

CONV 729/03

**NOTE**

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from :	Secretariat
to :	Convention
Subject :	<b>Part Two of the Constitution</b> – <b>Second report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission</b>

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**I. INTRODUCTION**

1. Members of the Convention will find attached the second report by the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission.
2. After the working party of experts submitted their first report on 13 March 2003, the Praesidium decided to give them a complementary mandate (CONV 682/03), asking them to implement some of their suggestions.
3. That mandate stated that the Praesidium would if necessary issue a further complementary mandate for implementation of the suggestions referred to in points 29, "Designation of legislative acts" and 30, 31 and 32 of the report, "Breakdown between legislative and non-legislative acts of the Council", once the Praesidium had examined the relevant questions. The second complementary mandate was issued to the working party of experts on 29 April.
4. Some of the amendments to Part Three of the Constitution included in this report are more than purely technical. They result from proposals which the Praesidium is submitting to the Convention, mainly relating to decision-making procedures (see II below). These proposals reflect the opinions of a majority of the members of the Praesidium.

5. The legal bases which are the subject of draft articles prepared by the Praesidium or specific discussions within the Convention and the discussion groups are not covered by the experts working party's complementary mandate. The provisions in question are those relating to the area of freedom, security and justice, the Court of Justice and the Court of First Instance, the general and final provisions and the provisions relating to external action, finance, the institutions, Union membership, democratic life and Economic and Monetary Union.

## II. DECISION-MAKING PROCEDURES

The Praesidium's proposals to the Convention which the working party of experts has already translated into textual form are as follows:

1. Establishment in draft Article 17(3) (CONV 691/03) of the principle that "Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority." The result of introducing this rule is that the reference to the qualified majority in the legal bases is deleted and the simple majority is mentioned where applicable.
2. Establishment in draft Article 18(2) of the principle that "Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal." The introduction of this rule has important consequences for the way in which aspects of procedure are explained in the legal bases. The working party of experts clearly explains these consequences and offers some suggestions which might make it possible to clarify the scope of the general rule.
3. The breakdown between legislative acts (draft Article 25<sup>1</sup>) and non-legislative acts directly adopted on the basis of the Constitution (draft Article 26<sup>1</sup>) and, within the category of legislative acts, between those which in future should be subject to the ordinary legislative procedure (codecision) and those to be adopted by the Parliament or the Council with the participation

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<sup>1</sup> CONV 571/03.

of the other arm of the legislative authority under a special legislative procedure. On the basis of that twofold breakdown, the working party of experts has been able to indicate the type or types of acts which may be adopted pursuant to the various legal bases: law, framework law, regulation or decision, and to simplify the information describing the procedures.

In this context, the Praesidium has selected, firstly, the legal bases to which it is proposing that the Convention extend the ordinary legislative procedure and, secondly, those for which it suggests continuing to apply a special legislative procedure.

(a) First of all, the Praesidium proposes extending the ordinary legislative procedure (codecision) to the legal bases directly referred to in the conclusions of the Working Group on Simplification:

- Internal market (social security measures for Community migrant workers). Article 42 ***(Currently the Council acts unanimously)***<sup>2</sup>
- Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Coordination of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. Article 47 ***(Currently the Council acts unanimously)***
- Culture. Article 151 (except for recommendations). ***(Currently the Council acts unanimously)***
- Structural Funds and Cohesion Fund, (from 2007). Article 161 ***(Currently: qualified majority in 2007 and assent)***.

(b) The Praesidium also proposes extending the ordinary legislative procedure to the following legal bases:

- (i) ***Current procedure: qualified majority in the Council and simple majority in the Parliament***
- Common agricultural policy legislation (legislative aspects only). Article 37(2)
  - Liberalisation of services. Article 52(1)

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<sup>2</sup> The Praesidium proposes the change in procedure, which involves a transition from unanimity to qualified majority, since it believes that this article does not entail any measures to harmonise Member States' laws.

- Provisions concerning the principles of the regulatory system for transport, application of which would be liable to have a serious effect on the standard of living and on employment. Article 71( 2)
- Social policy: Article 137(1)(d), (f) and (g) and second subparagraph of Article 137(2) *(According to the Treaty in force, the aspects referred to here may be subject to the codecision procedure following a unanimous Council decision)*
- Control mechanisms for implementing powers. Article 202 (Draft Article 28)
- Adoption of the financial regulations, (from 2007). Article 279(1)
- Establishment of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities. Article 283.

**(ii) Current procedure: qualified majority in the Council**

- Exclusion in a Member State of certain activities from the scope of the provisions on the right of establishment. Article 45, second paragraph.
- Extension of the provisions on the supplying of services to include nationals of a third country established in the Community. Article 49, second paragraph.
- Adoption of other measures on the movement of capital to or from third countries. Article 57(2), first part.
- Adoption of directives to eliminate distortion within the common market. Article 96, second paragraph.

**(iii) Current procedure: unanimity in the Council and ordinary consultation of the Parliament**

- Amendment of certain articles of the Protocol on the Statute of the EIB. Article 266

(c) The Praesidium also identified the legislative acts which would be adopted by the European Parliament or by the Council with the participation of the other arm of the legislative authority under a special legislative procedure:

**(i) Acts adopted by the European Parliament**

- Regulations governing the Ombudsman. Article 195(4) *(Current procedure: Adoption by the Parliament after approval of the Council and Commission opinion)*

- Regulations governing Members of Parliament. Article 190(5) (*Current procedure: Adoption by the Parliament after approval of the Council and Commission opinion*)
- Detailed provisions governing the exercise of the right of inquiry. Article 193 (*Current procedure: common accord of the Parliament, Council and Commission. The Praesidium proposes: adoption by the Parliament after approval by the Council and Commission opinion*<sup>3</sup>).

**(ii) Acts requiring national ratification**

- Extension of rights linked to citizenship. Article 22 (*Current procedure: unanimity in the Council and ordinary consultation of the Parliament. The Praesidium proposes replacing ordinary consultation of the Parliament by assent*).
- Uniform electoral procedure. Article 190(4) (*Current procedure: unanimity in the Council on a proposal from and after assent of the EP*)

**(iii) Acts with constitutional repercussions in the Member States**

- Measures to combat discrimination. Article 13(1)<sup>4</sup> (*Current procedure: unanimity in the Council and ordinary consultation of the Parliament*)
- Citizenship: right to vote and to stand as a candidate. Article 19<sup>4</sup> (*Current procedure: unanimity in the Council and ordinary consultation of the Parliament*)

**(iv) Acts which are particularly politically sensitive.<sup>5</sup> Current procedure: unanimity in the Council and ordinary consultation of the Parliament**

- Adoption of measures on the movement of capital to or from third countries which constitute a step back in Community law as regards liberalisation. End of Article 57(2).<sup>6</sup>

<sup>3</sup> This procedure could involve approval by the Commission, so as better to preserve the current inter-institutional balance.

<sup>4</sup> Even though they do not require national ratification, these two legal bases have direct consequences for Member States' constitutional provisions.

<sup>5</sup> Working Group IX on Simplification, when tackling the issue of generalising the legislative procedure, said that exceptions to this rule would remain in areas where the special nature of the Union required autonomous decision-making, (ratification requirement), or in areas of great political sensitivity for the Member States.

<sup>6</sup> These three provisions are exceptions to their respective general rules, which provide for the legislative procedure: the end of Article 57(2) is an exception to the general rule in the first part of Article 57(2), Article 94 is an exception to Article 95 should the Praesidium follow the proposal from the working party of experts; Article 175(2) is an exception to Article 175(1).

*(The current procedure does not provide for consultation of the Parliament.)*

- Approximation of laws. Article 94 <sup>6</sup>.
- Social policy: social security and social protection of workers. Article 137(1)(c) and second subparagraph of Article 137(2)
- Provisions of a fiscal nature, measures concerning town and country planning and land use, measures affecting energy supplies and biodiversification. Article 175(2) <sup>6</sup>.

### III. TECHNICAL ADJUSTMENTS

The working party of experts made the following technical adjustments:

- mergers of provisions (merger of the two paragraphs of Article 19 TEC and merger of the two subparagraphs of Article 80(2) TEC (points 3(a) and (e) of Annex A to the mandate – CONV 682/03);
- insertion of the chapter on the association of overseas countries and territories as a new chapter "Aa" within the structure of Volume I, i.e. between chapter A on policies and internal action and B on external action (point 3(d) of Annex A to the mandate – CONV 682/03);
- adjustment of the terminology relating to the European Parliament (replacement of "*assent*" by "*consent*"; deletion of the adjective "*absolute*" when expressing a simple majority in the Parliament, i.e. the majority of the votes cast (point 3(c)(ii) and (iv) of Annex A to the mandate – CONV 682/03);
- replacement of the abbreviations "ECB" and "ESCB" by the official names (point 3(b) of Annex A to the mandate – CONV 682/03);
- replacement of "shared values" in Article 16 TEC by the wording indicated in the mandate (point 3(g) of Annex A to the mandate – CONV 682/03).

#### IV. SUGGESTIONS

The working party also put forward suggestions relating to:

- (a) Adding a reference to fisheries in the heading of the agriculture chapter. In order to follow up the Praesidium's decision (point 3 of Annex B to the mandate – CONV 628/03) to include fisheries in the heading of the agriculture chapter, the working party of experts suggested inserting the following new Article 31a:

"The Union shall define and implement a common agricultural and fisheries policy.

"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture and the use of the term "agricultural" shall be understood as also applying to fisheries."

The working party also suggested slightly amending Article 32(1), which would read:

"The common market shall extend to agriculture and trade in agricultural products."

- (b) Deletion of the instrument of the agreement. The Praesidium decided to act on the conclusions of Working Group IX and abolish agreements (point 3(f) of Annex A to the mandate – CONV 682/03). The working party put forward drafting suggestions for Articles 20, 186 and 293 TEC, including the type of legal act and the adoption procedure to be introduced.

#### V. PRESENTATION

Like the report of 13 March 2003, this report is divided into two volumes. Volume I contains firstly a number of suggestions and comments by the working party of experts which will be useful for the continuation of the proceedings, as well as the relevant provisions of the EU and EC Treaties following the order based on the structure of Part Two of the Constitution (CONV 369/02). Volume II contains, by way of illustration, the amendments made to the current provisions of the EC and EU Treaties before their restructuring.

**REPORT**

**of 7 May 2003**

**submitted to the Praesidium of the European Convention  
by the working party of experts nominated by the Legal Services  
of the European Parliament, the Council and the Commission**

**(following the complementary mandates of 2 and 29 April 2003)**



## GENERAL CONSIDERATIONS AND SUGGESTIONS

### A. Introduction

1. The Praesidium of the European Convention decided to confer two complementary mandates on the working party of experts nominated by the Legal Services of the European Parliament, the Council and the Commission (complementary mandates of 2 April 2003 (CONV 682/03) and of 29 April 2003).

These mandates, set out in the Annex, are a follow-up to the Praesidium's examination of the report by the working party of experts of the Legal Services dated 13 March 2003 (CONV 618/03) <sup>1</sup>.

2. With this report, the working party of experts follows up all the points in these complementary mandates. Like the report dated 13 March 2003, this report is divided into two volumes:
  - Volume I which, in addition to these general considerations, contains the relevant provisions of the Treaty on European Union (TEU) and of the Treaty establishing the European Community (TEC) based on the structure of Part Two of the future Constitution as set out in CONV 369/02 of 28 October 2002;
  - Volume II which contains the relevant provisions of the TEU and TEC Treaties according to the present structure and numbering of the current Treaties.

In accordance with paragraph 6 of the mandate of 29 April 2003, these volumes do not contain the provisions on the area of freedom, security and justice, external action, membership of the Union, the democratic life of the Union, the Union's finances, the Institutions (including the Court of Justice) or the final provisions, which will be drafted by the Praesidium and the Convention. <sup>2</sup>

3. The terminological and typographic conventions listed in Annex I to Volume I of the report dated 13 March 2003 continue to apply, i.e., in particular, that additions appear in bold and deleted terms in strikethrough.

The articles reproduced in italics are those which are to undergo substantive amendment by the Convention subsequently and which are not dealt with here.

New footnotes are underlined.

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<sup>1</sup> The addendum of 18 March 2003 on economic and monetary policy (618/03 ADD 1) has not yet been examined by the Praesidium and will therefore, it seems, be the subject of a separate mandate.

<sup>2</sup> Consequently, the 23 legal bases of the institutional chapter or the final provisions mentioned in the lists annexed to the complementary mandate of 29 April 2003 have not been adapted. These relate to the following Articles: 190(4), 190(5), 191, 193, 195(4), 202, 209, 210, 215, 2nd para., 247(3), 247(8), 258, 4th para., 255(2), 259, 263, 3rd para., 266, 279(1), 280(4), 283, 285(1), 286(2), 290 and 296(2).

**B. Decision-making procedures (qualified-majority voting in the Council and acts adopted on a proposal from the Commission) and the breakdown of legal bases between legislative and non-legislative acts**

4. The bulk of the work carried out by the working party of experts concerned the implementation of the Praesidium decisions introducing the general rule of qualified-majority voting in the Council and that of the adoption of acts on a proposal from the Commission, as well as the implementation of decisions relating to the breakdown of legal bases between legislative and non-legislative acts.

***Voting in the Council***

5. The introduction of a provision whereby the normal rule for voting in the Council is now by qualified majority (draft Article 17(3), CONV 691/03) and no longer by a simple majority, means deleting the references to qualified majority in the legal bases and expressly indicating the cases where a simple majority applies.

