

# Treaty Amending the Treaty of Nice

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Contact:

Dr. Dominik Hierlemann  
Bertelsmann Stiftung, Guetersloh  
Phone: 0049 5241 81 81537  
Fax: 0049 5241 816 81537  
Email: dominik.hierlemann@bertelsmann.de  
Internet: www.bertelsmann-stiftung.de

Janis Emmanouilidis  
Center for Applied Policy Research, Munich  
Phone: 0049 89 2180 1336  
Fax: 0049 89 2180 1329  
Email: janis.emmanouilidis@lrz.uni-muenchen.de  
Internet: www.cap-lmu.de

## Preface

On 29 October 2004 the heads of state and government of the European Union (EU) signed the “Treaty establishing a Constitution for Europe” at a ceremony in Rome. The constitutional treaty can only enter into force after it has been ratified by all of the 25 EU member states, and the EU can be placed on a new primary legal basis only after the instruments of ratification have been duly deposited. Until this happens, the Treaty of Nice will continue to remain in force.

The ratification process was originally supposed to have been completed by the end of 2006. In 15 countries the decision is in the hands of the national parliaments, and in ten countries the electorate was to be given the chance to vote in a referendum. Ratification has been completed in 15 EU states. They are Lithuania, Hungary, Slovenia, Italy, Greece, Slovakia, Spain, Austria, Germany, Latvia, Cyprus, Malta, Luxembourg and Belgium and Estonia (in chronological order), and together they comprise more than 50 per cent of the EU population.

However, the constitutional treaty was rejected in referendums held in two of the EU’s founding states, France and the Netherlands. The “no” vote of the French and the Dutch in the early summer of 2005 and the postponement of the referendums in the United Kingdom and other countries constituted a severe setback for the process of ratifying the constitution. In view of the negative attitude of the electorate in a number of member states, the heads of state and government meeting in June 2005 decided to give themselves a year-long “pause for thought.”

However, the self-ordained period of reflection has not come up with any substantial results. The European Union is in the midst of a crisis. As a result, there is a need for alternatives in case the European Constitution cannot enter into force. Political decision-makers and EU experts agree that the Treaty of Nice is not the suitable framework for preparing a European Union of 25 and soon more member states to meet the challenges of the future.

The central innovations of the European Constitution would improve both the EU’s ability to take action and its democratic legitimation. In the member states the controversies were not sparked off by the institutional and procedural core of the Constitution. The considerable improvements made by the Constitution with regard to efficiency, democracy, and transparency have not been called into question. These central features ought to be preserved even if the ratification fails.

A pragmatic option would be to incorporate the core of the constitutional innovations into the existing Treaties. To do this it would be necessary to identify the central reforms of the Constitution and to bring them together in the shape of a treaty amending the Treaty of Nice. Such changes would refer to both the Treaty on the European Union (EU Treaty) and the Treaty establishing the European Community (EC Treaty). In the tradition of the Single European Act and the treaty revisions of Maastricht, Amsterdam and Nice, such a treaty would have to be adopted by an intergovernmental conference and ratified in the member states on the basis of the respective national provisions.

The Bertelsmann Stiftung and the Center for Applied Policy Research draft in the present brochure a “Treaty Amending the Treaty of Nice“. The reform of the current Treaties on the basis of the innovations contained in the Constitutional Treaty would affect the following core areas:

- (1) the reform of the EU’s institutional system;
- (2) the development of the decision-making and voting procedures;
- (3) the reform and enhancement of the instruments of differentiated integration;
- (4) and a series of structural provisions.

## (1) Reform of the institutional system

The central institutional reforms of the Constitution should be incorporated into the current Treaties. This applies above all to the appointment of an elected President of the European Council, the introduction of a European Minister for Foreign Affairs and a new administrative structure (European External Action Service), the establishment of a team presidency in the Council of Ministers, the appointment of a permanent president of the Euro Group, and the reduction in the size of the Commission and the strengthening of its President.

The personalization of the European leadership architecture will make it possible to assign responsibilities on the EU level more clearly and to enhance the continuity, visibility and coherence of European policymaking.

## (2) Development of the decision-making and voting procedures

If the EU wishes to keep its ability to take action and to enhance its democratic legitimation, it needs to reform the decision-making and voting procedures in both the Council of Ministers and the European Parliament, and assign a prominent role to the national parliaments.

The introduction of the “dual majority” voting procedure that the constitutional treaty envisages constitutes a milestone in the development of the European Union. Using the number of citizens and the number of states as a basis for decision-making in the Council of Ministers reflects the two strands of EU legitimation. This voting procedure will make it more difficult for member states to form blocking coalitions and will promote the ability to form constructive majorities.

The extension of majority decision-making in the Council of Ministers from 137 to 181 instances is of decisive importance for the problem-solving competence of an enlarged EU and should also be taken into account in the revision of the Treaty of Nice.

The rights of national parliaments (early warning mechanism) should be enhanced and elements of direct democracy (citizens’ initiative) should be introduced. Furthermore, the budgetary powers and the co-decision rights of the European Parliament in the legislative process should be strengthened (extension of co-decision).

## (3) Reforming and enhancing the instruments of differentiated integration

In the enlarged EU the interests of the member states are becoming increasingly diverse. For this reason strategies of differentiated integration are of paramount importance. Blockades or the lack of political will in certain member states in the fields of monetary, internal and social policy were already in the past overcome with the help of differentiation, thereby promoting the process of integration.

The amendment of the current Treaties should take over the reforms of the existing flexibility instruments laid down in the Constitution (enhanced cooperation) and adopt the new instruments especially in the area of Common Security and Defence Policy (Permanent Structured Cooperation, EU Missions, cooperation within the European Defence Agency).

As in the Constitution, the Open Method of Coordination should be firmly embedded in the reformed Treaty of Nice. This method reduces the role of the EU to setting targets for the member states and to making sure that the agreements are enforced. This is its primary advantage: The member states implement national action plans and compete with each other in a transparent manner.

