose external relations a Member State is responsible.

5. The ~~provisions of this Treaty~~ **Constitution** shall apply to the Åland Islands in accordance with the provisions set out in Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

- (a) ~~this Treaty~~ **the Constitution** shall not apply to the Faroe Islands;
- (b) ~~this Treaty~~ **the Constitution** shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) ~~the provisions of this Treaty~~ **the Constitution** shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

[Insert provisions on the OCT here] ¹

Article 300 ²

1. Where this Treaty provides for the conclusion of agreements between the Community 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 it 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 the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

¹ As suggested in the footnote to Part Four (Articles 182 to 188 of the EC Treaty), the provisions on the overseas countries and territories could be placed here.

² The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here.

2. *Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.*

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

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

3. *The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.*

By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

4. *When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.*

5. *When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.*

6. *The European Parliament, 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 this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.*

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

Article 301¹

Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries², the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

Article 302³

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.

The Commission shall also maintain such relations as are appropriate with all international organisations.

Article 303

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

Article 304

The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.

¹ The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here. Nevertheless, the Convention may wish to consider whether it would be appropriate to amalgamate it with current Article 60 of the EC Treaty.

² The reference only to "countries" currently precludes use of this Article for sanctions against individuals or non-State entities. See footnote to Article 60 for developments and suggestions on this subject.

³ The Convention should consider Articles 302 to 304 in the context of external relations questions; they are therefore not dealt with here.

Article 305 ¹

1. ~~The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.~~

2. ~~The provisions of this Treaty~~ The **Constitution** shall not derogate from ~~those of the Treaty~~ establishing the European Atomic Energy Community.

Article 306

~~The provisions of this Treaty~~ **Constitution** shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of ~~this Treaty~~ **the Constitution**.

Article 307

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by ~~by the provisions of this Treaty~~ **the Constitution**.

To the extent that such agreements are not compatible with ~~this Treaty~~ **the Constitution**, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under ~~this Treaty~~ **the Constitution** by each Member State form an integral part of the ~~Community~~ **Union** and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

¹ This Article might be re-examined, depending on how the question of the EURATOM Treaty is dealt with.

Article 308 ¹

~~If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.~~

Article 309 ²

- 1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with Article 7(3) of the Treaty on European Union, these voting rights shall also be suspended with regard to this Treaty.*
 - 2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has been determined in accordance with Article 7(2) of that Treaty, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. 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 this Treaty shall in any case continue to be binding on that State.*
- 3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken in accordance with paragraph 2 in response to changes in the situation which led to their being imposed.*
 - 4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).*
- This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.*

¹ This Article has been deleted and replaced by the draft article on the "flexibility clause" in Title III of Part One (Article 16 CONV 528/03).

² The Convention should consider this Article in the context of Part One; it is therefore not dealt with here.

Article 310¹

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

Article 311²

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.

Article 312

This Treaty is concluded for an unlimited period.

FINAL PROVISIONS

Article 313

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

Article 314

This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

¹ The Convention should consider this Article in the context of external relations questions; it is therefore not dealt with here.

² Articles 311 to 314 are to be incorporated into Part Three (see CONV 369/02) and are accordingly not dealt with here.

Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.

Part B

Provisions of the Treaty on European Union (EU Treaty)

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TITLE I

COMMON PROVISIONS

~~Article 1~~¹

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union".~~

~~This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.~~

~~The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.~~

~~Article 2~~

~~The Union shall set itself the following objectives:~~

- ~~—— to promote economic and social progress and a high level of employment 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, ultimately including a single currency in accordance with the provisions of this Treaty;~~
- ~~—— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17;~~
- ~~—— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;~~
- ~~—— to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;~~

¹ Articles 1 and 2 are deleted and replaced by draft articles (Establishment of the Union, the Union's values and the Union's objectives) of Part One (Articles 1, 2 and 3 CONV 528/03).

~~— to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.~~

~~The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.~~

Article 3

*The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.*¹

*The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.*²

Article 4³

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

¹ This point will be covered by Title IV (institutions) of Part One.

² This point should be examined by the Convention in the context of external relations and is therefore not dealt with here.

³ Articles 4 and 5 will be covered by Title IV (institutions) of Part One.