This also means inserting into the Constitution a definition of what is understood by "simple majority" in the Council which could be worded as follows:

***"For deliberations requiring a simple majority, the Council shall act by a majority of its members".***

The working party also noted that at the current stage of proceedings it would seem that the specific qualified majority provided for in Article 255 (2), second subparagraph, second indent of the TEC (62 votes and 10 Member States), where the Council does not act on a proposal from the Commission, has been removed and that it is therefore not necessary to indicate expressly in the legal bases those cases where this specific majority applies.<sup>3</sup>

***Acts adopted on a proposal from the Commission***

6. The introduction of a provision making the Commission's right of initiative the general rule expressed as follows: *"except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal"* (draft Article 18(2), CONV 691/03) means deleting the expression *"on a proposal from the Commission"* from the legal bases and, in those cases where a Union act is adopted by an institution or body acting alone, inserting a wording specifying that this institution or body may act on its own initiative, without the need for a prior Commission proposal.

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<sup>3</sup> This concerns for example Article 128(4) TEC. This specific majority is also currently provided for in Articles 99(2)(1st and 3rd subparas.), 99(4)(1st subpara.), 104(6), 107(6)(b), 119(2), 119(3)(2nd subpara.), 120(3), 207(2)(1st subpara.), 210, 215(2nd para.), 223(6th para.), 224(5th para.), 225a(5th para.), 247(3)(1st subpara.), 247(8), 248(4)(5th subpara.), 258(4th para.), 259(1), 263(4th para.) and 276(1) of the TEC. There is also provision for it in the areas of the CFSP (Article 23(2)(3rd subpara.) TEU) and JHA (Article 34(3) TEU). These provisions are not dealt with in this report (cf. paragraph 6 of the complementary mandate of 29 April 2003).

However, the complementary mandate of 29 April 2003 requests that the expression "*on a proposal from the Commission*" be maintained in those legal bases which provide for the adoption of non-legislative acts. The working party feels that this instruction is likely to cause some difficulties of interpretation with regard to the scope of the general rule of the adoption of acts on the basis of a Commission proposal provided for in draft Article 18(2).

7. The wording of draft Article 18 (2) proposed by the Praesidium is very broad insofar as it refers to all "Union acts" without further specification regarding the authors of these acts or the types of act. This wording poses problems of application and of legal certainty.

To avoid such problems and so as not to cover cases beyond the desired aim, this general rule needs to be worded more specifically.

Consequently, the suggestion is to confine the application of this general rule solely to legislative acts of the European Parliament and/or the Council and to non-legislative acts of the Council, thus ensuring that acts adopted by other institutions or bodies (Court of Justice, European Central Bank, Court of Auditors, European Investment Bank, Economic and Social Committee, Committee of the Regions, Ombudsman, agencies, etc.) are not covered.

The suggestion is also to indicate expressly the type of acts to which this rule applies (laws, framework laws, regulations, decisions and recommendations, except for measures relating to organisation and internal functioning, procedural decisions, etc.). For internal and procedural measures, it is suggested that there be a specific Article.

8. These suggested provisions might read as follows:

"European laws and framework laws, as well as European regulations and decisions and Council recommendations shall be adopted on a proposal from the Commission, except where the Constitution provides otherwise."

"Each institution shall, on its own initiative, adopt the relevant measures relating to its organisation and internal functioning, as well as procedural decisions."

***Consequently, where the legal bases provide that the acts in question are adopted at the initiative, on the recommendation or at the request of a Member State, institution or body, these will constitute cases where "the Constitution provides otherwise", i.e. that the act in question should not be adopted on a proposal from the Commission.***

***The same applies to cases where the legal bases provide that an institution be asked to give its approval to a draft act. Such a referral constitutes a case in which "the Constitution provides otherwise", where approval should not be given on a proposal from the Commission.***

***Lastly, thanks to its more specific nature, the provision suggested above would give the general rule of the adoption of acts on a proposal from the Commission a more complete scope, making it possible to delete the expression "on a proposal from the Commission" in the legal bases providing for the adoption of non-legislative acts, which would eliminate the difficulties of interpretation described in point 6.***

9. As for the wording of the standard wordings to be inserted into the legal bases to state that the institution may act alone, the working party suggests using the expression "on its own initiative".

However, in the (few) cases where the institution is obliged to act, Council Legal Service experts feel that the expression "*without a proposal from the Commission*" should be chosen in order to avoid implying that the institution may, of its own free initiative, choose whether or not to act. This refers in particular (pending an examination of the provisions of those chapters not covered by this report) to cases where it is provided that an institution appoints a person to carry out a Union task (the Ombudsman and High Representative for the CFSP) or to the case of the adoption of the detailed rules for the association of the overseas countries and territories (Article 187 TEC). <sup>4</sup>

### ***Breakdown of the legal bases between legislative and non-legislative acts***

10. The wording of most of the legal bases has been amended following, firstly, the introduction of the general rule of qualified-majority voting in the Council and that of the adoption of acts on a proposal from the Commission and, secondly, the Praesidium's breakdown of legal bases between those providing for the adoption of legislative acts (by codecision or otherwise) and those providing for the adoption of non-legislative acts.
11. The working party therefore adapted the wording of the different legal bases in line with the indications given in paragraph 14 of the mandate of 29 April requesting that the working party "*in the case of legal bases providing for legislative acts, remove all references to procedural elements and simply refer to law and framework law*", and "*retain the words "on a proposal from the Commission" for all legal bases which do not provide for legislative acts*"<sup>5</sup>. The working party also indicated, for each legal basis, which type of act could be adopted.
12. The working party agreed to suggest the following standard wordings to be inserted into the different legal bases depending on the case:
- for codecision cases, the wording: "***A European law or framework law shall [establish the measures .../regulate .../facilitate ..., etc.]***";
  - for cases where the European Parliament or the Council alone adopts a law or framework law, the wording: "***A European law or framework law [of the European Parliament/ of the Council] shall determine.../regulate ..., etc.***";
  - for non-legislative acts of the Council, the classic wording unchanged: "***The Council, on a proposal from the Commission*** <sup>5</sup>, ***shall adopt [the European regulations or decisions defining .../establishing .../laying down ...]***".

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<sup>4</sup> The wordings suggested above reduce the legal uncertainties but, according to Council Legal Service experts, there is no guarantee that all uncertainty has been eliminated.

<sup>5</sup> For this instruction, see above comments in final paragraphs of points 6 and 8.

13. Certain procedural elements need to remain in some cases, such as references to mandatory consultation of other institutions or bodies.
14. In some cases, despite the fact that the legal basis seemed to allow free choice of the type of act, the working party suggests a single type of act bearing in mind the specific context of the legal basis in question which allows in reality for the adoption of only a single type of act. This applies to Articles 72, 161 (2nd para.) and 166(1) TEC.
15. By dint of this breakdown and the identification, in each legal basis, of the types of acts to be adopted, the use of the word "measures", which usually in the Treaties signifies cases where there is free choice of the type of act, has been confined to those cases of general references to acts or provisions adopted in a certain field (for example, Articles 14(1) or 18(3) TEC).
16. In some cases, the working party suggests amending the legal basis, even though it does not appear in one of the lists annexed to the mandate of 29 April (see Articles 59 and 175(2) TEC).
17. Lastly, Article 37(2), 3rd subparagraph TEC, which provides the legal basis in agricultural matters, has not been adapted as, according to the mandate of 29 April, the Praesidium still needs to establish the breakdown between legislative and non-legislative.
18. Furthermore, the working party notes that Articles 93 (legal basis for indirect taxation) and 187 TEC (legal basis for the association of the overseas countries and territories) were not contained in the breakdown lists annexed to the mandate of 29 April 2003.

***Impact on secondary legislation of the new provisions having general application***

19. The working party of experts draws the attention of the Praesidium and the Convention to the need to govern, in the Constitution, two matters arising from the effect of the general rule of qualified-majority voting in the Council and that of the adoption of acts on a proposal from the Commission.
20. The first matter concerns the relationship between the rule of adoption of acts on a proposal from the Commission and draft Article 28(2) (CONV 571/03) on implementing acts which provides that the Council, in certain cases, may delegate implementing powers.

In the absence of clarification either in draft Article 28(2) or elsewhere in the Constitution, the effect of the general rule will be that, in those cases, the Council will have to act on a proposal from the Commission. If the Convention wished to leave the legislator the possibility of allowing the Council to adopt implementing acts without a Commission proposal, this would need to be specified, for example by a standard wording: *"legal acts containing a legal basis for the adoption of implementing measures by the Council shall, on a case-by-case basis, specify the procedural decision applicable"*.

21. A second matter concerns the effect of these general rules on current law.

Although this matter also applies to other new rules that will be incorporated into the Constitution, here it is particularly serious, and it would be all the more significant if the current wording for draft Article 18(2), which refers to all "*Union acts*", is not made more precise.

It is therefore necessary that the Convention, for example in a chapter dealing with the effects of the Constitution's entry into force on the Union's current legal order, provide for a transitional provision regulating the effects of these new general provisions on existing secondary legislation.

In the absence of such a provision, the two new rules would apply automatically to all existing acts.

Several options could be envisaged for such a transitional provision. For example:

- a general clause allowing for current legislation to be adapted en bloc to all the Constitution's new rules, similar to the provisions of the Acts of Accession of the new Member States;
- not applying these new rules to past acts, which will continue to be governed by the provisions previously in force, with the institutions which draw up these acts deciding, on a case-by-case basis and in line with the provisions of Article 4 of the "Committee Procedure" Decision of 1987, to adapt the act to the new rules or to maintain the procedures as they are, introducing wordings that allow for derogations from the new rules.

22. The working party is, if the Praesidium so wishes, prepared to supply suggestions for legal texts to resolve this problem.

C. **Deletion of the instrument of agreements between Member States – proposals for the wording of Articles 20, 186 and 293 TEC**

23. The complementary mandate of 2 April 2003 also provides for *deletion of "the instrument of the agreements"*, namely agreements concluded between Member States, and their replacement with Union instruments (Articles 20, 186 and 293 TEC).
24. The current Article 20 TEC, the legal basis for the diplomatic and consular protection of citizens, could be reworded as follows (bearing in mind that the first sentence of the Article is reproduced in the draft Article on "citizenship" in Part One <sup>6</sup>):

*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 **adopt the necessary rules provisions among themselves and start the international negotiations required to secure this diplomatic and consular protection of citizens of the Union in third countries as referred to in [Article (...)]*** <sup>7</sup>.

*The/a European law or framework law [...the Convention will decide whether the instrument should be adopted by the codecision procedure or by the Council alone and according to which voting rules...] **may establish the measures necessary to facilitate such protection.***

25. The current Article 186 TEC, which is the legal basis for the free movement of workers between Member States and overseas countries and territories, could be worded as follows:

Option A – Inclusion under the arrangements in Article 187 TEC

*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~~ **shall be governed by measures adopted in accordance with Article 187.***

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<sup>6</sup> Cf. Article 7(2), 3rd indent, CONV 528/03.

<sup>7</sup> Insert reference to draft article on "citizenship" in Part One.

Option B – Alignment of treatment of workers on that provided for in Article 183(5) TEC for the self-employed

*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~~ shall be governed in accordance with the provisions and procedures laid down in the [Chapter] relating to the free movement of workers and on a non-discriminatory basis, subject to any special measures adopted pursuant to [Article 187].*

26. With regard to the current Article 293 TEC, which provides for the adoption of agreements between Member States in four areas:
- the first indent ("*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*") is obsolete, as these various elements are either covered by the various legal bases of the current TEC, or fall outside the scope of the Treaty. It could therefore be deleted;
  - the second indent ("*the abolition of double taxation within the Community*") seems to be covered by measures approximating legislation, which can currently be adopted on the basis of Article 94 TEC, and could therefore be deleted.

If the Convention deems it necessary to create a specific legal basis, it could be worded as follows:

***The/a European law or the/a European framework law*** [...the Convention will decide whether the instrument should be adopted by the co-decision procedure or by the Council alone and according to which voting rules...] ***shall establish measures to abolish double taxation of Member States' nationals within the Union.***

- the third indent ("*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*"), subject to more thorough technical verification, seems to be covered by measures approximating legislation which can currently be adopted on the basis of Article 95 TEC. It could therefore be deleted;
- the fourth indent ("*simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards*") is obsolete since it is covered by civil judicial cooperation measures which can currently be adopted on the basis of Article 65 TEC. It could therefore be deleted.



**D. Addition of a reference to fisheries in the heading of the "agriculture" chapter – suggestions for wording (Article 32 TEC)**

27. To take into account the reference to fisheries in the heading of the chapter on "agriculture" (which already applies to fisheries but does not emerge very clearly from the current wording), it is suggested that a new Article 31a be inserted, the last sentence of which should be subject to technical verification, and paragraph 1 of Article 32 be amended slightly:

***AGRICULTURE AND FISHERIES***

***Article 31a***

***The Union shall define and implement a common agricultural and fisheries policy.***

***"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture and the use of the term "agricultural" shall be understood as also referring to fisheries.***

***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. (...)

**E. Other technical adjustments**

28. In accordance with the mandate of 2 April 2003, the working party of experts also carried out the various technical adjustments requested, in particular:
- merger of provisions (merger of two paragraphs of Article 19 TEC and merger of two sub-paragraphs of Article 80(2) TEC);
  - insertion of the chapter on the association of overseas countries and territories as a new chapter "Aa" in the structure of volume I, i.e. between Chapter A on policies and internal action and Chapter B on external action;
  - adjustment of the terminology relating to the European Parliament (replace the term "*assent*" with "*consent*"; deletion of the adjective "*absolute*" to indicate the majority of votes cast, in other words the simple majority of the Parliament; meetings of the European Parliament "*in extraordinary session*");
  - replace abbreviations "ECB" and "ESCB" with the official names;
  - replace the words "shared values" in Article 16 TEC with the wording indicated in the mandate.