#### (4) Structural Provisions

In addition to the institutional changes, the reform of the decision-making and voting procedures, and the development of the instruments of differentiated integration, certain important structural provisions of the European Constitution should form part of the amendments to the existing Treaties. These include

- the legally binding incorporation of the *Charter of Fundamental Rights* into the Treaty of Nice. A reference to the legally binding nature of the Charter – instead of the complete text – would suffice;
- the introduction of *competence categories* that describe the areas in which the Union possesses exclusive powers, the responsibilities shared by the Union and the member states, and the areas in which the Union may act only in a complementary or supportive manner;
- the incorporation of the so-called “*passerelle*” or *bridge clauses*, which will make it possible to improve the decision-making procedures in the Council of Ministers, the co-decision-making powers of the European Parliament, or certain internal policies without convening an intergovernmental conference;
- the reform of the *treaty revision procedure*, so that future changes to primary law are not decided merely by government representatives behind closed doors, but are publicly debated and concluded in the framework of a Convention including representatives of the national parliaments, the European Parliament and the European Commission;
- the adoption of the *solidarity clause*, according to which EU members assist each other in case a member state is subject to a terrorist attack or the victim of a natural or “man-made” disaster. This clause has already proved its worth in EU practice after the terrorist attacks in Madrid;
- the introduction of the *mutual assistance clause*, with which the EU states undertake to provide support in the case of armed aggression on the territory of a member state, if need be of a military nature.

These changes to certain provisions of the Nice EU and EC Treaty could preserve the central innovations of the Constitution without embarking on a comprehensive reformulation of European primary law. The restricted revision of the current Treaties by an intergovernmental conference strengthens both the EU’s ability to act and its democratic legitimation. At the same time it deliberately eschews a strikingly symbolic emphasis on the treaty-based nature of integration.

The Bertelsmann Foundation and the Center for Applied Policy Research published the “Treaty amending the Treaty of Nice” as early as June 2005, directly after the constitutional referendums in France and the Netherlands. A year after the start of the period of reflection this proposal is more topical than ever.

Guetersloh and Munich, July 2006

## Explaining the Draft Treaty

To help the reader, the following remarks briefly explain the origins and the basic structure of the treaty amending the Treaty of Nice.

### 1. Choosing the central provisions of the Constitution

Starting point was the question which provisions of the Constitution should be incorporated into the present treaty. The choice of the central provisions was based on a thorough analysis of the Constitutional Treaty published early 2005: Werner Weidenfeld (ed.), "Die Europäische Verfassung in der Analyse". A systematic list of the Constitutional innovations selected is given on page 8.

In the course of the discussions certain elements were added and others deleted. Thus the reader may be somewhat surprised to find that the instruments of differentiated integration and open coordination play a more prominent role in this treaty compared to other Constitutional provisions which have been disregarded. This is in line with our view that these new forms of cooperation and coordination will become increasingly important as supplementary measures for the classical community method.

### 2. Combining the central Constitutional provisions in a treaty amending the Treaty of Nice

After compiling a list of the central Constitutional innovations and the articles of the Constitution in question, the latter were compared with the provisions of the EU and EC Treaty. Which articles would be affected by the innovations of the Constitution, which would have to be changed, and how could this be done (replacement, addition, excision, insertion of a new article)? The footnotes to every article of the present treaty contain information about the way in which each provision was dealt with, and on which article of the Constitution the changes to the Treaty of Nice are based.

With regard to the sequence of the articles, the authors, in contrast to the systematic list of contents, which is merely designed to provide a brief overview, have deliberately adhered to the sequence of articles in the EU and EC Treaty. It thereby becomes clearly visible that one of the most important achievements of the Constitution is its very structure. The European Treaties have for the first time been combined in a systematic manner, and as a result are not only more transparent, but also simply more legible. This achievement will no doubt get lost by returning to the (amended) Treaty of Nice.

Depending on the nature of the specific legal material this procedure has different consequences. Thus horizontal topics – for example, giving the EU a legal personality or the introduction of a new hierarchy of legal norms – have a far greater effect on the whole structure of the Treaty of Nice than, for example, the incorporation of reforms related to a new treaty amendment procedure, which in the final analysis affects only a handful of provisions. In the end it was not always possible to clarify every legal question in detail.

### 3. Terminological changes and the use of cross-references

Furthermore, when transferring Constitutional provisions to the EU or EC Treaty, it became necessary to make certain terminological changes. Thus the Constitution contains concepts, which do not or only marginally exist in current primary law, for example, the coherent use of the terms “Union” or “Constitution”, or the introduction of the “ordinary legislative procedure”. In these cases the authors returned to the terminology of the Treaty of Nice. However, to improve the legibility of the text, the changes have not been highlighted. The cross-references in the footnotes enable the reader to compare them with the original text of the Constitution, and this makes the alterations comprehensible. Here again the greater terminological clarity, an important achievement of the Constitution, when compared to the Treaty of Nice, has been lost.

Another problem was caused by the practice of referring to other sections of the Constitution or to articles of the Constitution (e.g. “Part III”, “Art. III-256”). The return to the numbering of the Treaty of Nice has rendered these cross-references obsolete; they have been adapted to the style of the Treaty of Nice or omitted.

Here again a pragmatic approach has been adopted. The procedure is designed to be comprehensive, though here and there it may need to be modified.

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- Composition of the European Parliament: Article 190 TEC
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### 2. Development of the decision-making and voting procedures

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# Changes to the Treaty on European Union

## European Council and President of the European Council:

### ARTICLE 4 TEU [European Council]<sup>1</sup>

- (1) The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.
- (2) The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
- (3) The European Council shall meet quarterly, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.
- (4) If not provided otherwise, decisions of the European Council shall be taken by consensus.
- (5) When the European Council acts by a qualified majority the following shall apply:
  - a) A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

By way of derogation from paragraph 1, when the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union.
  - b) Within the European Council, its President and the President of the Commission shall not take part in the vote.