Article 5

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, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.

Article 6 ¹

- ~~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.~~
- ~~2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.~~
- ~~3. The Union shall respect the national identities of its Member States.~~
4. [The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.] ²

Article 7 ³

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 principles mentioned in Article 6(1), 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.

¹ Paragraph 1 is deleted and replaced by the draft article on "values" of Part One (Article 2 CONV 528/03); paragraph 2 is deleted and replaced by the draft article on "fundamental rights" of Part One (Article 5(3) CONV 528/03); paragraph 3 is deleted and replaced by the draft article on "Establishment of the Union" of Part One (Article 1(2) CONV 528/03).

² It is suggested that this paragraph be covered by Part One, and could therefore be deleted.

³ This Article is to be examined by the Convention in the context of Part One and is therefore not dealt with here.

2. *The Council, meeting in the composition of the 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 principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.*

3. *Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this 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 this 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 3 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 2. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.*

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

6. *For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.*

TITLE II

~~PROVISIONS AMENDING THE TREATY~~

~~ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY~~

~~WITH A VIEW TO ESTABLISHING THE EUROPEAN COMMUNITY~~

Article 8

(not reproduced)

~~TITLE III~~
~~PROVISIONS AMENDING THE TREATY ESTABLISHING~~
~~THE EUROPEAN COAL AND STEEL COMMUNITY~~

~~Article 9~~
~~(not reproduced)~~

~~TITLE IV~~
~~PROVISIONS AMENDING THE TREATY ESTABLISHING~~
~~THE EUROPEAN ATOMIC ENERGY COMMUNITY~~

~~Article 10~~
~~(not reproduced)~~

TITLE V ¹
PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

Article 11

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;*
- to strengthen the security of the Union in all ways;*
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;*
- to promote international cooperation;*

¹ This Title will be re-examined by the Convention and is therefore not dealt with here.

- *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.*

2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Article 12

The Union shall pursue the objectives set out in Article 11 by:

- *defining the principles of and general guidelines for the common foreign and security policy;*
- *deciding on common strategies;*
- *adopting joint actions;*
- *adopting common positions;*
- *strengthening systematic cooperation between Member States in the conduct of policy.*

Article 13

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.

2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.

Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3. The Council shall 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.

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

The Council shall ensure the unity, consistency and effectiveness of action by the Union.

Article 14

- 1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.*
- 2. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.*
- 3. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.*
- 4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.*
- 5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.*
- 6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.*
- 7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.*

Article 15

The Council shall adopt common positions. 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 16

Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.

Article 17

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, in accordance with the second subparagraph, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.

2. Questions referred to in this Article shall include humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking.

3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.

4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this Title.

5. *With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.*

Article 18

1. *The Presidency shall represent the Union in matters coming within the common foreign and security policy.*

2. *The Presidency shall be responsible for the implementation of decisions taken under this Title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.*

3. *The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.*

4. *The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.*

5. *The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.*

Article 19

1. *Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.*

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

2. *Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.*

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Article 20

The diplomatic and consular missions of the Member States and the Commission delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.

Article 21

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Article 22

1. Any Member State or the Commission may refer to the Council any questions relating to the common foreign and security policy and may submit proposals to the Council.

2. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

Article 23

1. *Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions. When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.*

2. *By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:*

- when adopting joint actions, common positions or taking any other decision on the basis of a common strategy;*
- when adopting any decision implementing a joint action or a common position;*
- when appointing a special representative in accordance with Article 18(5).*

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

This paragraph shall not apply to decisions having military or defence implications.

3. *For procedural questions, the Council shall act by a majority of its members.*

Article 24

- 1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency.*
- 2. The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions.*
- 3. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2).*
- 4. The provisions of this Article shall also apply to matters falling under Title VI. When the agreement covers an issue for which a qualified majority is required for the adoption of internal decisions or measures, the Council shall act by a qualified majority in accordance with Article 34(3).*
- 5. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally.*
- 6. Agreements concluded under the conditions set out by this Article shall be binding on the institutions of the Union.*

Article 25

Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47.

Article 26

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.

Article 27

The Commission shall be fully associated with the work carried out in the common foreign and security policy field.