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**Complementary mandate of 2 April 2003**

**EUROPEAN CONVENTION**  
THE SECRETARY-GENERAL

**Brussels, 2 April 2003**

**Complementary mandate for the working party of experts  
nominated by the Legal Services  
of the three Institutions**

1. At its meeting on 2 April 2003, the Praesidium examined the suggestions put forward by the working party of experts in its report of 13 March 2003 (cf. CONV 618/03, pp. 175 to 187), with the exception of the suggestions referred to in points 29, 30, 31 and 32.
2. Following this examination, the Praesidium agreed to give the working party a complementary mandate to implement some of the suggestions which the Praesidium has decided to act upon. Since it has not yet examined the suggestions referred to in points 29, 30, 31 and 32, the Praesidium will, if necessary, issue a further complementary mandate for their implementation.
3. The suggestions which the Praesidium would ask the working party to act upon are the following:

**(a) Merger of Articles 70 and 80 TEC**

The Praesidium has decided to act on this suggestion by choosing option (a) (p.179).

**(b) Use of abbreviations**

The Praesidium has decided to take up the working party's suggestion (p.176); the abbreviations in Part Two of the Constitution should be replaced by their official names.

**(c) Decision-making procedures**

The Praesidium has decided to act on the following suggestions made by the working party (pp. 184 and 185):

- (i) replace the current voting rule under which "the Council shall act by a majority of its members" (Article 205(1)) by the expression "the Council shall act by a qualified majority". The working party is asked to make the necessary technical adjustments to the legal bases to take account of this new rule.

- (ii) in relation to the European Parliament, replace the term "assent" with "consent";
- (iii) since the Praesidium has decided to include in an article of the Constitution devoted to the Commission a wording to the effect that "Except where specifically stated otherwise, an act by the Union may be adopted only on a proposal from the Commission", the working party is asked to make the necessary technical adjustments to the various legal bases which stipulate that the Council shall act on a proposal from the Commission.
- (iv) in relation to the European Parliament, replace the terms "absolute majority" with "majority of the votes cast", and the phrase "majority of the Members of the European Parliament" with "majority of its Members".

**(d) Association of overseas countries and territories**

The Praesidium has decided to retain Part Four of the EC Treaty as an independent section in Part Two.

**(e) Merger of certain provisions**

The Praesidium has decided to act on the suggestion that Article 19(1) and (2) be merged, while calling for care to be taken in drafting the merged provision to take full account of the specific features of each of the areas in question.

**(f) Deletion of certain provisions**

The Praesidium has decided to act on the conclusions of Working Group IX to delete the instrument of the agreements (cf. Articles 20 TEU and 186 and 293 TEC) and to replace them with Council regulations or decisions. As a result, it has decided to delete Article 293 TEC. The working party is asked to implement these suggestions and to examine the possible need to create a specific legal basis for the areas covered by this provision and which would not be covered by other provisions of the Constitution. Any new legal basis should make provision for the Council regulation as an instrument.

**(g) Replacement of "shared values" in Article 16 TEC**

The Praesidium has decided to act on the working party's suggestion to replace the words "in the shared values" in Article 16 TEC with the phrase "as services to which all in the Union attribute value".

4. The Praesidium also approved the suggestions of the working party of experts which the latter has already implemented and which are set out in the Annex to this note.

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**SUGGESTIONS WHICH HAVE ALREADY BEEN IMPLEMENTED**  
**BY THE WORKING PARTY OF EXPERTS**

**1. Structure of Part Two**

The working party of experts (p. 177) drew attention to 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 made suggestions regarding where they should be placed in Part Two.

**2. Deletion of obsolete provisions**

The working party (p. 178) proposed deleting, on grounds of obsolescence, certain provisions of the EC Treaty which refer to dates or events that have been superseded (Article 14 TEC and Article 93 TEC which refer to 31 December 1992, the date set for the completion of the internal market, and Article 37(1) TEC which refers to a conference that took place in Stresa in 1958, the outcome of which now forms part of the *acquis*).

**3. Rearrangement of certain Articles**

The working party (pp. 182 and 183) proposed certain limited rearrangements:

- a. moving Article 4 TEC to the beginning of the Title on "*Economic and monetary policy*";
- b. Articles 14 and 15 TEC heading up a new title or chapter on the internal market, which would also group together Articles 94 to 97 TEC;
- c. adding the words "*and fisheries*" after "*Agriculture*" in Title II of the EC Treaty so as to reflect the scope of Article 32(1) TEC in the Title, and adapting the text of that Article accordingly.

**4. Annual sessions of the European Parliament**

Since the wording in the second paragraph of Article 196 TEC "*the European Parliament may meet in extraordinary session...*" may give rise to confusion in the public eye, the working party proposed (p. 187) replacing it with the wording used by the Parliament's Rules of Procedure since 1958, namely "*the part-session*".

**Complementary mandate of 29 April 2003**

**EUROPEAN CONVENTION**  
The Secretary-General

**Brussels, 29 April 2003**

**Second complementary mandate for the working party of experts  
nominated by the Legal Services  
of the three institutions**

**Legal acts and procedures**

1. At its meeting on 2 April 2003, the Praesidium examined the suggestions made by the working party of experts in its report of 13 March 2003. Following that examination it was agreed that the working party should be given a complementary mandate to implement some of the suggestions which the Praesidium had decided to act upon. The mandate indicated that the action to be taken on the suggestions referred to in points 29, 30, 31 and 32 of the report, which the Praesidium had not yet examined, would, if necessary, be the subject of a further complementary mandate from the Praesidium.
2. At its meeting on 10 April 2003, the Praesidium examined issues in connection with points 29 "Designation of legislative acts" and 30, 31 and 32 "Breakdown between legislative and non-legislative acts of the Council".
3. At that meeting, the Praesidium decided on the breakdown between legislative acts (Article 25) and non-legislative acts adopted directly on the basis of the Constitution (Article 26) and, within the former, between the legal bases which would in future be subject to ordinary legislative procedure and those which would be adopted by the Parliament or the Council with the participation of the other arm of the legislative authority. The conclusions of the Praesidium are reflected in the lists given in the **Annex**.
4. As regards legislative acts, the system described in draft Article 25 implies that they are always adopted by the legislator. In general they are adopted jointly and on the basis of parity by the two arms of the legislative authority in accordance with the ordinary legislative procedure laid down in draft Article 25. However, in certain specific cases, they are adopted in accordance with special legislative procedures by the Parliament with some participation by the Council, or by the Council (acting as legislator, ie. subject to rules of transparency and subsidiarity) with some participation by the Parliament.

5. In the light of the amendments, the debate in plenary and the report from the working party of experts of 13 March 2003, the Praesidium reached the conclusion that the designation "legislative" for a procedure which constitutes the general practice could prove misleading, since it appears to be the determining criterion and not the consequence of the "legislative" nature of the act. The Praesidium decided to make clear its scope as a legislative procedure under ordinary law by referring to it as "ordinary legislative procedure", in order to avoid excluding the legislative nature of the very limited number of acts which might be adopted (if the Convention so decided) by the Parliament or the Council with varying degrees of participation by the other arm of the legislative authority by virtue of "special" legislative procedures.
6. The legal bases which are the subject of draft articles and ongoing discussions in the Convention and in the discussion circles have not been considered in this document. The legislative nature or otherwise of the legal bases, and consequently their procedure, will have to be determined in the context of those discussions and specific proceedings on the various subjects. This applies to provisions concerning the area of freedom, security and justice, those relating to the Court of Justice and the Court of First Instance, the final provisions and those covering external action, finance, the institutions, membership of the Union and democracy. The decision-making procedures of Economic and Monetary Union will have to be examined separately as a package in order to ensure their consistency.
7. Section I of the Annex consists of the legal bases which are already subject to ordinary legislative procedure and whose legal nature is therefore not under discussion. It also contains the legal bases directly referred to in the conclusions of Working Group IX on Simplification.
8. Section II covers the legal bases to which ordinary legislative procedure could be extended. The Praesidium considers that these are acts of a legislative nature on the basis of the criteria identified by the Working Group on Simplification.
9. Section III contains the legal bases on the basis of which acts, although legislative in nature, are adopted by the Parliament or by the Council with varying degrees of participation by the other arm of the legislative authority.
10. Section IV contains a list of non-legislative acts. These are legal bases which meet the criteria drawn up by Working Group IX.
11. The working party of experts is asked take action on the decisions of the Praesidium in respect of the following aspects:
  - (a) The working party of experts is asked to indicate for each legal base in Part III of the Constitution the instruments to be used, ie. the law and the framework law for the legal bases included in Sections I, II and III below. The law replaces the regulation and the framework law the directive. As regards Section IV, the regulation replaces the regulation and the directive; the decision remains as a decision.
  - (b) Where the current Treaty does not indicate a specific instrument but refers in general to "measures", there should be a choice between "law or framework law" for the legal bases included in Sections I, II and III and between "regulation and decision" for the legal bases in Section IV.

- (c) The term "measures" used by the working party of experts in all cases where the instrument is not specified in the Treaty also includes recommendations. These will be covered by a horizontal provision in Title V of the Constitution (in its new version) which will lay down that "when the Constitution provides for the adoption of legally binding acts, the Institutions may also adopt recommendations".
- (d) Draft Article 25 indicates the elements of the ordinary legislative procedure: joint decision of the Parliament and of the Council acting by a qualified majority on a proposal from the Commission, and it refers to Article(ex 251). Consequently it should no longer be necessary to mention all these elements in each legal basis where the ordinary legislative procedure applies. The working party of experts is asked to examine the possibility of simplifying the drafting of legal bases which provide for the adoption of legislative acts in accordance with the ordinary legislative procedure by replacing the details of the procedure simply by a reference to a law or framework law.
- (e) The lists of legal bases also involve certain procedural amendments. The working party of experts is also asked to take action on those changes.

#### **Working document of 16 April 2003: Commission's right of initiative**

- 12. The working party of experts has submitted to the Praesidium a working document which deals with all the points in the complementary mandate of 2 April 2003, with the exception of point (c) (iii) on the inclusion of a general rule to the effect that "Except where specifically stated otherwise, an act by the Union may be adopted only on a proposal from the Commission".
- 13. The Praesidium has in the meantime submitted to the Convention a draft Title IV on the institutions. The draft lays down the rule that "Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal." <sup>1</sup>
- 14. Taking into account both this general provision and the arguments put forward by legal experts, the working party is asked to:
  - Retain the words "on a proposal from the Commission" for all legal bases which do not provide for legislative acts,
  - In the case of legal bases providing for legislative acts, remove all references to procedural elements and simply refer to law and framework law.

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<sup>1</sup> Draft Article 18(2) (CONV 691/03).



### **Deadline for the second complementary mandate**

15. Given the increasing pace of Convention proceedings, the working party of experts is asked to act on this second complementary mandate and submit its conclusion to the Praesidium, via the Convention Secretariat, by 8 May 2003.

## I. LEGISLATIVE ACTS – ORDINARY LEGISLATIVE PROCEDURE

- Rules prohibiting any discrimination on grounds of nationality. Article 12.
- Measures to encourage non-discrimination. Article 13(2).
- Provisions aimed at facilitating the exercise of the right of citizens to move and reside freely within the territory of the Member States. Article 18(2).
- Freedom of movement for workers. Article 40.
- Right of establishment. Article 44.
- Coordination of provisions laid down by law, regulation or administrative action providing for special treatment for nationals of other Member States in exercising the right of establishment. Article 46(2).
- Right of establishment as regards activities as self-employed persons. Article 47, end of second paragraph.
- Services. Article 55.
- Common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States; the conditions under which non-resident carriers may operate transport services within a Member State; measures to improve transport safety. Article 71(1).
- Extension to sea and air transport of the procedural provisions laid down in Article 71(1). Article 80(2).
- Harmonisation measures relating to the internal market. Article 95(1).
- Incentive measures for employment. Article 129.
- Customs cooperation. Article 135.
- Social policy: Article 137(1)(a)(b)(e)(h)(i)(j)(k) and (2), second subparagraph (***Currently: the part of the Article referred to here is already subject to the legislative procedure, the other part – see below, could be subject to it following a unanimous Council decision***).
- Social policy (equal opportunities, treatment and pay). Article 141.
- Implementation of decisions relating to the European Social Fund. Article 148.
- Education. Article 149(4) (except recommendations).
- Vocational training (measures contributing to the achievement of the objectives of Article 150). Article 150(4).
- Public health (minimum standards of quality and safety of organs, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health). Article 152(4).
- Consumer protection. Articles 153(4).
- Trans-European networks, guidelines. Article 156(1).
- Other measures affecting trans-European networks. Article 156.
- Industry. Article 157(3).
- Measures in the field of economic and social cohesion. Article 159.
- Implementing decisions relating to the ERDF. Article 162.
- Framework programme of research. Article 166.
- Adoption of the measures referred to in Articles 167, 168, and 169 – research. Article 172.
- Environment (Community action to achieve the objectives referred to in Article 174). Article 175(1).

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

**Legal bases directly referred to in the conclusions of the Working Group on "Simplification" which should come under the ordinary legislative procedure**

- Internal market (social security for Community migrant workers). Article 42. **(The Council currently acts unanimously)**<sup>1</sup>
- Coordination of Member States' laws, regulations and administrative provisions concerning the taking-up and pursuit of activities as self-employed persons. Coordination of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. Article 47. **(The Council currently acts unanimously)**.
- Culture. Article 151 (except recommendations). **(The Council currently acts unanimously)**.
- Structural Funds and Cohesion Fund (as from 2007). Article 161. **(Currently: qualified majority in 2007 and assent)**.

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<sup>1</sup> The Praesidium proposes changing the procedure, i.e. switching from unanimity to qualified majority, on the grounds that this Article does not entail any harmonisation of Member States' legislation.