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<sup>1</sup> Replacement of Art. 4 TEU by Art. I-21 Constitutional Treaty (CT) and Art. I-25 (3) CT in conjunction with (1) und (2). Insertion of Art. I-25 (4) CT.

## ARTICLE 4 a TEU [President of the European Council]<sup>2</sup>

- (1) The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her term of office in accordance with the same procedure.
- (2) The President of the European Council:
  - a) shall chair it and drive forward its work;
  - b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
  - c) shall endeavour to facilitate cohesion and consensus within the European Council;
  - d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs.

- (3) The President of the European Council shall not hold a national office.

## **Charter of Fundamental Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms:**

### ARTICLE 6 TEU [Principles; Fundamental Rights; Relations Between the Union and the Member States]<sup>3</sup>

- (1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
- (2)<sup>4</sup> The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights added to this Treaty as a Protocol.

The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's and the Community's competences as defined in this Treaty or in the Treaty establishing the European Community.

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<sup>2</sup> New Art. 4 a TEU. Insertion of Art. I-22 CT.

<sup>3</sup> Heading added.

<sup>4</sup> Replacement of Art. 6 (2) TEU by Art. I-9 CT.

Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

- (3)<sup>5</sup> The Union shall respect the equality of Member States before this Treaty and the Treaty establishing the European Community as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security.

Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from this Treaty and the Treaty establishing the European Community.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of this Treaty and the Treaty establishing the European Community or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

- (4) The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

## **Common Security and Defence Policy (CSDP)<sup>6</sup>:**

### ARTICLE 17 TEU<sup>7</sup>

#### [General Provisions on Common Security and Defence Policy]

- (1) The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.
- (2) The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

<sup>5</sup> Replacement of Art. 6 (3) TEU by Art. I-5 CT.

<sup>6</sup> The provisions concerning the Common Security and Defence Policy should be added as section 2 to Title V "Provisions on a Common Foreign and Security Policy" of the EU Treaty.

<sup>7</sup> Substitution of Art. 17 TEU by insertion of Art. I-41 (1), (2), (4), (5) and (8) CT.

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

- (3) Decisions relating to the common security and defence policy, including those initiating a mission as referred to in Article 17a, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
- (4) The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 17 a (4) and (5).
- (5) The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

#### ARTICLE 17 a TEU [Missions of the Union]<sup>8</sup>

- (1) As an integral part of the common foreign and security policy the common security and defence policy shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.
- (2) The tasks referred to in paragraph 1, in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.
- (3) The Council shall adopt decisions relating to the tasks referred to in paragraph 2, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.
- (4) The Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the Union Minister for Foreign Affairs, shall agree among themselves on the management of the task.
- (5) Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States

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<sup>8</sup> New article. Insertion and adaptation of Art. I-41 (1), III-309, III-310 CT.

shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 3. In such cases, the Council shall adopt the necessary decisions.

## ARTICLE 17 b TEU [European Defence Agency]<sup>9</sup>

- (1) Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

- (2) The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), subject to the authority of the Council, shall have as its task to:
- a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
  - b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
  - c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
  - d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
  - e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.
- (3) The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

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<sup>9</sup> New article. Insertion and adaptation of Art. I-41 (3), Art. III-311 CT.

## ARTICLE 17 c TEU [Permanent Structured Cooperation]<sup>10</sup>

- (1) Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish Permanent Structured Cooperation within the Union framework.
- (2) Those Member States which wish to participate in the Permanent Structured Cooperation, which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on Permanent Structured Cooperation<sup>11</sup> shall notify their intention to the Council and to the Union Minister for Foreign Affairs.
- (3) Within three months following the notification referred to in paragraph 2 the Council shall adopt a decision establishing Permanent Structured Cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.
- (4) Any Member State which, at a later stage, wishes to participate in the Permanent Structured Cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on Permanent Structured Cooperation.<sup>12</sup> The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

- (5) If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on Permanent Structured Cooperation<sup>13</sup>, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined as at least 55% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

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<sup>10</sup> Insertion and adaptation of Art. I-41 (6) and Art. III-312 CT.

<sup>11</sup> Protocol is annexed to this treaty.

<sup>12</sup> Protocol is annexed to this treaty.

<sup>13</sup> Protocol is annexed to this treaty.

- (6) Any participating Member State which wishes to withdraw from Permanent Structured Cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.
- (7) The European decisions and recommendations of the Council within the framework of Permanent Structured Cooperation, other than those provided for in paragraphs 3 to 6, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

### ARTICLE 17 d TEU [Mutual Assistance]<sup>14</sup>

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

### **Union Minister for Foreign Affairs<sup>15</sup>:**

### ARTICLE 18 TEU [Union Minister for Foreign Affairs; European External Action Service]<sup>16</sup>

- (1) The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her term of office by the same procedure.
- (2) The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
- (3) The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
- (4) The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or

<sup>14</sup> New article. Insertion of Art. I-41 (7) CT.

<sup>15</sup> Only the most important articles referring to the Minister for Foreign Affairs are mentioned in the following. The remaining articles of the EC and the EU Treaty, in which the High Representative for CFSP or the "foreign policy" Presidency are mentioned, will also have to be adapted. Further clarification is also required concerning the relationship between the position as Foreign Minister of the Union and as part of Community institutions (member of the Commission and at the same time permanent chairman of the Council for "external relations").

<sup>16</sup> New formulation of article 18 TEU: Insertion of Art. I-28 CT and Art. III-296 CT. The provisions concerning EU Special Representatives (current Art. 18 (5) TEU) would have to be formulated in a separate article.

she shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

- (5) The Union Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.
- (6) The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
- (7) In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.

## **Special „Passerelle Clause“ in the field of CFSP:**

### ARTICLE 23 TEU [Decision-making Procedure]<sup>17</sup>

- (1) Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions. When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.
- (2) By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

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<sup>17</sup> Passerelle clause concerning the decision-making procedure in the area of CFSP: amendment of Art. 23 TEU by the introduction of a new paragraph (4) through the insertion and adaptation of Art. III-300 (3) CT.