Article 27a

1. Enhanced cooperation in any of the areas referred to in this title shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect:

- the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy,*
- the powers of the European Community, and*
- consistency between all the Union's policies and its external activities.*

2. Articles 11 to 27 and Articles 27b to 28 shall apply to the enhanced cooperation provided for in this article, save as otherwise provided in Article 27c and Articles 43 to 45.

Article 27b

Enhanced cooperation pursuant to this title shall relate to implementation of a joint action or a common position. It shall not relate to matters having military or defence implications.

Article 27c

Member States which intend to establish enhanced cooperation between themselves under Article 27b shall address a request to the Council to that effect.

The request shall be forwarded to the Commission and, for information, to the European Parliament. The Commission shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies. Authorisation shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.

Article 27d

Without prejudice to the powers of the Presidency and of the Commission, the Secretary-General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.

Article 27e

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 27c shall notify its intention to the Council and inform the Commission. The Commission shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Council shall take a decision on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

For the purposes of this Article, the Council shall act by a qualified majority. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the members of the Council concerned as those laid down in the third subparagraph of Article 23(2).

Article 28

- 1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.*
- 2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.*
- 3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.*

In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

- 4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.*

TITLE VI ¹

PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 29

Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- *closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32,*
- *closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ("Eurojust"), in accordance with the provisions of Articles 31 and 32,*
- *approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).*

Article 30

1. Common action in the field of police cooperation shall include:

- (a) operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;*

¹ This Title will be re-examined by the Convention and is therefore not dealt with here.

- (b) *the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data;*
- (c) *cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research;*
- (d) *the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.*

2. *The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:*

- (a) *enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;*
- (b) *adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;*
- (c) *promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;*
- (d) *establish a research, documentation and statistical network on cross-border crime.*

Article 31

1. *Common action on judicial cooperation in criminal matters shall include:*

- (a) *facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;*

- (b) *facilitating extradition between Member States;*
 - (c) *ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;*
 - (d) *preventing conflicts of jurisdiction between Member States;*
 - (e) *progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.*
2. *The Council shall encourage cooperation through Eurojust by:*
- (a) *enabling Eurojust to facilitate proper coordination between Member States' national prosecuting authorities;*
 - (b) *promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol;*
 - (c) *facilitating close cooperation between Eurojust and the European Judicial Network, particularly, in order to facilitate the execution of letters rogatory and the implementation of extradition requests.*

Article 32

The Council shall lay down the conditions and limitations under which the competent authorities referred to in Articles 30 and 31 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.

Article 33

This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 34

1. In the areas referred to in this title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. *The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may:*

- (a) adopt common positions defining the approach of the Union to a particular matter;*
- (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;*
- (c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;*
- (d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.*

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties.

3. *Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts of the Council shall require at least 62 votes in favour, cast by at least 10 members.*

4. *For procedural questions, the Council shall act by a majority of its members.*

Article 35

1. *The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them.*
2. *By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.*
3. *A Member State making a declaration pursuant to paragraph 2 shall specify that either:*
 - (a) *any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment; or*
 - (b) *any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.*
4. *Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 1.*
5. *The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.*
6. *The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.*

7. *The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under Article 34(2) whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under Article 34(2)(d).*

Article 36

1. *A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:*

- give opinions for the attention of the Council, either at the Council's request or on its own initiative,*
- contribute, without prejudice to Article 207 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in Article 29.*

2. *The Commission shall be fully associated with the work in the areas referred to in this title.*

Article 37

Within international organisations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of this title.

Articles 18 and 19 shall apply as appropriate to matters falling under this title.

Article 38

The agreements referred to in Article 24 may cover matters falling under this Title.