## II. PROVISIONS WHICH COULD COME UNDER THE ORDINARY LEGISLATIVE PROCEDURE

### Current procedure: qualified majority in Council and ordinary consultation of Parliament

- Legislation under the common agricultural policy. Article 37(2).<sup>2</sup>
- Liberalisation of services Article 52(1).
- Provisions concerning the principles of the regulatory system for transport whose application would be liable to have a serious effect on the standard of living and on employment. Article 71(2).
- Social policy: Article 137(1)(d), (f) and (g) and Article 137(2), second subparagraph. **(According to the present Treaty, the aspects referred to here may be covered by the codecision procedure if the Council takes a unanimous decision to that effect).**
- Supervision of implementing powers. Article 202 (Draft Article 28).
- Adoption of Financial Regulations (as from 2007). Article 279(1).
- Laying down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants. Article 283.

### Current procedure: qualified majority in Council

- Exclusion, in a Member State, of certain activities from the scope of the provisions relating to right of establishment. Second paragraph of Article 45.
- Extension of the benefit of the provisions relating to provision of services to nationals of a third country who are established within the Community. Second paragraph of Article 49.
- Adoption of other measures on the movement of capital to or from third countries. Article 57(2), first part.
- Adoption of Directives aimed at eliminating distortions within the common market. Second paragraph of Article 96.

### Current procedure: unanimity in Council and ordinary consultation of Parliament

- Amendment of certain Articles of the Protocol on the Statute of the European Investment Bank. Article 266.

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<sup>2</sup> It will be necessary to specify later which aspects of agricultural policy are to be regarded as legislative and which as non-legislative.

### III. LEGISLATIVE ACTS ADOPTED BY A SPECIAL LEGISLATIVE PROCEDURE

#### Acts adopted by the European Parliament

- Regulations and general conditions governing the Ombudsman. Article 195(4). **(Current procedure: adoption by Parliament after Council approval and Commission opinion).**
- Regulations and general conditions governing Members of the European Parliament. Article 190(5). **(Current procedure: adoption by Parliament after Council approval and Commission opinion).**
- Detailed provisions governing exercise of the right of inquiry. Article 193. **(Current procedure: common accord of Parliament, Council and Commission. The Praesidium proposes: adoption by Parliament after Council approval and Commission opinion).**

#### Acts requiring national ratification

- Extension of rights relating to citizenship. Article 22. **(Current procedure: unanimity in Council and ordinary consultation of Parliament. The Praesidium proposes replacing ordinary consultation of Parliament by an assent).**
- Uniform electoral procedure. Article 190(4). **(Current procedure: unanimity in Council on the basis of an EP proposal and with EP assent).**

#### Acts with constitutional repercussions in the Member States

- Measures to combat discrimination. Article 13(1)<sup>3</sup>. **(Current procedure: unanimity in Council and ordinary consultation of Parliament).**
- Citizenship: right to vote and to stand for election. Article 19.<sup>3</sup> **(Current procedure: unanimity in Council and ordinary consultation of Parliament).**

#### Particularly sensitive political acts.<sup>4</sup> **Current procedure: unanimity in Council and ordinary consultation of Parliament)**

- Adoption of measures in respect of the movement of capital to or from third countries which constitute a backward step in Community law as regards liberalisation. End of Article 57(2).<sup>5</sup> **(The current procedure does not provide for any Parliament opinion)**
- Approximation of laws. Article 94.<sup>5</sup>

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<sup>3</sup> Although they do not entail national ratification, these two legal bases have a direct impact on Member States' constitutional provisions.

<sup>4</sup> When examining the question of generalising the legislative procedure, Working Group IX on Simplification pointed out that there would still be exceptions to this rule in areas where the special nature of the Union called for autonomous decision-making procedures (ratification necessary) or in areas which were "highly politically sensitive" for the Member States.

<sup>5</sup> These three provisions are exceptions to the general rules relating to them, which provide for the legislative procedure: the clause at the end of Article 57(2) is an exception to the general rule in the first part of Article 57(2); Article 94 is an exception to Article 95, if the Praesidium were to follow the expert group's proposal; Article 175(2) is an exception to Article 175(1).

- Social policy: social security and social protection for workers. Article 137(1)(c) and Article 137(2), second subparagraph.
- Fiscal provisions, measures affecting town and country planning, measures affecting the supply and biodiversification of energy. Article 175(2).<sup>5</sup>

#### **IV. NON-LEGISLATIVE ACTS**

##### **Current procedure: qualified majority in Council and ordinary consultation of Parliament**

- Non-legislative acts under agricultural policy. Article 37(2)<sup>6</sup>
- Acts on competition. Article 83.
- Acts on State aid. Article 89.
- Preparation of the guidelines which the Member States are to take into account in their employment policies, on the basis of the conclusions of the European Council. Article 128(2).
- Specific research programmes. Article 166(4).
- Research, setting up of joint undertakings. Article 172(1).
- Appointment of members of the Court of Auditors. Article 247(3).

##### **Current procedure: qualified majority in Council**

- Guidelines to ensure balanced progress in all the sectors concerned by the internal market. Article 14(3).
- Fixing of common customs tariff duties. Article 26.
- Abolition of discrimination in the transport sector. Article 75(3).
- Remissions and repayments in respect of exports to other Member States and countervailing charges in respect of imports from Member States. Article 92.
- Recommendations regarding employment. Article 128(4).
- Application of other agreements between labour and management. Article 139(2).
- Recommendations regarding education. Second indent of Article 149(4).
- Recommendations in the sphere of culture. Second indent of Article 151(5).

*(Currently: unanimity in Council. The Praesidium proposes switching to qualified majority, to be consistent with the proposals relating to legislation in Section I).*

- Recommendations regarding public health. End of Article 152(4).
- Determination of the salaries, allowances and pensions of members of the Commission and of the Court of Justice. Article 210.
- Decision not to replace a member of the Commission who has resigned or been compulsorily retired. Second paragraph of Article 215.
- Determination of the salaries, allowances and pensions of members of the Court of Auditors. Article 247(8).
- Appointment of members of the Economic and Social Committee. Article 259.
- Determination of the allowances of members of the Economic and Social Committee. Last paragraph of Article 258.
- Appointment of members of the Committee of the Regions and their alternates. Third paragraph of Article 263.

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<sup>6</sup> See footnote 2 on page 7.

**Current procedure: unanimity in Council**

- Decisions on the compatibility with the common market of State aid as regards competition. Article 88(2).
- Implementation of agreements between management and labour in matters covered by Article 137(3). Article 139(2).
- Determination of the rules governing the languages of the institutions of the Community. Article 290.
- Changes to the list of products covered by the provisions on the production of or trade in arms, munitions and war material. Article 296(2).

**Current procedure: simple majority in Council**

- Employment Committee. Article 130.
  - Social Protection Committee. Article 144.
  - Rules governing the committees provided for in the Treaty. Article 209.
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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)*



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## PART TWO:

### UNION POLICIES AND THEIR IMPLEMENTATION

#### [COMMON PROVISIONS] <sup>1</sup>

##### Clause 1 (ex Article 3)

1. [...] <sup>2</sup>

~~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. <sup>3</sup>

##### Clause 2 (ex Article 6) <sup>4</sup>

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.

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<sup>1</sup> 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.

<sup>2</sup> This paragraph appears in the addendum to this document.

<sup>3</sup> 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.

<sup>4</sup> 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 of the Union~~ **as services to which all in the Union attribute value**<sup>5</sup> 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)

**Text not reproduced in accordance with the complementary mandate of 29 April 2003.**

Clause 5 (ex Article 296)<sup>6</sup>

**Text not reproduced in accordance with the complementary mandate of 29 April 2003.**

**[NON-DISCRIMINATION AND CITIZENSHIP]**<sup>7</sup>

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 Council, acting in accordance with the procedure referred to in Article 251 may adopt rules to~~  
**The European law or framework law shall lay down rules to prohibit such discrimination on grounds of nationality as referred to in [Article (.....)]**<sup>8</sup>.

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<sup>5</sup> Wording provided by the complementary mandate of 2 April 2003.

<sup>6</sup> The Convention may wish to consider this Article in the context of common defence questions.

<sup>7</sup> Suggested new heading which was not contained in the structure of the preliminary draft Constitutional Treaty of 28 October 2002 (CONV 369/02).

<sup>8</sup> Insert a reference to the draft Article entitled "Non-discrimination on grounds of nationality" in Part One (Article 6 CONV 528/03).

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~~ **a European law or framework law of the Council may establish** the measures needed to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. **The Council shall act unanimously after consulting the European Parliament.**
2. By way of derogation from paragraph 1, ~~when the Council adopts Community~~ **the European law or framework law shall establish the Union's** incentive measures, ~~excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States. it shall act in accordance with the procedure referred to in paragraph 1.~~

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.~~<sup>9</sup>
2. If action by the **Community Union** should prove necessary to attain ~~this~~ **the** objective, **referred to in [Article (.....)]<sup>10</sup> of the right of every Union citizen to move and reside freely** and ~~this Treaty the Constitution~~ has not provided the necessary powers, ~~the Council, may adopt provisions~~ **the European law or framework law with a view to facilitating may facilitate** 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.<sup>11</sup>

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<sup>9</sup> Article 18(1) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

<sup>10</sup> Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

<sup>11</sup> 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.

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 right~~ <sup>13</sup> ~~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; these arrangements may provide for derogations where warranted by problems specific to a Member State.~~

2. ~~Without prejudice to [Article 190(4)] and to the provisions 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; A European law or framework law of the Council shall determine the detailed arrangements for exercising the right, referred to in [Article (...)] <sup>14</sup>, for every Union citizen to vote and to stand as a candidate in municipal elections and elections to the European Parliament in their Member State of residence. The Council shall act unanimously after consulting the European Parliament. These arrangements may provide for derogations where warranted by problems specific to a Member State.~~

**The right to vote and to stand as a candidate in elections to the European Parliament shall be exercised without prejudice to [Article 190(4)] and the measures adopted for its implementation.**

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<sup>12</sup> The text merges paragraphs 1 and 2 and retains a reference to Article 190(4), which refers to the uniform electoral procedure for Members of the European Parliament to be covered in Part One. That provision refers to the right (to vote and to stand for election 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. As proposed here, Article 190 should be referred to in a separate sentence specifying that it applies only to the right to vote and to stand in elections.

<sup>13</sup> 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).

<sup>14</sup> Insert a reference to the article on the right to vote and to stand in municipal and EP elections in Part One (Article 7(2), CONV 528/03).

Clause 10 (ex Article 20) <sup>15</sup>

~~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~~ **adopt the necessary rules provisions among themselves and start the international negotiations required to secure this diplomatic and consular protection of citizens of the Union in third countries as referred to in [Article (...)]** <sup>16</sup>

**The/A law or framework law [... the Convention will decide whether the instrument should be adopted by the codecision procedure or by the Council alone and according to which voting rules ...] may establish the measures necessary to facilitate such protection.**

Clause 11 (ex Article 21) <sup>17</sup>

~~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 under [Article (...)] <sup>18</sup> 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 <sup>19</sup>.**

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 (...)] <sup>20</sup> and of [this Part]**. This report shall take account of the development of the Union.

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<sup>15</sup> The first sentence of Article 20 is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 3rd indent, CONV 528/03). Text suggested to act upon the complementary mandate of 2 April 2003 (deletion of the instrument of agreements between Member States).

<sup>16</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2), 3rd indent, CONV 528/03).

<sup>17</sup> 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).

<sup>18</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

<sup>19</sup> 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).

<sup>20</sup> 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, a European law or framework law of the Council to strengthen or shall add~~ to the rights laid down in ~~this Part~~ **[Article (....)]**<sup>21</sup>, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. **The Council shall act unanimously after obtaining the consent of the European Parliament.**<sup>22</sup>

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<sup>21</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).

<sup>22</sup> Consultation of the Parliament replaced by the consent of the Parliament, in accordance with the complementary mandate of 29 April 2003.

## PART THREE

### COMMUNITY UNION POLICES

#### A. INTERNAL POLICIES AND ACTION <sup>23</sup>

##### A1. INTERNAL MARKET

Clause 13 (ex Article 14) <sup>24</sup>

1. The ~~Community~~ **Union** shall adopt measures with the aim of ~~progressively~~ establishing the internal market ~~over a period expiring on 31 December 1992~~, 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**.
3. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, shall ~~determine~~ **adopt European regulations and decisions** <sup>25</sup> **laying down** the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned <sup>26</sup>.

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<sup>23</sup> 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.

<sup>24</sup> It is suggested that Articles 14 and 15 appear in the chapter on the internal market.

<sup>25</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003. Alternatively, given the scope of this paragraph, provision for legislative acts could be considered.

<sup>26</sup> It appears that this paragraph has never been used. Should it be deleted?

Clause 14 (ex Article 15)<sup>27</sup>

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)

**Text not reproduced in accordance with the complementary mandate of 29 April 2003.**

Clause 16 (ex Article 298)

**Text not reproduced in accordance with the complementary mandate of 29 April 2003.**

## **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~~.<sup>28</sup>

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**.<sup>29</sup>

3. ~~It shall entail~~ **Workers shall have**<sup>30</sup> the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

<sup>27</sup> The reference to the period of establishment of the internal market has been deleted.  
However, deletion could result in perpetuating the possible derogations provided for in Article 15, which are applicable only during the period in question.

<sup>28</sup> This wording is more direct, clearer, and does not change substance.

<sup>29</sup> This wording is more direct, clearer, and does not change substance.

<sup>30</sup> This wording is more direct, clearer, and does not change substance.

- (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.

#### 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~~ **A European law or framework law shall establish the measures needed to bring about freedom of movement for workers, as defined in [Article 39]. It shall be adopted after consulting the Economic and Social Committee.**

**The European law or framework law 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.<sup>31</sup>

Clause 20 (ex Article 42)

~~The Council shall, acting in accordance with the procedure referred to in Article 251~~ In the field of social security, **a European law or framework law shall establish** such measures as are necessary to **bring about** freedom of movement for workers<sup>32</sup> by introducing a system to secure for migrant workers and their dependants:

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

~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~<sup>33</sup>

## 2. FREEDOM OF ESTABLISHMENT

Clause 21 (ex Article 43)

Within the framework of ~~the provisions set out below~~ **[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.