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

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

- (3) For procedural questions, the Council shall act by a majority of its members.
- (4) The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.

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

## **Provisions concerning Enhanced Cooperation in the EU-Treaty:**

### Changes to the provisions concerning Enhanced Cooperation in the field of Common Foreign and Security Policy

#### ARTICLE 27 b TEU [Non-military Action]

D e l e t e d

#### ARTICLE 27 c TEU [Request and Authorisation]<sup>18</sup>

The request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council. It shall be forwarded to the Union Minister for Foreign Affairs, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.

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<sup>18</sup> Insertion and adaptation of Art. III-419 (2) CT.

## ARTICLE 27 d TEU [Information to the EP and the Council]<sup>19</sup>

Without prejudice to the powers of the Presidency and of the Commission, the Union Minister for Foreign Affairs shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.

## ARTICLE 27 e TEU [Late Participation]<sup>20</sup>

Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the Union Minister for Foreign Affairs and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the Union Minister for Foreign Affairs and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the Union Minister for Foreign Affairs, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act unanimously, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.

## Changes to the provisions concerning Enhanced Cooperation in the field of Police and Judicial Cooperation in Criminal Matters

## ARTICLE 40 a TEU [Request and Authorisation]<sup>21</sup>

- (1) Member States which wish to establish enhanced cooperation between themselves on the grounds of Article 40 shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so. Those Member States may then submit an initiative to the Council designated to obtain authorisation for the enhanced cooperation concerned.

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<sup>19</sup> Amendment of Art. 27 d TEU.

<sup>20</sup> New article. Insertion and adaptation of Art. III-420 (2) CT.

<sup>21</sup> Insertion and adaptation of Art. III-419 (1) CT.

- (2) The authorisation referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45, by the Council, acting by a qualified majority, on a proposal from the Commission and after obtaining the consent of the European Parliament.

### ARTICLE 40 b TEU [Late Participation]<sup>22</sup>

Any Member State which wishes to participate in enhanced cooperation in progress on the grounds of Article 40 a shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

## Changes to the general provisions concerning Enhanced Cooperation

### ARTICLE 43 TEU [Preconditions]<sup>23</sup>

Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community provided that the proposed cooperation:

- a) is aimed at furthering the objectives of the Union and of the Community, at protecting and serving their interests and at reinforcing their process of integration;
- b) respects the said Treaties and the single institutional framework of the Union;
- c) respects the *acquis communautaire* and the measures adopted under the other provisions of the said Treaties;
- d) remains within the framework of the Union's or the Community's non-exclusive competences and does not concern the areas which fall within the exclusive competence of the Community;

<sup>22</sup> Insertion and adaptation of Art. III-420 (1) CT.

<sup>23</sup> New formulation of Art. 43 d) and g) TEU in accordance with Art. I-44 CT.

- e) does not undermine the internal market as defined in Article 14 (2) of the Treaty establishing the European Community, or the economic and social cohesion established in accordance with Title XVII of that Treaty;
- f) does not constitute a barrier to or discrimination in trade between the Member States and does not distort competition between them;
- g) provided that at least one third of the Member States participate in it;
- h) respects the competences, rights and obligations of those Member States which do not participate therein;
- i) does not affect the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union;
- j) is open to all the Member States, in accordance with Article 43b.

#### ARTICLE 44 b TEU [Special Passerelle Clause]<sup>24</sup>

- (1) Where a provision of this Treaty or the Treaty establishing the European Community which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously with the members of the Council representing the Member States participating in enhanced cooperation taking part in the vote, may adopt a European decision stipulating that it will act by a qualified majority.
- (2) Where a provision of this Treaty or the Treaty establishing the European Community which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt regulations or directives under a special legislative procedure, the Council, acting unanimously with the members of the Council representing the Member States participating in enhanced cooperation taking part in the vote, may adopt a decision stipulating that it will act under Article 251 of the Treaty establishing the European Community. The Council shall act after consulting the European Parliament.
- (3) Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.

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<sup>24</sup> New article. Insertion and adaptation of Art. III-422 CT.

## Solidarity Clause:

### *Title VIIa* *Solidarity*<sup>25</sup>

#### ARTICLE 45 a TEU [Solidarity Clause]<sup>26</sup>

- (1) The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to
  - a) - prevent the terrorist threat in the territory of the Member States;
  - protect democratic institutions and the civilian population from any terrorist attack;
  - assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;
- b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

#### ARTICLE 45 b TEU [Implementation of the Solidarity Clause]<sup>27</sup>

- (1) Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
- (2) The arrangements for the implementation by the Union of the solidarity clause referred to in Article 45 a shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. The Council shall act in accordance with (...) <sup>28</sup> where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to (...) <sup>29</sup>, the Council shall be assisted by the Political and Security Committee with the support of the structures devel-

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<sup>25</sup> Title VIIa is a new title.

<sup>26</sup> New 45 a TEU. Insertion of Art. I-43 (1) CT. Art. I-43 (2) CT was not added because of Art. 45 b TEU.

<sup>27</sup> New Art. 45 b EUV. Insertion of Art. III-329 CT.

<sup>28</sup> Reference needs to be adapted in the final version in line with Art III-300 (1) CT.

<sup>29</sup> Reference needs to be adapted in the final version in line with Art III-344 CT.

oped in the context of the common security and defence policy and by the Committee referred to in (...)<sup>30</sup>; the two committees shall, if necessary, submit joint opinions.

- (3) The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

## Procedures for Revising the Treaties:

### ARTICLE 48 a TEU [Ordinary Revision Procedure]<sup>31</sup>

- (1) The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of this Treaty or the Treaty establishing the European Community. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.
- (2) If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 3.

The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

- (3) A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to this Treaty and the Treaty establishing a European Community.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

- (4) If, two years after the signature of the treaty amending this Treaty or the Treaty establishing the European Community, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

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<sup>30</sup> Reference needs to be adapted in the final version in line with Art III-261 CT.

<sup>31</sup> New article. Insertion and amendment of Art. IV-443 CT.