Article 39

1. *The Council shall consult the European Parliament before adopting any measure referred to in Article 34(2)(b), (c) and (d). The European Parliament shall deliver its opinion within a time limit which the Council may lay down, which shall not be less than three months. In the absence of an opinion within that time limit, the Council may act.*

2. *The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this title.*
3. *The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in the areas referred to in this title.*

Article 40

1. *Enhanced cooperation in any of the areas referred to in this title shall have the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice, while respecting the powers of the European Community and the objectives laid down in this title.*
2. *Articles 29 to 39 and Articles 40a to 41 shall apply to the enhanced cooperation provided for by this article, save as otherwise provided in Article 40a and in Articles 43 to 45.*
3. *The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice and the exercise of those powers shall apply to this article and to Articles 40a and 40b.*

Article 40a

1. *Member States which intend to establish enhanced cooperation between themselves under Article 40 shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so. Those Member States may then submit an initiative to the Council designed to obtain authorisation for the enhanced cooperation concerned.*
2. *The authorisation referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45, by the Council, acting by a qualified majority, on a proposal from the Commission or on the initiative of at least eight Member States, and after consulting the European Parliament. The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community.*

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

Article 40b

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 40a shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the cooperation in question. The Council shall take a decision on the request within four months of the date of receipt of that notification. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

For the purposes of this Article, the Council shall act under the conditions set out in Article 44(1).

Article 41

- 1. Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.*
- 2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.*
- 3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.*
- 4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.*

Article 42

The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.

TITLE VII¹

PROVISIONS ON ENHANCED COOPERATION

Article 43

Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community provided that the proposed cooperation:

- (a) is aimed at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration;*
- (b) respects the said Treaties and the single institutional framework of the Union;*
- (c) respects the *acquis communautaire* and the measures adopted under the other provisions of the said Treaties;*
- (d) remains within the limits of the powers of the Union or of the Community and does not concern the areas which fall within the exclusive competence of the Community;*
- (e) does not undermine the internal market as defined in Article 14(2) of the Treaty establishing the European Community, or the economic and social cohesion established in accordance with Title XVII of that Treaty;*
- (f) does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them;*
- (g) involves a minimum of eight Member States;*
- (h) respects the competences, rights and obligations of those Member States which do not participate therein;*
- (i) does not affect the provisions of the Protocol integrating the Schengen *acquis* into the framework of the European Union;*
- (j) is open to all the Member States, in accordance with Article 43b.*

¹ This title will be covered by Part One.

Article 43a

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 Treaties.

Article 43b

When enhanced cooperation is being established, it shall be open to all Member States. It shall also be open to them at any time, in accordance with Articles 27e and 40b of this Treaty and with Article 11a of the Treaty establishing the European Community, 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 44

1. For the purposes of the adoption of the acts and decisions necessary for the implementation of enhanced cooperation referred to in Article 43, the relevant institutional provisions of this Treaty and of the Treaty establishing the European Community 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 shall be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members concerned as laid down in Article 205(2) of the Treaty establishing the European Community, and in the second and third subparagraphs of Article 23(2) of this Treaty as regards enhanced cooperation established on the basis of Article 27c. 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 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.

Article 44a

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 consulting the European Parliament, decide otherwise.

Article 45

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 the Community, and shall cooperate to that end.

TITLE VIII¹

FINAL PROVISIONS

Article 46

The provisions of the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:

- (a) provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;*
- (b) provisions of Title VI, under the conditions provided for by Article 35;*
- (c) provisions of Title VII, under the conditions provided for by Articles 11 and 11a of the Treaty establishing the European Community and Article 40 of this Treaty;*
- (d) Article 6(2) with regard to action of the institutions, insofar as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty;*

¹ This Title will appear in the general and final provisions (Part Three).

- (e) *the purely procedural stipulations in Article 7, with the Court acting at the request of the Member State concerned within one month from the date of the determination by the Council provided for in that Article;*
- (f) *Articles 46 to 53.*

Article 47

Subject to the provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, and to these final provisions, nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.

Article 48

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, 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 common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Article 49

Any European State which respects the principles set out in Article 6(1) 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.

The conditions of admission and the adjustments to the Treaties 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 50

- 1. Articles 2 to 7 and 10 to 19 of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Brussels on 8 April 1965, are hereby repealed.*
- 2. Article 2, Article 3(2) and Title III of the Single European Act signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 are hereby repealed.*

Article 51

This Treaty is concluded for an unlimited period.

Article 52

- 1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.*
- 2. This Treaty shall enter into force on 1 January 1993, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.*

Article 53

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

Pursuant to the Accession Treaty of 1994, the Finnish and Swedish versions of this Treaty shall also be authentic.