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<sup>31</sup> Suggestion: examine this provision to see whether it could usefully be "modernised" by providing competence for the Union of some nature to be defined.

<sup>32</sup> 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.

<sup>33</sup> Removal of unanimity by the Council (see report by Working Group IX on Simplification, page 14 and the complementary mandate of 29 April 2003).

~~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. <sup>34</sup>

Clause 22 (ex Article 44)

1. **A European framework law shall establish measures** 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.~~ **It shall be adopted 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;
  - (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)];

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<sup>34</sup> This wording is more direct, clearer and does not change substance (see also Article 39 on workers).

- (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~~ 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 others, 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.<sup>35</sup>

~~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~~ **A European law or framework law**<sup>36</sup> **may exempt** certain activities from application of this Chapter.

#### 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~~ **A European framework law shall coordinate** the ~~abovementioned national provisions referred to in paragraph 1.~~

#### Clause 25 (ex Article 47)<sup>37</sup>

1. ~~In order to~~ **A European framework law** shall 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.~~ **It shall cover:**

<sup>35</sup> This wording is more direct, clearer and does not change anything in substance.

<sup>36</sup> Move to codecision in accordance with the complementary mandate of 29 April 2003.

<sup>37</sup> 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).

- (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.

~~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.~~<sup>38</sup>

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.

#### 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)

**Text not reproduced in accordance with the complementary mandate of 29 April 2003.**

### 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~~ **Member State** other than that of the person for whom the services are intended.

<sup>38</sup> Abolition of unanimity in the Council (see report by Working Group IX on Simplification, page 14) and the complementary mandate of 29 April 2003.



~~The Council may, acting by a qualified majority on a proposal from the Commission, A European law or framework law~~ <sup>39</sup> may 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;
- (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.

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<sup>39</sup> Move to codecision in accordance with the complementary mandate of 29 April 2003.

Clause 31 (ex Article 52)

1. **A European framework law**<sup>40</sup> shall establish the measures in order to achieve the liberalisation of a specific service~~and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority. . It shall be adopted after consulting the Economic and Social Committee.~~
2. As regards the ~~directives~~ **European framework law** 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)<sup>41</sup>

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the **European framework law 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.

Clause 33 (ex Article 54)<sup>42</sup>

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 of 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]**~~<sup>43</sup>

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<sup>40</sup> Codecision replaces consultation in accordance with the complementary mandate of 29 April 2003.

<sup>41</sup> The relevance of retaining this provision may be questioned.

<sup>42</sup> 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.

<sup>43</sup> 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.

## 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.

#### 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 the European regulations and decisions fixing Common Customs Tariff duties.** <sup>44</sup>

#### Clause 39 (ex Article 27)

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

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<sup>44</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

- (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] <sup>45</sup>

#### Clause 40 (ex Article 135)

Within the scope of application of ~~this Treaty~~ **the Constitution**, ~~the Council acting in accordance with the procedure referred to in Article 251 shall take,~~ **a European law or framework law shall establish 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) <sup>46</sup>

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.~~

<sup>45</sup> Suggested heading not contained in the structure dated 28 October 2002.

<sup>46</sup> Suggestion: merge this Article with Article 29.

#### 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.

#### 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) <sup>47</sup>

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.~~

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<sup>47</sup> It is suggested that paragraphs 1 and 2 be merged.

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.

2. **A European law or framework law** <sup>48</sup> **shall enact** measures 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.

**The Council and the European Parliament shall endeavour** 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 **the Constitution**. <sup>49</sup>

3. **Notwithstanding paragraph 2, only a Council European law or framework law may enact** ~~Unanimity shall be required for measures under this paragraph~~ which constitute a step back in **Union** law as regards the liberalisation of the movement of capital to or from third countries. **The Council shall act unanimously after consulting the European Parliament.** <sup>50</sup>

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.

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<sup>48</sup> Transferred to the codecision procedure, in accordance with the complementary mandate of 29 April 2003.

<sup>49</sup> For drafting reasons, it is better to reverse the order of these two subparagraphs.

<sup>50</sup> The complementary mandate of 29 April 2003 seems to indicate that provision should be made in this paragraph for consultation of the European Parliament.

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 [European regulations or decisions introducing]** <sup>51</sup> 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 European Central Bank.**

### [IIIa. FISCAL PROVISIONS] <sup>52</sup>

#### 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 exported <sup>53</sup> **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.

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<sup>51</sup> This article is not mentioned in the complementary mandate of 29 April 2003. Safeguard measures for a limited period would seem, on the face of it, to involve non-legislative acts. It is therefore suggested that reference be made here to the two types of non-legislative act which the Council can adopt.

<sup>52</sup> Suggested new heading not contained in the structure dated 28 October 2002.

<sup>53</sup> The use of the word "exported" in the context of trade between Member States needs to be reconsidered.

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** <sup>54</sup> **adopted by** the Council ~~acting~~ 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** <sup>55</sup> 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~~ <sup>56</sup>. **The Council shall act after consulting the European Parliament and the Economic and Social Committee.**

#### IV. APPROXIMATION OF LEGISLATION

Clause 52 (ex Article 94) <sup>57</sup>

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives~~ **A Council European framework law shall bring about** 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. **The Council shall act unanimously after consulting the European Parliament and the Economic and Social Committee.**

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<sup>54</sup> A non-legislative act, in accordance with the complementary mandate of 29 April 2003.

<sup>55</sup> The complementary mandate of 29 April 2003 does not specify the legal acts to be used in this paragraph.

<sup>56</sup> It has been proposed that the time limit mentioned here (31.12.1992) should be deleted (see footnote re Article 14).

<sup>57</sup> 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 superimposed 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 the explanation in Annex II to the report of 13 March 2003).



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~~ **A European law or framework law shall bring about** 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. **It shall be adopted 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~~ **submitted under** 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.
4. If, after the adoption ~~by the Council or by the Commission~~ of a harmonisation measure **by means of European law or framework law or a Commission regulation**, 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 Council or by the Commission~~ of a harmonisation measure **by means of a European law or framework law or a Commission regulation**, 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 decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

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<sup>58</sup> See the suggestion in the preceding footnote.

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 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.

10. The harmonisation measures referred to ~~above~~ **in this Article** shall, in appropriate cases, include a safeguard clause authorising the Member States to **adopt**, 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 ~~an agreement eliminating~~ **achieve the desired result, a European framework law** <sup>59</sup> **shall eliminate** the distortion in question. ~~. The Commission and the Council may take~~ Any other appropriate measures provided for in ~~this Treaty~~ **the Constitution may be adopted**.

#### 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.

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<sup>59</sup> Transferred to the codecision procedure, in accordance with the complementary mandate of 29 April 2003.

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**

### **TITLE VII**

#### **ECONOMIC AND MONETARY POLICY**

**This Title is not reproduced, in accordance with the complementary mandate of  
29 April 2003.**

## **A3. POLICIES IN OTHER SPECIFIC AREAS**

### **I. RULES ON COMPETITION**

#### **[SECTION 1**

#### **RULES APPLYING TO UNDERTAKINGS]**

##### **Clause 56 (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 57 (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 58 ( ex Article 83)

1. **The Council, on a proposal from the Commission, shall adopt** ~~The appropriate the European regulations<sup>60</sup> or directives~~ 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.
2. The **European** regulations 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~~ **the European regulations** adopted pursuant to this Article.

Clause 59 (ex Article 84)

Until the entry into force of ~~the provisions~~ **the European regulations** 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 Article 82].

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<sup>60</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

Clause 60 (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 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 61 (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 regulations or** decisions to Member States.

[SECTION 2

AIDS GRANTED BY **MEMBER STATES**]

Clause 62 (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;
- [(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.]<sup>61</sup>

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 **European regulations or decisions**<sup>62</sup> **adopted by the Council** ~~acting~~ by a qualified majority on a proposal from the Commission.

#### Clause 63 (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.

<sup>61</sup> The Convention may wish to consider whether this Article is still relevant (see also Article 78).

<sup>62</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

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.

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** regulations provided for in [Article 89], if such a 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 decision.

#### Clause 64 (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 the European** regulations <sup>63</sup> 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.**

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<sup>63</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.



## II. SOCIAL POLICY

### Clause 65 (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.

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.<sup>64</sup>

### Clause 66 (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;

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<sup>64</sup> The force of this paragraph would appear to be no more than declaratory.

- (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. To this end, ~~the Council~~

- (a) ~~May adopt measures~~ **a European law or framework law may establish 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~~, a **European framework law may establish** minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. ~~Such directives~~ **Such European framework law** 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 all cases, the European law or framework law shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions <sup>65</sup>.**

**3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), the European law or framework law shall be adopted by the Council acting unanimously after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.**

~~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(e), (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. <sup>66</sup>~~

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.

<sup>65</sup> Replacement of consultation by codecision in the areas covered by Article 137(1)(d), (f) and (g), in accordance with the complementary mandate of 29 April 2003.

<sup>66</sup> The whole of this paragraph has been incorporated above.

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**.

4. The ~~provisions~~ **European laws and framework laws** 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 67 (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 68 (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~~ **European regulation or decision**<sup>67</sup> **adopted by the Council** 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 ~~referred to in Article 137(1)(c), in that case, it~~ the Council shall act unanimously.

#### Clause 69 (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 70 (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.

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<sup>67</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

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 Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee adopt~~ **A European law or framework law shall establish** 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. **It shall be adopted 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 71 (ex Article 142)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes<sup>68</sup>.

#### Clause 72 (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.~~<sup>69</sup>

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<sup>68</sup> There are doubts about how this would work.

<sup>69</sup> This paragraph is identical to the second paragraph of Article 145 and could therefore be deleted.

#### Clause 73 (ex Article 144)

The Council, **on its own initiative**, ~~after consulting the European Parliament~~, shall establish <sup>70</sup> **by a simple majority** a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. **The Council 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.

#### Clause 74 (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 75 (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.

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<sup>70</sup> Non-legislative act, in accordance with the complementary mandate of 29 April 2003.

Clause 76 (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 77 (ex Article 148)

~~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 adopt decisions A~~ **European law or framework law shall establish** implementing **measures** relating to the European Social Fund. **It shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

### III. ECONOMIC AND SOCIAL COHESION

Clause 78 (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 79 (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.<sup>71</sup> 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.

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<sup>71</sup> 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 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~~ **A European law or framework law may establish any specific measure** ~~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 law or framework law shall be adopted** after consulting the Economic and Social Committee and the Committee of the Regions.

#### Clause 80 (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 81 (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 a European law or framework law~~ <sup>72</sup> **shall define** the tasks, priority objectives and the organisation of the Structural Funds; - which may involve grouping the Funds - ~~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.

A Cohesion Fund set up by ~~the Council in accordance with the same procedure~~ **a European law** <sup>73</sup> shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

**In all cases, the European law or framework law shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

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<sup>72</sup> Replacement of assent by codecision, in accordance with the report by Working Group IX on Simplification (CONV 424/02, p. 17), and with the complementary mandate of 29 April 2003.

<sup>73</sup> It is suggested that reference is made only to a European law, since for the creation of a financial instrument at Union level the legal act cannot be a framework law.



~~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.~~

#### Clause 82 (ex Article 162)

**A European law or framework law shall establish** 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.~~ **It shall be adopted** 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 83 (Article 31a) <sup>74</sup>

**The Union shall implement a common agriculture and fisheries policy.**

**"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries.**

#### Clause 84 (ex 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.

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<sup>74</sup> Text suggested in line with the complementary mandate of 2 April 2003 (adjustment of the text following the insertion of fisheries into the heading of the Title). Inclusion of the last sentence should be subject to additional technical verification.

3. The products **listed in [Annex I] shall be** subject to the provisions of Articles 33 to 38~~are listed in Annex I to this Treaty~~<sup>75</sup>.

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;
  - (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;

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<sup>75</sup> Suggestion: delete these redundant words, as a reference to the Annex could only refer to the Constitution.

- (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) <sup>76</sup>

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;

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<sup>76</sup> This Article should be reviewed once the Convention has determined the legislative and non-legislative aspects of the common agricultural policy (see footnote re Article 37).

- (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.~~

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.

~~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 European laws/European regulations <sup>77</sup>, 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~~ <sup>78</sup> **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.

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<sup>77</sup> Since the complementary mandate of 29 April 2003 states that "it will be necessary to specify later which aspects of agricultural policy are to be regarded as legislative and which as non-legislative", the wording of this legal basis is unchanged from that appearing in the Group's report of 13 March 2003.

<sup>78</sup> The deleted text is redundant since the procedure to be applied is already indicated by the reference to Article 37(2).

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.

### 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 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~~ **A European law or framework law shall establish** what action is to be taken ~~by the Community~~ in order to achieve the objectives referred to in [Article 174]. **It shall be adopted 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 European laws or framework laws establishing:**

- (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.

**A European law** <sup>79</sup> of the Council may ~~, under the conditions laid down in the first subparagraph, by unanimity~~ define those matters referred to in this paragraph on which ~~decisions are to be taken~~ **it shall act** by a qualified majority.

**In all cases, the Council shall act after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.**

3. In other areas <sup>80</sup>, **a European law or framework law shall establish** 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.~~ **It shall be adopted** after consulting the Economic and Social Committee and the Committee of the Regions.

~~The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the~~ The measures necessary for the implementation of these programmes **shall be adopted under the terms of paragraph 1 or paragraph 2, according to the case.** <sup>81</sup>

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~~ <sup>82</sup>.

#### 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.

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<sup>79</sup> This subparagraph is not mentioned in the complementary mandate of 29 April 2003. Given the scope of this act, it is suggested that the adoption of a European law should be provided for here.

<sup>80</sup> This phrase could be deleted since in practice the European Parliament and the Council adopt framework programmes of general scope.

<sup>81</sup> This subparagraph seems superfluous, since it is limited to referring to the decision-making procedures in paragraphs 1 and 2.