## Passerelle Clauses:

### ARTICLE 48 b TEU [Simplified Revision Procedure]<sup>32</sup>

- (1) In those cases in which the Council acts by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

- (2) In those cases in which the Council adopts regulations or directives in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such regulations or directives according to the procedure laid down in Article 251 of the Treaty establishing the European Community.
- (3) Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

### ARTICLE 48 c TEU<sup>33</sup> [Simplified Revision Procedure Concerning Internal Union Policies]<sup>34</sup>

- (1) The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part three of the Treaty establishing the European Community with the exception of Title IX, XX and XXI.
- (2) The European Council may adopt a decision amending all or part of the provisions of Part three of the Treaty establishing the European Community with the exception of Title IX, XX and XXI. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.

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<sup>32</sup> New Article. Insertion and adaptation of Art. IV-444 CT.

<sup>33</sup> The simplified revision procedure concerning internal Union policies in the Constitutional Treaty goes beyond the formulation of the new Article 48 c. This results from the fact that Title III of Part III (CT), to which Art. III-445 CT refers, is more broad than Part three of the EC Treaty. One example: Title III of Part III of the Constitutional Treaty includes the entire "Area of Freedom, Security and Justice". In the current treaty framework (TEC/TEU) the "Provisions on police and judicial cooperation in criminal matters" are part of the TEU.

<sup>34</sup> New article. Insertion and adaptation of Art. IV-445 CT.

Such a decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.

- (3) The decision referred to in paragraph 2 shall not increase the competences conferred on the Union in this Treaty.

## **Withdrawal Clause:**

### ARTICLE 49 a TEU [Voluntary Withdrawal From the Union]<sup>35</sup>

- (1) Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- (2) A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with (...) <sup>36</sup>. It shall be concluded by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- (3) This Treaty and the Treaty establishing the European Community shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- (4) For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in European decisions concerning it.

A qualified majority shall be defined as at least 72% of the members of the Council, representing the participating Member States, comprising at least 65% of the population of these States.

- (5) If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

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<sup>35</sup> New Art. 49 a TEU. Insertion of Art. I-60 CT.

<sup>36</sup> Reference needs to be adapted in the final version in line with Art III-325 (3) CT.



# Changes to the Treaty establishing the European Community

## Competences:

### ARTICLE 5 TEC [Fundamental Principles of Competence]<sup>37</sup>

- (1) The limits of Community competences are governed by the principle of conferral. The use of Community competences is governed by the principles of subsidiarity and proportionality.
- (2) Under the principle of conferral, the Community shall act within the limits of the competences conferred upon it by the Member States in this Treaty to attain the objectives set out in this Treaty. Competences not conferred upon the Community in this Treaty remain with the Member States.
- (3) Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Community shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Community level.

The institutions of the Community shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>38</sup> National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in that Protocol.

- (4) Under the principle of proportionality, the content and form of Community action shall not exceed what is necessary to achieve the objectives of this Treaty.

The institutions of the Community shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>39</sup>

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<sup>37</sup> Amendment of Art. 5 TEC. Insertion of Art. I-11 CT.

<sup>38</sup> Protocol is annexed to the treaty.

<sup>39</sup> Protocol is annexed to the treaty.

## Competence Categories<sup>40</sup>:

### ARTICLE 5 a TEC [Categories of Competence]<sup>41</sup>

- (1) When this Treaty confers on the Community exclusive competence in a specific area, only the Community may legislate and adopt binding acts, the Member States being able to do so themselves only if so empowered by the Community or for the implementation of Community acts.
- (2) When this Treaty confers on the Community a competence shared with the Member States in a specific area, the Community and the Member States may legislate and adopt binding acts in that area. The Member States shall exercise their competence to the extent that the Community has not exercised, or has decided to cease exercising, its competence.
- (3) The Member States shall coordinate their economic and employment policies within arrangements as determined by Part three, which the Community shall have competence to provide.
- (4) In certain areas and under the conditions laid down in this Treaty, the Community shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Binding acts of the Community adopted on the basis of the provisions in Part three relating to these areas shall not entail harmonisation of Member States' laws or regulations.

- (5) The scope of and arrangements for exercising the Union's competences shall be determined by the provisions relating to each area in Part three.

### ARTICLE 5 b TEC [Areas of Exclusive Competence]<sup>42</sup>

- (1) The Community shall have exclusive competence in the following areas:
  - a) customs union;
  - b) establishment of common rules necessary for the functioning of the common market concerning competition, taxation and the harmonisation of legal norms;
  - c) monetary policy for the Member States whose currency is the euro;
  - d) the conservation of marine biological resources under the common fisheries policy;
  - e) common commercial policy.

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<sup>40</sup> New Art. 5a-5e TEC. Insertion of Art. I-12-15, 17 CT. Article I-16 (Common Foreign and Security Policy) was not taken from the Constitutional Treaty.

<sup>41</sup> New Art. 5 a TEC. Insertion of Art. I-12 CT. Art. I-12 (4) CT was not taken from the Constitutional Treaty.

<sup>42</sup> New Art. 5 a TEC. Insertion of Art. I-13 CT and adaptation to the TEC.

- (2) The Community shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in an act of the Community or is necessary to enable the Community to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope.

## ARTICLE 5 c TEC [Areas of Shared Competence]<sup>43</sup>

- (1) The Community shall share competence with the Member States where this Treaty confers on it a competence which does not relate to the areas referred to in Articles 5 b and 5 e.
- (2) Shared competence between the Community and the Member States applies in the following principal areas:
  - a) common market according to Part three, Title I, III and X;
  - b) social policy, for the aspects defined in Part three;
  - c) economic and social cohesion;
  - d) agriculture and fisheries, excluding the conservation of marine biological resources;
  - e) environment;
  - f) consumer protection;
  - g) transport;
  - h) trans-European networks;
  - i) energy;
  - j) Visas, asylum, immigration and other policies related to free movement of persons;
  - k) common safety concerns in public health matters, for the aspects defined in Part three.
- (3) In the areas of research, technological development and space, the Community shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.
- (4) In the areas of development cooperation and humanitarian aid, the Community shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

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<sup>43</sup> New Art. 5 c TEC. Insertion of Art. I-14 CT and adaptation to the TEC.