<sup>82</sup> This clarification is unnecessary as there is only one Cohesion Fund.

## 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.<sup>83</sup>
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 Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee~~ **A European law or framework law shall adopt lay down** the measures referred to in paragraph 3(b). **It shall be adopted after consultation of 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~~<sup>84</sup> within the framework of a common transport policy.

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<sup>83</sup> 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)).

<sup>84</sup> 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).



Clause 96 (ex Article 71)

1. ~~For the purpose of implementing~~ **A European law or framework law<sup>85</sup> shall implement** [Article 70], ~~and taking into account the distinctive features of transport. 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,~~ **It shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.**

**The European law or framework law shall contain:**

- (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;
- (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 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 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 market after consulting the European Parliament and the Economic and Social Committee.~~

Clause 97 (ex Article 72)

Until the ~~provisions~~ **European law or framework law** 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 a European law<sup>86</sup> 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.

<sup>85</sup> Consultation replaced by codecision in accordance with the complementary mandate of 29 April 2003. The whole text can therefore be combined into a single paragraph, which entails a slight extension of the compulsory consultation of the Committee of the Regions which, at present, is provided for only in the cases in the present paragraph 1.

<sup>86</sup> It is suggested that reference should be made only to the European law since, for reasons of legal consistency, such a derogation could only be granted by a law.

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 Council from adopting other ~~measures~~ **European laws or framework laws** 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 European regulations or decisions**<sup>87</sup> 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 European regulations and decisions** 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~~ **European regulations and decisions referred to in** paragraph 3.

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<sup>87</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

#### 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 <sup>88</sup> 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.

#### Clause 103 [(ex Article 78) <sup>89</sup>

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.]

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<sup>88</sup> 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.

<sup>89</sup> The Convention may wish to consider whether this Article is still relevant (see also Article 87(2)(c)).

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]<sup>90</sup>.

Clause 105 (ex Article 80)

1. ~~The provisions of~~ This title shall apply to transport by rail, road and inland waterway.
2. ~~The Council may, acting by a qualified majority, decided whether, to what extent and by what procedure appropriate provisions may be laid down~~ **A European law or framework law may lay down appropriate measures for sea and air transport. It shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.**

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

## 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**.

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<sup>90</sup> 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.

## 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. A European law or framework law shall establish 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. It shall be adopted** after consultation of 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.<sup>91</sup>

**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.~~

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<sup>91</sup> 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.

~~Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.~~<sup>92</sup>

## 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.
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;

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<sup>92</sup> This Article could be deleted; see previous footnote.

- (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 States, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Clause 111 (ex Article 166)

1. **A European law**<sup>93</sup> **shall establish 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. It shall be adopted** after consultation of 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.

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<sup>93</sup> It is suggested that reference should be made only to a European law, since, as an operational framework at Union level is being set up, the legal act cannot be a framework law

4. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission ~~and~~, **shall adopt the European regulations or decisions** <sup>94</sup> **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) <sup>95</sup>

For the implementation of the multiannual framework programme, ~~the Council~~, **a European law or framework law shall establish:**

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

**The European law or framework law shall be adopted after consultation of 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 Council shall adopt~~ **A European law or framework law shall determine** the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. **It shall be adopted after consulting the Economic and Social Committee.**

**Adoption of the supplementary programmes shall require the agreement of the Member States concerned.** <sup>96</sup>

Clause 114 (ex Article 169)

In implementing the multiannual framework programme the ~~Community~~ **the European law or framework law** 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 law or framework law shall be adopted after consultation of the Economic and Social Committee.**

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<sup>94</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>95</sup> 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).

<sup>96</sup> Paragraph taken from the final sentence of existing Article 172 TEC.



Clause 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~~ **The Council, on a proposal from the Commission may adopt European regulations or decisions** <sup>97</sup> **to set up joint undertakings or any other structure necessary for the efficient execution of** ~~Community~~ **the Union's** research, technological development and demonstration programmes. **It shall act after consulting the European Parliament and the Economic and Social Committee.**

Clause 117 (ex Article 172) <sup>98</sup>

~~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.~~

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.

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<sup>97</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>98</sup> With a view to clarity, the provisions of this Article have been fully incorporated in Articles 167, 168, 169 and 171 above.

**A4. INTERNAL SECURITY**  
**AREA OF FREEDOM, SECURITY AND JUSTICE**<sup>99</sup>

TITLE IV

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

**This title is not reproduced, in accordance with the complementary mandate  
of 29 April 2003.**

TITLE VI

PROVISIONS ON POLICE AND JUDICIAL COOPERATION  
IN CRIMINAL MATTERS

**This title is not reproduced, in accordance with the complementary mandate  
of 29 April 2003.**

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<sup>99</sup> 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).

## A5. AREAS WHERE THE UNION MAY TAKE SUPPORTING ACTION

### I. EMPLOYMENT<sup>100</sup>

#### Clause 119 (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...~~]<sup>101</sup> of ~~this Treaty~~ **the Constitution**.

#### Clause 120 (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 121 (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.<sup>102</sup>

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<sup>100</sup> 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).

<sup>101</sup> Insert reference to draft article on the Union's objectives in Part One (Article 3 CONV 528/03).

<sup>102</sup> 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 122 (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 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 ~~draw up~~ **adopt by a qualified majority** guidelines<sup>103</sup> 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**<sup>104</sup> **by a qualified majority** recommendations<sup>105</sup> **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 123 (ex Article 129)

~~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 A~~ **European law or framework law may establish** 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. **It shall be adopted after consultation with the Economic and Social Committee and the Committee of the Regions.**

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<sup>103</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>104</sup> It should be noted that the current requirement in the Council for at least ten Member States to vote in favour, laid down by Article 205(2), second subparagraph, second indent TEC, has been abolished in the draft article "Council of Ministers" (Article 17b CONV 691/03).

<sup>105</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

~~These measures~~ **The European law or framework law** shall not include harmonisation of the laws and regulations of the Member States.

#### Clause 124 (ex Article 130)

The Council, ~~after consulting the European Parliament,~~ **on its own initiative**, shall establish <sup>106</sup> **by simple majority** 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 <sup>107</sup>

#### Clause 125 (ex Article 152) <sup>108</sup>

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. <sup>109</sup>

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<sup>106</sup> Non-legislative act, in accordance with the complementary mandate of 29 April 2003.

<sup>107</sup> 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.

<sup>108</sup> 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).

<sup>109</sup> 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)).

~~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.

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 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~~ **A European law or framework law** shall contribute to the achievement of the objectives referred to in this Article ~~through adopting~~ **by establishing**:

- (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 law or framework law shall be adopted after consultation of 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. ~~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 126 (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**.<sup>110</sup> ~~The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee,~~ **A European law or framework law may decide on establish** specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1. **It shall be adopted after consultation of 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.

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<sup>110</sup> 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.<sup>111</sup>
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~~ **a European law or framework law**<sup>112</sup> **shall establish** incentive actions, 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. It shall be adopted after consulting the Committee of the Regions;~~
  - (b) ~~the Council, acting unanimously~~ on a proposal from the Commission, shall adopt recommendations<sup>113</sup>.

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<sup>111</sup> 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)).

<sup>112</sup> Move from unanimity to qualified majority voting, in accordance with the complementary mandate of 29 April 2003.

<sup>113</sup> Move from unanimity to qualified majority voting, in accordance with the complementary mandate of 29 April 2003



## V. EDUCATION, VOCATIONAL TRAINING AND YOUTH

### Clause 128 (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) ~~acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions~~ **a European law or framework law** shall establish incentive actions, excluding any harmonisation of the laws and regulations of the Member States. **It shall be adopted 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.

Clause 129 (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 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, A European law or framework law shall~~ contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. **It shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

## A. BIS ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES <sup>114</sup>

### [PART FOUR]

#### Clause 130 (ex 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...~~ <sup>115</sup>, 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.

#### Clause 131 (ex 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.

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<sup>114</sup> Text placed here in response to the complementary mandate of 2 April 2003.

<sup>115</sup> 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].

Clause 132 (ex 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.

Clause 133 (ex 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.

• **Option A – Transition to the arrangements provided for in Article 187 TEC**

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.~~ **shall be regulated by measures adopted in accordance with Article 187.**

Option B – Bringing the treatment of workers into line with that provided for by Article 183(5) TEC for self-employed persons

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.~~ **shall be regulated in accordance with the provisions and procedures laid down in the [chapter] relating to the freedom of movement for workers and on a non-discriminatory basis, subject to any special provisions laid down pursuant to [Article 187].**

The Council acting unanimously, ~~on its own initiative/without a proposal from the Commission~~ <sup>117</sup>, **shall adopt unanimously**, 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 ... <sup>118</sup>, ~~lay down provisions measures~~ <sup>119</sup> as regards the detailed rules and the procedure for the association of the countries and territories with the ~~Community~~ **Union**.

~~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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<sup>116</sup> Alternative texts suggested in response to the complementary mandate of 2 April 2003 (deletion of the instrument of the agreement between Member States).

<sup>117</sup> The experts from the Council Legal Service consider that the formula "*without a proposal from the Commission*" should be adopted (see explanation in point 9 of the general considerations at the beginning of the report). In any event, it should be noted that, in practice, the Council acts in general on a proposal from the Commission. It could be useful for the Convention to examine whether, as Community areas and in view of practice, the measures should not be adopted on a proposal from the Commission.

<sup>118</sup> See footnote re the third paragraph of Article 182 TEC above.

<sup>119</sup> The complementary mandate of 29 April 2003 does not determine the legal acts to be used in this paragraph.

## **B. EXTERNAL ACTION**

**This Title is not reproduced, in accordance with the complementary mandate of 29 April 2003.<sup>120</sup>**

## **C. DEFENCE<sup>121</sup>**

**This Title is not reproduced, in accordance with the complementary mandate of 29 April 2003.<sup>122</sup>**

## **D. THE FUNCTIONING OF THE UNION**

**This Title is not reproduced, in accordance with the complementary mandate of 29 April 2003.**

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<sup>120</sup> In the provisions incorporating Title V of the EU Treaty (Provisions on a common foreign and security policy), it would be advisable to provide for a specific formula to take account of the introduction of the general rule of qualified majority voting provided for in the draft "Council of Ministers" article (Article 17(3) CONV 691/03) and that of the adoption of acts on a proposal from the Commission, if the Convention does not wish these rules to be applied automatically to acts adopted in relation to this policy.

<sup>121</sup> This Title has been left blank for the reasons set out in the footnote to Chapter B. IV (common foreign and security policy).

<sup>122</sup> See footnote on external action.

# **VOLUME II**

## **PRELIMINARY DRAFT CONSTITUTIONAL TREATY**

**Suggestions for technical adaptations  
to the provisions of the EC and EU Treaties**

**\*\*\***

**following the complementary mandates of 2 and 29 April 2003**

This Volume should be read in the light of the cover note to Volume I.

## **Part A**

### **Provisions of the Treaty establishing the European Community**



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## PART ONE

### PRINCIPLES

#### ~~Article 1~~<sup>1</sup>

~~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;~~
- ~~(g) a system ensuring that competition in the internal market is not distorted;~~

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<sup>1</sup> 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).

- ~~(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.<sup>2</sup>

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<sup>2</sup> This paragraph, which applies horizontally to all 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 <sup>3</sup>

1. For the purposes set out in Article 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, 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 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~~ <sup>4</sup>

~~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.~~

#### Article 6 <sup>5</sup>

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.

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<sup>3</sup> This Article will be transferred to the beginning of the Title on economic and monetary policy.

<sup>4</sup> Article 5 has been deleted and replaced by the draft article entitled "Fundamental principles" in Part One (Article 8 CONV 528/03).

<sup>5</sup> This Article, which applies horizontally to all 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.

## Article 7<sup>6</sup>

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 8<sup>7</sup>

*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.*

## 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.*

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<sup>6</sup> Articles 7 to 11a are or will be covered by Part One.

<sup>7</sup> When drawn up in Part One of the Constitution, this Article will not contain abbreviations ("ECB" and "ESCB") but will give the full names of the bodies in question ("European Central Bank" and "European System of Central Banks"). Moreover, during the final tidying up of the texts, it would be advisable to include here a reference to the fact that the status of the ESCB is contained in the Protocol on the Status of the ESCB and ECB, thereby making it possible to delete such a reference from Article 107(4).

## 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 Council, acting in accordance with the procedure referred to in Article 251, may adopt rules~~  
A European law or framework law shall regulate the prohibition of discrimination **on grounds of nationality as referred to in [Article (.....)]**<sup>8</sup>.

## 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 a European law or framework law may 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 unanimously after consulting the European Parliament.**

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<sup>8</sup> Insert a reference to the draft Article entitled "Non-discrimination on grounds of nationality" in Part One (Article 6 CONV 528/03).



2. By way of derogation from paragraph 1, ~~when the Council adopts Community a European law or framework law shall establish Union~~ incentive measures, excluding any harmonisation of the laws and regulations of the Member States, ~~to to~~ 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~~.

#### Article 14 <sup>9</sup>

1. The ~~Community~~ **Union** shall adopt measures with the aim of progressively establishing the internal market ~~over a period expiring on 31 December 1992~~, 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**.

3. The Council, ~~acting by a qualified majority~~ on a proposal from the Commission, shall ~~determine~~ **adopt European regulations or decisions** <sup>10</sup> ~~defining~~ **laying down** the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned <sup>11</sup>.

#### Article 15 <sup>12</sup>

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.

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<sup>9</sup> Articles 14 and 15 will be moved to the beginning of a new title or chapter entitled "Internal market".

<sup>10</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003. In view of the subject of this paragraph, it is suggested that it might be advisable to consider providing for legislative acts.

<sup>11</sup> It appears that this paragraph has never been used. Should it be deleted?

<sup>12</sup> The reference to the period of establishment of the internal market has been deleted. However, deletion could result in perpetuating the possible derogations provided for in Article 15, which are applicable only during the period in question.

## 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 of the Union as services to which all in the Union attribute value~~<sup>13</sup> 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.

## PART TWO

### CITIZENSHIP OF THE UNION

## Article 17<sup>14</sup>

~~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.~~<sup>15</sup>

~~2. If action by the Community Union should prove necessary to attain this the objective, referred to in [Article (.....)]<sup>16</sup>, of the right of every Union citizen to move and reside freely and this Treaty the Constitution has not provided the necessary powers, the Council may adopt provisions with a view to facilitating a European law or framework law may facilitate 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.~~

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<sup>13</sup> Formula envisaged by the complementary mandate of 2 April 2003.

<sup>14</sup> Article 17 has been deleted and replaced by the draft article on citizenship in Part One (Article 7(1) CONV 528/03).

<sup>15</sup> Article 18(1) is deleted and replaced by the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

<sup>16</sup> Insert a reference to the draft Article on citizenship in Part One (Article 7(2), 1st indent, CONV 528/03).

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.<sup>17</sup>

## Article 19<sup>18</sup>

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 right<sup>19</sup> 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. These arrangements may provide for derogations where warranted by problems specific to a Member State.~~

2. ~~Without prejudice to [Article 190(4)] and to the provisions 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; A European law or framework law of the Council shall establish the detailed arrangements for exercising the right, referred to in [Article (...)<sup>20</sup>], for every Union citizen to vote and to stand as a candidate in municipal elections and elections to the European Parliament in the Member State in which he resides. The Council shall act unanimously after consulting the European Parliament. These arrangements may provide for derogations where warranted by problems specific to a Member State.~~

**The right to vote and to stand as a candidate in elections to the European Parliament shall be exercised without prejudice to [Article 190(4)] and to the measures adopted for its implementation.**

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<sup>17</sup> 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.

<sup>18</sup> Text merging paragraphs 1 and 2 and maintaining a reference to Article 19(4), which concerns the uniform electoral procedure for Members of the European Parliament, to be covered in Part One. That provisions concerns the right (to vote and to stand as a candidate in European elections) and not 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. As proposed here, the reference to Article 190 should be made into a separate sentence specifying that it applies only to the right to vote or stand as a candidate.

<sup>19</sup> 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).

<sup>20</sup> Insert a reference to the Article on the right to vote/stand in municipal and EP elections in Part One (Article 7(2), CONV 528/03).

## Article 20<sup>21</sup>

~~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~~ **take the necessary steps** ~~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 (...)]**<sup>22</sup>

**The/a law or the/a framework law [... the Convention will determine whether the act should be adopted under codecision or by the Council alone and under what voting rules...] may establish the measures needed to facilitate such protection.**

## Article 21<sup>23</sup>

~~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 (...)]<sup>24</sup> 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<sup>25</sup>.**

## 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 (...)]<sup>26</sup> and of** [this Part]. This report shall take account of the development of the Union.

<sup>21</sup> 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). Text suggested to implement the complementary mandate of 2 April 2003 (deletion of the instrument of the agreement between Member States). 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).

<sup>22</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2), 3rd indent, CONV 528/03).

<sup>23</sup> 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).

<sup>24</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2), final indent, CONV 528/03).

<sup>25</sup> 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).

<sup>26</sup> 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**, acting ~~unanimously on a proposal from the Commission and after consulting the European Parliament,~~ **measures to strengthen or to a European law or framework law of the Council shall** add to the rights laid down in ~~this Part~~ **[Article (.....)]**<sup>27</sup>; ~~which it~~ the Council shall recommend **the law or framework law** to the Member States for adoption in accordance with their respective constitutional requirements. **The Council shall act unanimously after consulting** ~~obtaining the consent of the European Parliament~~<sup>28</sup>.

## PART THREE

### COMMUNITYUNION 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.

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<sup>27</sup> Insert reference to the draft Article on citizenship in Part One (Article 7(2) CONV 528/03).  
<sup>28</sup> Replacement of consultation of the Parliament by consent of the Parliament, in accordance with the complementary mandate of 29 April 2003.

## 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 the European regulations or decisions fixing Common Customs Tariff duties**<sup>29</sup>.

#### 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**.

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<sup>29</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

## CHAPTER 2

### PROHIBITION OF QUANTITATIVE RESTRICTIONS

#### Article 28<sup>30</sup>

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.

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.

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<sup>30</sup> Suggestion: merge this Article with Article 29.

TITLE II  
AGRICULTURE AND FISHERIES

**Article 31a**<sup>31</sup>

**The Union shall implement a common agricultural and fisheries policy.**

**"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture and the use of the term "agricultural" shall be understood as also applying to fisheries.**

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]<sup>32</sup>. ~~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;

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<sup>31</sup> Text suggested to implement the complementary mandate of 2 April 2003 (adaptation of the text following the insertion of fisheries in the heading of this Title). The advisability of including the last sentence should be a matter for further technical scrutiny.

<sup>32</sup> Suggestion: delete these redundant words, as a reference to the Annex could only refer to the Constitution.



- (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.

#### 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<sup>33</sup>

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.~~

~~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.

~~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 European laws/regulations, 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.]~~<sup>34</sup>

<sup>33</sup> This Article should be reviewed after the Convention has determined the legislative and non-legislative aspects of the common agricultural policy (see footnote re Article 37).

<sup>34</sup> Given that it is stated in the complementary mandate of 29 April 2003 that "it will be necessary to specify later which aspects of the agricultural policy are to be regarded as legislative and which as non-legislative", the wording of this legal basis has been left unchanged as compared with that appearing in the working party's report of 13 March 2003.

3. ~~The Council may, acting by a qualified majority and~~<sup>35</sup> **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.

### 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**.<sup>36</sup>

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<sup>35</sup> This phrase is superfluous since the applicable procedure is already covered by the reference to Article 37(2).

<sup>36</sup> This wording is more direct, clearer, and does not change substance.

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**.<sup>37</sup>

3. ~~It shall entail~~ **Workers shall have**<sup>38</sup> 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.

#### 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~~ **A European law or framework law shall establish the measures needed** to bring about freedom of movement for workers, as defined in [Article 39] ~~in particular~~ **It shall be adopted after consulting the Economic and Social Committee.**

**The European law or framework law 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.

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<sup>37</sup> This wording is more direct, clearer, and does not change substance.

<sup>38</sup> This wording is more direct, clearer, and does not change substance.

## Article 41

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.<sup>39</sup>

## Article 42

~~The Council shall, acting in accordance with the procedure referred to in Article 251~~ In the field of social security such **a European law or framework law shall establish** measures as are necessary to bring about freedom of movement for workers<sup>40</sup>; by introducing a system to secure for migrant workers and their dependants:

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

~~The Council shall act unanimously throughout the procedure referred to in Article 251.~~<sup>41</sup>

## 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.

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<sup>39</sup> Suggestion: examine this provision to see whether it could usefully be "modernised" by providing competence for the Union of some nature to be defined.

<sup>40</sup> 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.

<sup>41</sup> Removal of unanimity by the Council (see report by Working Group IX on Simplification, page 14 and the complementary mandate of 29 April 2003).

~~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.<sup>42</sup>

#### Article 44

1. ~~A European framework law shall establish measures 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.~~ **It shall be adopted 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;
- (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 others, 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;

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<sup>42</sup> This wording is more direct, clearer and does not change substance (see also Article 39 on workers).

- (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.<sup>43</sup>

**A European law or framework law**<sup>44</sup> **may exempt** certain activities from application of this Chapter.

#### 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~~ **A European framework law shall** coordinate the ~~abovementioned~~ **national** provisions **referred to in paragraph 1.**

#### Article 47<sup>45</sup>

1. **A European framework law shall** 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.~~ **It shall cover:**
  - (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.~~<sup>46</sup>

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<sup>43</sup> This wording is more direct, clearer and does not change anything in substance.

<sup>44</sup> Move to codecision, in accordance with the complementary mandate of 29 April 2003.

<sup>45</sup> 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).

<sup>46</sup> Abolition of unanimity in the Council (see report by Working Group IX on Simplification, page 14 and the complementary mandate of 29 April 2003).

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.

#### 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 may, acting by a qualified majority on a proposal from the Commission, The~~ **European law or framework law** <sup>47</sup> may 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;

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<sup>47</sup> Switch to codecision, in accordance with the complementary mandate of 29 April 2003.



- (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.

#### 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. **The European framework law** <sup>48</sup> **shall establish measures** ~~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. It shall be adopted after consultation of 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.

#### Article 53 <sup>49</sup>

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.

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<sup>48</sup> Replacement of consultation by codecision, in accordance with the complementary mandate of 29 April 2003.

<sup>49</sup> The relevance of retaining this provision may be questioned.

## Article 54<sup>50</sup>

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].

## Article 55

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

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<sup>50</sup> 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.

## CHAPTER 4

### CAPITAL AND PAYMENTS

#### Article 56 <sup>51</sup>

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. **The European law or framework law** <sup>52</sup> **shall establish** measures 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.

~~Whilst endeavouring The Council and the European Parliament shall endeavour 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 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.~~ <sup>53</sup>

3. **By way of derogation from paragraph 2, only a European law or framework law may establish** ~~Unanimity shall be required for 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. **The Council shall act unanimously after consulting the European Parliament.** <sup>54</sup>

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<sup>51</sup> It is suggested that paragraphs 1 and 2 be merged.

<sup>52</sup> Switch to codecision, in accordance with the complementary mandate of 29 April 2003.

<sup>53</sup> For drafting reasons it is preferable to invert the order of these two subparagraphs.

<sup>54</sup> It seems from the complementary mandate of 29 April 2003 that consultation of the European Parliament should be provided for in this paragraph.

## 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, ~~by a qualified majority on a proposal from the Commission, and after consulting the ECB,~~ **may take** ~~may adopt~~ **[European regulations or decisions instituting]** <sup>55</sup> 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 European Central Bank.**

## Article 60 <sup>56</sup>

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* <sup>57</sup>.

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<sup>55</sup> This article is not mentioned in the complementary mandate of 29 April 2003. At first sight a safeguard measure of limited duration would appear to fall into the category of non-legislative acts. It is therefore suggested that a reference to the two types of non-legislative act which the Council can adopt should be inserted here.

<sup>56</sup> 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.

<sup>57</sup> 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, acting by a qualified majority on a proposal from the Commission, may 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 IV

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

**In accordance with the complementary mandate of 29 April 2003, this Title has not been reproduced.**

#### TITLE V

#### TRANSPORT

#### Article 70

The objectives of ~~this Treaty~~ **the Constitution** shall, in matters governed by this Title, be pursued ~~by Member States~~<sup>58</sup> within the framework of a common transport policy.

#### Article 71

~~1. For the purpose of implementing~~ **A European law or framework law**<sup>59</sup> **shall implement** [Article 70], and taking into account the distinctive features of transport, ~~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, lay down:~~ **It shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.**

<sup>58</sup> 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).

<sup>59</sup> Replacement of consultation by codecision in accordance with the complementary mandate of 29 April 2003. It is therefore possible to merge the whole provision into one paragraph, which involves a slight extension of compulsory consultation of the Committee of the Regions, currently only provided for in the cases covered by the present paragraph 1.

**The European law or framework law 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;
- (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 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 by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee.~~

Article 72

Until the ~~provisions~~ **European law or framework law** referred to in [Article 71(1)] ~~have been laid down, has been adopted, and unless the Council has unanimously adopted a European law~~ <sup>60</sup> **granting a derogation**, no Member State may, ~~without the unanimous approval of the Council,~~ 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.

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<sup>60</sup> For reasons of legal consistency, it is suggested that only a European law should be referred to here, since such a derogation could be granted only by means of a law.

## 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 Council from adopting~~ **the adoption of** other ~~measures~~ **European laws or framework laws** 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~~ **adopt rules European regulations or decisions**<sup>61</sup> 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 European regulations and decisions** 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 European regulations and decisions in accordance with the provisions of~~ **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 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.

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<sup>61</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

## Article 77

Charges or dues [in respect of the crossing of frontiers] which are charged by <sup>62</sup> 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.

## [Article 78 <sup>63</sup>

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] <sup>64</sup>.

## Article 80

1. ~~The provisions of~~ This Title shall apply to transport by rail, road and inland waterway.
2. ~~The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down~~ **A European law or framework law may establish appropriate measures for sea and air transport. It shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.**

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

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<sup>62</sup> 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.

<sup>63</sup> The Convention may wish to consider whether this article is still relevant (see also Article 87(2)(c)).

<sup>64</sup> 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.



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** ~~The appropriate the European regulations<sup>65</sup> or directives~~ 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.

2. The **European** regulations ~~or directives~~ 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;

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<sup>65</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

- (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~~ **the European regulations** adopted pursuant to this Article.

#### Article 84

Until the entry into force of ~~the provisions~~ **European regulations** 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 national 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 European 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 European regulations** 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;
  - [(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.]<sup>66</sup>
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 **European regulations or decisions**<sup>67</sup> ~~of adopted by the Council acting by a qualified majority on a proposal from the Commission.~~

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<sup>66</sup> The Convention may wish to consider whether this Article is still relevant (see also Article 78).

<sup>67</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

## 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 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.

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** regulations provided for in [Article 89], if such a 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 make any appropriate~~ **may adopt European** regulations<sup>68</sup> 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.**

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<sup>68</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

## 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.

### Article 91

Where products are exported <sup>69</sup> **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 **European decision** <sup>70</sup> **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** <sup>71</sup> 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~~ <sup>72</sup>. **The Council shall act after consulting the European Parliament and the Economic and Social Committee.**

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<sup>69</sup> The use of the word "exported" in the context of trade between Member States needs to be reconsidered.

<sup>70</sup> Non-legislative act, in accordance with the complementary mandate of 29 April 2003.