**ARTICLE 5 d TEC**  
**[Coordination of Economic and Employment Policies]<sup>44</sup>**

- (1) The Member States shall coordinate their economic policies within the Community. To this end, the Council of Ministers shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

- (2) The Community shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.
- (3) The Community may take initiatives to ensure coordination of Member States' social policies.

**ARTICLE 5 e TEC**  
**[Areas of supporting, coordinating or complementary action]<sup>45</sup>**

The Union shall have competence to carry out supporting, coordinating or complementary action. The areas of such action shall, at European level, be:

- a) protection and improvement of human health;
- b) industry;
- c) culture;
- d) tourism;
- e) education and vocational training and youth;
- f) civil protection.

**Provisions concerning Enhanced Cooperation in the EC Treaty:**

**ARTICLE 11 TEC**  
**[Request]<sup>46</sup>**

- (1) Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by this Treaty shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission 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

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<sup>44</sup> New Art. 5 d TEC. Insertion of Art. I-15 CT.

<sup>45</sup> New Art. 5 e TEC. Insertion of Art. I-17 CT and adaptation to the EC Treaty.

<sup>46</sup> Insertion and adaptation of Art. III-419 CT.

Council, acting by a qualified majority on a proposal from the Commission and after the assent of the European Parliament.

### ARTICLE 11 a TEC [Late Participation]<sup>47</sup>

Any Member State which wishes to participate in enhanced cooperation in progress on the grounds of Article 11 shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

## **Euro Group:**

### *Chapter 3a* *PROVISIONS SPECIFIC TO MEMBER STATES* *WHOSE CURRENCY IS THE EURO*<sup>48</sup>

### ARTICLE 115 a TEC Coordination and Monitoring of Budgetary Discipline; Broad Economic Policy Guidelines]<sup>49</sup>

- (1) In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of this Treaty, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 99 and 104, with the exception of the procedure set out in Article 104 (14), adopt measures specific to those Member States whose currency is the euro:

<sup>47</sup> Insertion and adaptation of Art. III-420 CT.

<sup>48</sup> New heading.

<sup>49</sup> Insertion of Art. III-194-196 CT after Art 115 TEC. New headings.

- a) to strengthen the coordination and surveillance of their budgetary discipline;
  - b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Community and are kept under surveillance.
- (2) For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority shall be defined as at least 55% of these members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

#### ARTICLE 115 b TEC [Meetings between Ministers of the Euro Group]

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.<sup>50</sup>

#### ARTICLE 115 c TEC [Euro in the International Monetary System; Unified Representation]

- (1) In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall decide by qualified majority after consulting the European Central Bank.<sup>51</sup>
- (2) The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.
- (3) For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority shall be defined as at least 55% of these members of the Council, representing Member States comprising at least 65% of the population of the participating Member States.

A blocking minority must include at least the minimum number of these Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

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<sup>50</sup> Protocol is annexed to the treaty.

<sup>51</sup> Wording of Art. III-196 (1) sentence 2 CT supplemented by "qualified majority".

## Open Method of Coordination:

### Social policy

#### ARTICLE 140 TEC [Cooperation in the Field of Social Policy]<sup>52</sup>

With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, 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:

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- 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, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

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

### Public Health

#### ARTICLE 152 TEC [Cooperation in the Field of Public Health; Activities]<sup>53</sup>

- (1) A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. Community 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

<sup>52</sup> Amendment of Art. 140 (2) TEC by adding Art. III-213 (2) CT from “in particular” onwards.

<sup>53</sup> Amendment of Art. 152 (2) TEC by adding Art. III-278 (2) CT from “in particular” onwards.

their causes, their transmission and their prevention, as well as health information and education. The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

- (2) The Community 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, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.
- (3) The Community 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, shall contribute to the achievement of the objectives referred to in this article through adopting:
  - a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
  - b) by way of derogation from Article 37, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
  - c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States. The 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 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.

## Industrial Policy

### ARTICLE 157 TEC [Competitiveness]<sup>54</sup>

- (1) The Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's industry exist. For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:
  - speeding up the adjustment of industry to structural changes,

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<sup>54</sup> Amendment of Art. 157 (2) TEC by adding Art. III-279 (2) CT from “in particular” onwards.



- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings,
  - encouraging an environment favourable to cooperation between undertakings,
  - 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, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.
- (3) The Community 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 Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1.

This title shall not provide a basis for the introduction by the Community 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.

## Research and Technological Development

### ARTICLE 165 TEC [Coordination; Commission Initiatives]<sup>55</sup>

- (1) The Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community 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, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

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<sup>55</sup> Amendment of Art. 165 (2) TEC by the insertion of Art. III-250 (2) CT from “in particular” onwards.

## European Parliament: Extension of Rights, Size and Composition:

### ARTICLE 189 TEC [Tasks; Total Number of Members]<sup>56</sup>

The European Parliament shall consist of representatives of the peoples of the States brought together in the Community.

The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in this Treaty. It shall elect the President of the Commission.

The number of Members of the European Parliament shall not exceed 750.

### ARTICLE 190 TEC [Composition; Number of Parliamentarians]<sup>57</sup>

- (1) The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.
- (2) Representation of the peoples of the States shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

- (3) Representatives shall be elected for a term of five years.
- (4) The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

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

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

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<sup>56</sup> Amendment of Art. 189 (1), sentence 2 TEC. Insertion of Art. I-20 (1) CT, now Art. 189 (2) TEC.

<sup>57</sup> Amendment of Art. 190 (2) TEC by the insertion and adaptation of Art. I-20 (2) CT sentence 2 and the following and adaptation to the EC Treaty.

## **Council as Co-legislator, Public Meetings, Team Presidency, “Dual Majority” as Voting Procedure:**

### ARTICLE 202 TEC [Tasks]<sup>58</sup>

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

- ensure coordination of the general economic policies of the Member States,
- have power to take decisions,
- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament.

The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions.

### ARTICLE 203 TEC [Members, Composition, Presidency]<sup>59</sup>

- (1) The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.
- (2) The Council shall meet in different configurations.
- (3) The General Affairs Council shall ensure consistency in the work of the different Council configurations.

It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

- (4) The Foreign Affairs Council shall elaborate the Community's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Community's action is consistent.
- (5) The European Council shall adopt by a qualified majority a European decision establishing the list of other Council configurations.

<sup>58</sup> Amendment of Art. 202 TEC by the insertion of Art. I-23 (1) sentence 1 CT .

<sup>59</sup> Replacement of Art. 203 (2) TEC by Art. I-24 CT (exception: Art. I-24 (5) CT). Addition of heading and allocation of numbering (1), (2) etc.

- (6) The Council shall meet in public when it deliberates and votes on a draft act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union acts and non-legislative activities.
- (7) The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established by a decision of the European Council. The European Council shall act by a qualified majority.

### ARTICLE 205 TEC<sup>60</sup> [Decision-Making Procedure]<sup>61</sup>

- (1) Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members.
- (2) If a decision of the Council requires a qualified majority the following procedure shall apply:

A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Community.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

By way of derogation from paragraph 1, when the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Community.

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

## **Size of the Commission and Appointment of the President of the Commission:**

### ARTICLE 213 TEC [European Commission]<sup>62</sup>

- (1) The Commission shall promote the general interest of the Community and take appropriate initiatives to that end. It shall ensure the application of this Treaty, and measures adopted by the institutions pursuant to this Treaty. It shall oversee the application of

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<sup>60</sup> Those cases in which decisions are taken by qualified majority and which go beyond the provisions of the current Treaties will have to be amended individually according to the provisions of the Constitutional Treaty.

<sup>61</sup> Amendment of Art. 205 (2) TEC by the insertion of Art. I-25 (1) and (2) CT.

<sup>62</sup> Replacement of Art. 213 TEC by Art. I-26 CT.

Community law under the control of the Court of Justice. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in this Treaty. With the exception of the common foreign and security policy, and other cases provided for in this Treaty, it shall ensure the Community's external representation. It shall initiate the Community's annual and multiannual programming with a view to achieving interinstitutional agreements.

- (2) Community acts may be adopted only on the basis of a Commission proposal, except where this Treaty provides otherwise. Other acts shall be adopted on the basis of a Commission proposal where this Treaty so provides.
- (3) The Commission's term of office shall be five years.
- (4) The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.
- (5) The first Commission appointed under the provisions of this Article shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.
- (6) As from the end of the term of office of the Commission referred to in paragraph 5, the Commission shall consist of a number of members, including its President and the Union Minister for Foreign Affairs, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be selected from among the nationals of the Member States on the basis of a system of equal rotation between the Member States. This system shall be established by a decision adopted unanimously by the European Council and on the basis of the following principles:

- a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;
  - b) subject to point (a), each successive Commission shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States.
- (7) In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18 (2) of the Treaty on European Union, the members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.
  - (8) The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 210, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the duties that he or she carries out in the Commission.

## ARTICLE 214 TEC [President of the European Commission]<sup>63</sup>

- (1) Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.
- (2) The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in Article 213 (4) and (6), second subparagraph.

The President, the Union Minister for Foreign Affairs and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

- (3) The President of the Commission shall:
  - a) lay down guidelines within which the Commission is to work;
  - b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
  - c) appoint Vice-Presidents, other than the Union Minister for Foreign Affairs, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The Union Minister for Foreign Affairs shall resign, in accordance with the procedure set out in Article 18 (2) of the Treaty on European Union, if the President so requests.

### **Citizens' Initiative:**

## ARTICLE 219 a TEC [European Citizens' Initiative]<sup>64</sup>

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a act of the Community is required for the purpose of implementing this Treaty. A regulation of the Council acting by a qualified majority shall determine the provisions for the procedures and conditions required for

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<sup>63</sup> Replacement of Art. 214 TEC by Art. I- 27 CT.

<sup>64</sup> Introduction of a new Art. 219 a TEC (at the end of the section on the Commission). Insertion of Art. I-47 (4) CT. Addition of "a regulation of the Council acting by a qualified majority" in the final sentence.

such a citizens' initiative, including the minimum number of Member States from which such citizens must come.

## Acts and Decision-Making Procedures:

### ARTICLE 249 TEC [Acts; Characteristics]<sup>65</sup>

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

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

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

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

Recommendations and opinions shall have no binding force.

Regulations and directives shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council under the procedure as set out in Article 251. If the two institutions cannot reach agreement on an act, it shall not be adopted.

### ARTICLE 251 TEC [Co-decision Procedure]<sup>66</sup>

(1) Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

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

First reading

(3) The European Parliament shall adopt its position at first reading and communicate it to the Council.

(4) If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

<sup>65</sup> Amendment of Art. 249 TEC by paragraph (6) at the end. Insertion of Art. I-34 (1) CT. Retention of the terminology of the EC Treaty.

<sup>66</sup> Adaptation of Art. 251 (1) TEC, incidentally replacement of Art. 251 (2) et seqq. TEC by Art. III-396 (2)-(15) CT.

The cases in which the European Parliament shall enjoy the right of co-decision beyond the current provisions laid down in the TEC/TEU will have to be amended in line with the Constitutional Treaty.

- (5) If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.
- (6) The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

#### Second reading

- (7) If, within three months of such communication, the European Parliament:
  - a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;
  - b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;
  - c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
- (8) If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:
  - a) approves all those amendments, the act in question shall be deemed to have been adopted;
  - b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
- (9) The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

#### Conciliation

- (10) The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.
- (11) The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
- (12) If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.