<sup>71</sup> The complementary mandate of 29 April 2003 does not determine which legal acts are to be used in this paragraph.

<sup>72</sup> 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 <sup>73</sup>

#### Article 94 <sup>74</sup>

~~The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the~~ **A European framework law of the Council shall result in 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. **The Council shall act after consulting the European Parliament and the Economic and Social Committee.**

#### Article 95 <sup>75</sup>

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 adopt the measures for~~ **A European law or framework law shall undertake** 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. **It shall be adopted 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~~ **presented under** 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.
4. If, after the adoption ~~by the Council or by the Commission~~ of a harmonisation measure **by a European law or framework law or a Commission regulation**, 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.

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<sup>73</sup> This chapter, which contains the general legal bases for establishing the internal market, will be placed at the beginning of a new title or chapter on the "Internal market".

<sup>74</sup> 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 the report of 13 March 2003).

<sup>75</sup> See suggestion in previous footnote.

5. Moreover, without prejudice to paragraph 4, if, after the adoption ~~by the Council or by the Commission~~ of a harmonisation measure **by a European law or framework law or a Commission regulation**, 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 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 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.

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 **succeed**, ~~result in an agreement eliminating a European framework law~~ <sup>76</sup> **shall eliminate** the distortion in question. ~~the Council shall, on a proposal from the Commission, acting by a qualified majority, issue the necessary directives. The Commission and the Council may take~~ Any other appropriate measures provided for in ~~this Treaty~~ **the Constitution may be adopted**.

#### 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 is not reproduced, in accordance with the complementary mandate of 29 April 2003**

### TITLE VIII

#### EMPLOYMENT <sup>77</sup>

#### 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...]~~ <sup>78</sup> **of this Treatythe Constitution**.

<sup>76</sup> Switch to codecision, in accordance with the complementary mandate of 29 April 2003.

<sup>77</sup> 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).

<sup>78</sup> Insert reference to draft article on the Union's objectives in Part One (Article 3, CONV 528/03).

## 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.
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. <sup>79</sup>

## 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** guidelines <sup>80</sup> 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.

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<sup>79</sup> This provision, applying horizontally for all policies, could be grouped with other, similar provisions in a single article (see footnote re Article 3(2)).

<sup>80</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

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**<sup>81</sup> recommendations<sup>82</sup> **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.

#### Article 129

~~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, A European law or framework law may establish~~ **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. **It shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

~~These measures~~ **The European law or framework law** shall not include harmonisation of the laws and regulations of the Member States.

#### Article 130

The Council, ~~after consulting the European Parliament,~~ **on its own initiative**, shall establish<sup>83</sup> **by a simple majority** 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.

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<sup>81</sup> It should be noted that the current requirement for votes in favour cast by at least 10 members imposed by the second indent of the second subparagraph of Article 205(2) TEC has been deleted in the draft article on the Council of Ministers (Article 17b, CONV 691/03).

<sup>82</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>83</sup> Non-legislative act, in accordance with the complementary mandate of 29 April 2003.

TITLE IX  
COMMON COMMERCIAL POLICY

**This Title is not reproduced, in accordance with the complementary mandate of  
29 April 2003.**

TITLE X  
CUSTOMS COOPERATION

Article 135

Within the scope of application of ~~this Treaty~~ **the Constitution**, ~~the Council acting in accordance with the procedure referred to in Article 251 shall take adopt measures in order a~~ **a European law or framework law shall establish measures** 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.<sup>84</sup>

#### 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. To this end, ~~the Council~~:

- (a) ~~May adopt a European law or framework law~~ **may establish** 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;

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<sup>84</sup> The force of this paragraph would appear to be no more than declaratory.

- (b) ~~may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, a~~ **European framework law may establish** minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. ~~Such directives~~ **This European framework law** 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 all cases, the European law or framework law shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.** <sup>85</sup>

**3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), the European law or framework law shall be adopted by the Council acting unanimously, after consulting the Economic and Social Committee and the Committee of the Regions.**

~~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.~~ <sup>86</sup>

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**.

4. ~~The provisions~~ **European laws and framework laws** 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.

<sup>85</sup> Replacement of consultation by codecision for the areas referred to in Article 137(1)(d), (f) and (g), in accordance with the complementary mandate of 29 April 2003.

<sup>86</sup> The whole of this paragraph has been incorporated above.

## 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.

## 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~~ **European regulation or decision**<sup>87</sup> **adopted by the Council** 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 ~~referred to in Article 137(1)(c), (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;

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<sup>87</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

- (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.

#### 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 Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt~~ **A European law or framework law shall establish** 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. **It shall be adopted 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 <sup>88</sup>.

## 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.~~ <sup>89</sup>

## Article 144

The Council, ~~on its own initiative after consulting the European Parliament~~, shall establish <sup>90</sup> **by a simple majority** a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. **The Council 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.

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<sup>88</sup> There are doubts about how this would work.

<sup>89</sup> This paragraph is identical to the second paragraph of Article 145 and could therefore be deleted.

<sup>90</sup> Non-legislative act, in accordance with the complementary mandate of 29 April 2003.

## 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 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 adopt implementing decisions-~~ **A European law or framework law shall establish measures** relating to the European Social Fund. **It shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

## 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~~ **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 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 shall adopt~~  
**a European law or framework law shall establish** incentive measures, excluding any harmonisation of the laws and regulations of the Member States. **It shall be adopted 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.

#### 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 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 adopt measures to~~ **A European law or framework law shall** contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. **It shall be adopted 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.<sup>91</sup>

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<sup>91</sup> 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)).

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 shall adopt a European law or framework law~~<sup>92</sup> **shall establish** 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.~~ **It shall be adopted after consulting the Committee of the Regions;**
- (b) **the Council**, ~~acting unanimously~~ on a proposal from the Commission, shall adopt recommendations<sup>93</sup>.

## TITLE XIII

### PUBLIC HEALTH

#### Article 152<sup>94</sup>

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.<sup>95</sup>

~~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.

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<sup>92</sup> Move from vote by unanimity to vote by a qualified majority, in accordance with the complementary mandate of 29 April 2003.

<sup>93</sup> Move from vote by unanimity to vote by a qualified majority, in accordance with the complementary mandate of 29 April 2003.

<sup>94</sup> 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).

<sup>95</sup> 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** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. 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~~ **A European law or framework law** shall contribute to the achievement of the objectives referred to in this Article **by establishing** ~~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 law or framework law shall be adopted 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 ~~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.<sup>96</sup>

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<sup>96</sup> 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 Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee shall adopt~~ **A European law or framework law shall establish** the measures referred to in paragraph 3(b). **It shall be adopted 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. A European law or framework law shall establish** 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. It shall be adopted** 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.<sup>97</sup>

**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.~~<sup>98</sup>

### 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.

<sup>97</sup> 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.

<sup>98</sup> This article could be deleted; see previous footnote.



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**.<sup>99</sup> ~~The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, A European law or framework law may decide on establish~~ specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1. **It shall be adopted 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.

## 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.

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<sup>99</sup> 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 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.<sup>100</sup> 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~~ **A European law or framework law may establish 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.~~ **The European law or framework law shall be adopted** after consulting the Economic and Social Committee and the Committee of the Regions.

## 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 a European law or framework law~~<sup>101</sup> **shall define** the tasks, priority objectives and the organisation of the Structural Funds - which may involve grouping the Funds - ~~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.

A Cohesion Fund set up by **a European law**<sup>102</sup> ~~the Council in accordance with the same procedure~~ shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

<sup>100</sup> 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)).

<sup>101</sup> Replacement of assent with codecision, in accordance with the report from Working Group IX on Simplification (CONV 424/02, p. 17) and the complementary mandate of 29 April 2003.

<sup>102</sup> It is suggested that reference is made only to a European law, since the legal act for the creation of a financial instrument at Union level cannot be a framework law.

**In all cases, the European law or framework law shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.**

~~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.~~

#### Article 162

**A European law or framework law shall establish** 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~~. **It shall be adopted** 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. A **European law** <sup>103</sup> **shall establish the** 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. It shall be adopted** 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.

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<sup>103</sup> It is suggested that reference be made only to a European law, since the legal act for the creation of an operational framework at Union level cannot be a framework law.

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 the European regulations or decisions** <sup>104</sup> **establishing specific programmes. It shall act** after consulting the European Parliament and the Economic and Social Committee ~~shall adopt the specific programmes.~~

#### Article 167 <sup>105</sup>

For the implementation of the multiannual framework programme ~~the Council shall~~, **the European law or framework law shall establish:**

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

**The European law or framework law shall be adopted 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~~ **Union** participation.

~~The Council shall adopt~~ **A European law or framework law shall determine** the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. **It shall be adopted after consulting the Economic and Social Committee.**

**Adoption of the supplementary programmes shall require the agreement of the Member States concerned.** <sup>106</sup>

#### Article 169

In implementing the multiannual framework programme ~~the Community~~ **a European law or framework law** 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.

<sup>104</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>105</sup> With a view to clarity, references to the decision-making procedures currently in Article 172 TEC have been linked up to their respective legal bases (Articles 167, 168, 169 and 171).

<sup>106</sup> Paragraph taken from the final sentence of existing Article 172 TEC.

**The European law or framework law shall be adopted 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~~ **Council, on a proposal from the Commission, may adopt European regulations or decisions**<sup>107</sup> to set up joint undertakings or any other structure necessary for the efficient execution of ~~Community~~ **Union** research, technological development and demonstration programmes. **It shall act after consulting the European Parliament and the Economic and Social Committee.**

#### Article 172<sup>108</sup>

~~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.~~

#### 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.

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<sup>107</sup> Non-legislative acts, in accordance with the complementary mandate of 29 April 2003.

<sup>108</sup> With a view to clarity, the provisions of this Article have been fully incorporated in Articles 167, 168, 169 and 171 above.

TITLE XIX  
ENVIRONMENT

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.

1. ~~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, A European law or framework law shall establish~~ **shall decide** what action is to be taken by the Community in order to achieve the objectives referred to in [Article 174]. **It shall be adopted 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~~ **unanimously adopt European laws or framework laws establishing:**

- (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 may, under the conditions laid down in the first subparagraph, A European law~~ <sup>109</sup> **of the Council may, by unanimity,** define those matters referred to in this paragraph on which ~~decisions are to be taken~~ **it acts** by a qualified majority.

**In all cases, the Council shall act after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.**

3. In other areas <sup>110</sup>, **a European law or framework law shall establish** 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.~~ **It shall be adopted** after consulting the Economic and Social Committee and the Committee of the Regions.

~~The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the~~ The measures necessary for the implementation of these programmes **shall be adopted under the terms of paragraph 1 or paragraph 2 according to the case.** <sup>111</sup>

<sup>109</sup> This subparagraph is not mentioned in the complementary mandate of 29 April 2003. Given the scope of this act, it is suggested that the adoption of a European law should be stipulated here.

<sup>110</sup> This phrase could be deleted since in practice the European Parliament and the Council adopt framework programmes of general application.

<sup>111</sup> This subparagraph appears to be superfluous, since it merely refers to the decision-making procedures laid down in paragraphs 1 and 2.



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~~ <sup>112</sup>.

#### 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

**This Title has not been not reproduced, in accordance with the complementary mandate of 29 April 2003.**

#### *TITLE XXI*

#### *ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES*

**This Title has not been not reproduced, in accordance with the complementary mandate of 29 April 2003.**

<sup>112</sup> This clarification is unnecessary as there is only one Cohesion Fund.

## PART FOUR

### ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES <sup>113</sup>

#### 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...~~ <sup>114</sup>, 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].

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<sup>113</sup> There should be a reference to association arrangements in Part One of the Constitution.

<sup>114</sup> 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.

## 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 186 <sup>115</sup>

### Option A – Change to the system in Article 187 TEC

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~~ **regulated by measures adopted in accordance with Article 187**.

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<sup>115</sup> Alternative texts suggested further to the complementary mandate of 2 April 2003 (deletion of the instrument of a convention between the Member States)

Option B – Alignment of the treatment of workers on that provided by Article 183(5) TEC for the self-employed

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~~ **regulated in accordance with the provisions and procedures laid down in the [Chapter] relating to the free movement of workers and on a non-discriminatory basis, subject to any special measures adopted pursuant to [Article 187].**

Article 187

The Council, ~~acting unanimously shall establish,~~ **on its own initiative/without a proposal by the Commission** <sup>116</sup>, **shall unanimously adopt**, 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 ...~~ <sup>117</sup>, ~~lay down provisions-measures~~ <sup>118</sup> 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.~~

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.*

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<sup>116</sup> The Council Legal Service experts consider that the wording "*without a proposal by the Commission*" should be selected here (see explanation in paragraph 9 of the general considerations at the beginning of this report). In any case, it will be noted that in practice the Council generally acts on a proposal from the Commission. The Convention might find it useful to examine whether, in the case of Community areas and given current practice, these measures should be adopted on a proposal from the Commission.

<sup>117</sup> See footnote re the third paragraph of Article 182 TEC above.

<sup>118</sup> The complementary mandate of 29 April 2003 does not determine the legal acts to be used in this paragraph.

PART FIVE  
INSTITUTIONS OF THE ~~COMMUNITY~~UNION

**This part has not been reproduced, in accordance with the complementary mandate of 29 April 2003.**

PART SIX  
GENERAL AND FINAL PROVISIONS

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## **Part B**

### **Provisions of the Treaty on European Union (EU Treaty)**

**These provisions have not been reproduced, in accordance with the complementary mandate  
of 29 April 2003 <sup>1</sup>**

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<sup>1</sup> In the provisions which take over Title V of the TEU (Provisions on a common foreign and security policy) special wording is needed to take account of the establishment of qualified majority voting as a general rule, laid down in the draft article on the "Council of Ministers" (Article 17(3) in CONV 691/03), and of the adoption of acts on a proposal from the Commission, if the Convention does not want these rules to apply automatically to acts adopted in the context of this policy.