### Third reading

- (13) If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.
- (14) The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

### Special provisions

- (15) Where, in the cases provided for in the Treaty, a regulation or a directive is submitted on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

## ARTICLE 252 TEC [Cooperation Procedure]

D e l e t e d

# Protocols and Declarations

## **PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION AND THE COMMUNITY**

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union and the Community is a matter for the particular constitutional organisation and practice of each Member State;

DESIRING to encourage greater involvement of national Parliaments in the activities of the Union and the Community and to enhance their ability to express their views on draft European acts as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community:

### **TITLE I INFORMATION FOR NATIONAL PARLIAMENTS**

#### **ARTICLE 1**

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

#### **ARTICLE 2**

Draft European legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft European legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act.

Draft European legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft European legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft European legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

### ARTICLE 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft European legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft European legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft European legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

### ARTICLE 4

A six-week period shall elapse between a draft European legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft European legislative act during those six weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft European legislative act on the provisional agenda for the Council and the adoption of a position.

### ARTICLE 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft European legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

## ARTICLE 6

When the European Council intends to make use of Article 48 b (1) or (2) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

## ARTICLE 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

## ARTICLE 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

## TITLE II INTERPARLIAMENTARY COOPERATION

## ARTICLE 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union and the Community.

## ARTICLE 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

## **PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Community;

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty establishing the European Community, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing the European Community:

### **ARTICLE 1**

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty establishing the European Community.

### **ARTICLE 2**

Before proposing European legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

### **ARTICLE 3**

For the purposes of this Protocol, "draft European legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act.

### **ARTICLE 4**

The Commission shall forward its draft European legislative acts and its amended drafts to national Parliaments at the same time as to the Community legislator.

The European Parliament shall forward its draft European legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft European legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

## ARTICLE 5

Draft European legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft European legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Community objective can be better achieved at Community level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft European legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Community, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

## ARTICLE 6

Any national Parliament or any chamber of a national Parliament may, within six weeks from the date of transmission of a draft European legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft European legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft European legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

## ARTICLE 7

The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

Where reasoned opinions on a draft European legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second paragraph, the draft must be reviewed. This threshold shall be a quarter in the case of a draft European legislative act submitted on the basis of Article (...) <sup>67</sup> on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft European legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

## ARTICLE 8

The Court of Justice shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a European legislative act, brought in accordance with the rules laid down in Article 230 of the Treaty establishing the European Community by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against European legislative acts for the adoption of which the Treaties provide that it be consulted.

## ARTICLE 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty establishing the European Community. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

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<sup>67</sup> Needs further adaptation in line with the original reference to Art. III-264 CT.

## **PROTOCOL ON THE EURO GROUP**

**THE HIGH CONTRACTING PARTIES,**

DESIRING to promote conditions for stronger economic growth in the Community and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Community,

HAVE AGREED upon the following provisions, which are annexed to the Treaty establishing the European Community:

### **ARTICLE 1**

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

### **ARTICLE 2**

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.



## **PROTOCOL ON PERMANENT STRUCTURED COOPERATION ON THE BASIS OF ARTICLE 17 c OF THE TREATY ON EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article 17 c of the Treaty on European Union,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States;

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article 17 a of the Treaty on European Union outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces;

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States;

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States, which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework;

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements;

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community;

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter;

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities;

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned;

RECALLING the importance of the Minister for Foreign Affairs being fully involved in proceedings relating to Permanent Structured Cooperation,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union:

## ARTICLE 1

The Permanent Structured Cooperation referred to in Article 17 c Paragraph 1 of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of this Protocol, to:

- a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and
- b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 17 c of the Treaty on European Union, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

## ARTICLE 2

To achieve the objectives laid down in Article 1, Member States participating in Permanent Structured Cooperation shall undertake to:

- a) cooperate, as from the entry into force of this protocol, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;
- b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";
- e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

## ARTICLE 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established *inter alia* on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and European decisions adopted in accordance with Article 17 c of the Treaty on European Union.

## **DECLARATION ON ARTICLE 203 TEC CONCERNING THE EUROPEAN COUNCIL DECISION ON THE EXERCISE OF THE PRESIDENCY OF THE COUNCIL<sup>68</sup>**

The Conference declares that the Council should begin preparing the decision establishing the measures for applying the decision of the European Council on the exercise of the Presidency of the Council as soon as the new Treaty establishing a European Community is signed and should give its political approval within six months. A draft decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

## ARTICLE 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Community.
2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

## ARTICLE 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

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<sup>68</sup> Insertion and adaptation of the original declaration on Art. I-24 (7) CT.

### ARTICLE 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

### ARTICLE 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

## **DECLARATION ON ARTICLE 205 TEC<sup>69</sup>**

The Conference declares that the decision relating to the implementation of Article 205 will be adopted by the Council on the day the new Treaty establishing a European Community enters into force. The draft decision is set out below:

Draft decision of the Council relating to the implementation of Article 205 TEC

### **THE COUNCIL OF THE EUROPEAN COMMUNITY,**

Whereas:

- (1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in the Treaty of Nice and set out in Article 2(2) of the Protocol on the transitional provisions relating to the institutions and bodies of the Union annexed to the Treaty establishing the European Community, which will continue to apply until 31 October 2009, to the voting system provided for in Article 205 TEC, which will apply with effect from 1 November 2009.
- (2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority.
- (3) It is judged appropriate to maintain this decision as long as is necessary to ensure smooth transition to the new voting system provided for in the Treaty establishing the European Community,

**HAS DECIDED AS FOLLOWS:**

### **ARTICLE 1**

If members of the Council, representing:

- a) at least three quarters of the population, or
- b) at least three quarters of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article 205 (2), indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

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<sup>69</sup> Insertion and adaptation of the original declaration on Art. I-25 CT.

## ARTICLE 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

## ARTICLE 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

## ARTICLE 4

This decision shall take effect on 1 November 2009. It shall remain in force at least until 2014. Thereafter the Council may adopt a European decision repealing it.