EUROPEAN PARLIAMENT

Intergovernmental Conference Task Force

WHITE PAPER ON THE 1996 INTERGOVERNMENTAL CONFERENCE

VOLUME I

OFFICIAL TEXTS OF THE EUROPEAN UNION INSTITUTIONS

2803 EN

THIS PUBLICATION IS AVAILABLE IN ALL THE LANGUAGES.

POLITICAL SERIES: W - 18

THIS COMPILATION WAS DRAWN UP IN JANUARY 1996 BY THE EUROPEAN PARLIAMENT'S DIRECTORATE-GENERAL FOR RESEARCH, UNDER THE GUIDANCE AND SUPERVISION OF J. JAVIER FERNANDEZ FERNANDEZ, SECRETARY OF THE SECRETARIAT'S WORKING PARTY ON THE INTERGOVERNMENTAL CONFERENCE TASK FORCE, WITH THE ASSISTANCE OF MONIQUE DE MUL, A ROBERT SCHUMAN TRAINEE WITH THE EUROPEAN PARLIAMENT.

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Manuscript completed in January 1996

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PREFACE

In February 1995 the European Parliament Secretariat's set up a working party to monitor all the preparatory stages of the Intergovernmental Conference (1996 IGC Task Force).

The task force reports directly to the Secretary-General and, ultimately, to the President of Parliament, Klaus Hänsch; it is administrative in nature and its role is basically to coordinate the work of the various departments within Parliament most directly concerned with the Intergovernmental Conference; its other tasks are to locate, gather, analyse and summarize all IGC-related proposals and studies, not just from the various Community institutions and the official bodies of the Member States but also, and most importantly from civil society.

So far the Task Force has concentrated its efforts on drawing up a whole series of **documents** on the Intergovernmental Conference. These include a comprehensive memo on the positions of the various Member States and another on the state of considerations in the national parliaments; the production of over 30 briefing papers on the major topics to be dealt with at the Conference; the drawing up of an IGC-related bibliography by source and by topic; the preparation of a selection of bibliographic references to periodicals and a compilation of summaries on the same topic, and the coordination of a single periodical containing press reports relating to the IGC (Info CIG/96). All these documents are regularly updated and the Working Party has also commissioned and supervised a series of studies produced outside Parliament (simplification of the Treaties, European citizenship, position of the national political parties, division of powers and responsibilities between the Union and the Member States, etc.). It has ensured that this constant flow of valuable information is **widely distributed**, both within the Union institutions and within the Member States and public organizations and associations. In particular a constant supply of information on computer has been provided since mid-1995 by means of the **OVIDE** system and will soon be available on the **Internet**.

To provide more systematic information on the IGC, the Task Force has decided to compile a White Paper on the Intergovernmental Conference in three volumes. The first volume contains the most important official positions so far adopted by the institutions and bodies of the European Union; the second volume brings together and summarizes the Member States' positions and viewpoints and the third volume is a collection of the briefings prepared by the Secretariat's Task Force on the main topics that will be on the agenda for the Intergovernmental Conference.

There is no doubt that 1996 IGC will be a defining moment for the future of European integration. This review cannot and must not take place without the active involvement of European citizens, who will be the main players in shaping the destiny of the Community.

The European Parliament is fully aware of this and its position as the directly elected representative of the people of Europe gives it the confidence to assume a central role in encouraging ever wider participation and greater understanding of the negotiating process and of the very real challenges facing the Intergovernmental Conference.

In Parliament's opinion, the Community must emerge from the review of the Treaty as a more democratic, fairer, more interdependent, more prosperous and more equal Europe. If the White Paper helps to bring about a better understanding of the Community, and even contributes only minimally to the achievement of these objectives, the work which has gone into preparing it will not have been in vain.

Enrico VINCI
The Secretary-General

Luxembourg, January 1996

1.

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

A) EUROPEAN COUNCIL

BRUSSELS EUROPEAN COUNCIL

OF 10 AND 11 DECEMBER 1993

ANNEX III

THE PLACE OF THE APPLICANT COUNTRIES IN THE INSTITUTIONS AND BODIES

1. THE COMMISSION

Number of members

- Belgium	: 1	- Luxembourg	: 1
- Denmark	: 1	- Netherlands	: 1
- Germany	: 2	- Norway	: 1
- Greece	: 1	- Austria	: 1
- Spain	: 2	- Portugal	: 1
- France	: 2	- Finland	: 1
- Ireland	: 1	- Sweden	: 1
- Italy	: 2	- United Kingdom	: 2
		TOTAL	: 21

2. THE EUROPEAN PARLIAMENT

Number of members

- Belgium	: 25	- Luxembourg	: 6
- Denmark	: 16	- Netherlands	: 31
- Germany	: 99	- Norway	: 15
- Greece	: 25	- Austria	: 20
- Spain	: 64	- Portugal	: 25
- France	: 87	- Finland	: 16
- Ireland	: 15	- Sweden	: 21
- Italy	: 87	- United Kingdom	: 87
		TOTAL	: 639

3. COURT OF JUSTICE

- Each Member State will propose one Judge for appointment. In addition, should an even number of States accede, Germany, France, Italy, Spain and the United Kingdom will take part

4. THE COURT OF FIRST INSTANCE

Each Member State will propose one member for appointment.

5. THE COURT OF AUDITORS

Each Member State will propose one member for appointment.

6. THE ECONOMIC AND SOCIAL COMMITTEE

Number of members

- Belgium	: 12		- Luxembourg	:	6
- Denmark	: 9		- Netherlands	:	12
- Germany	: 24		- Norway	:	9
- Greece	: 12		- Austria	:	11
- Spain	: 21		- Portugal	:	12
- France	: 24		- Finland	:	9
- Ireland	: 9		- Sweden	:	11
- Italy	: 24		- United Kingdom	:	24
		TOTAL		:	229

7. THE COMMITTEE OF THE REGIONS

Number of members

- Belgium	: 12		- Luxembourg	:	6
- Denmark	: 9		- Netherlands	:	12
- Germany	: 24		- Norway	:	9
- Greece	: 12		- Austria	:	11
- Spain	: 21		- Portugal	:	12
- France	: 24		- Finland	:	9
- Ireland	: 9		- Sweden	:	11
- Italy	: 24		- United Kingdom	:	24
		TOTAL		:	229

8. THE COUNCIL

(a) Rotation of the Presidency

(i) Article 146 of the Treaty will be amended as follows:

"The Council shall consist of a representative of each Member State at ministerial level, authorized to commit the Government of that Member State.

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

(ii) When the Accession Treaty enters into force the Council will adopt the following Decision ([1]):

"The office of President of the Council shall be held:

- *for the first six months of 1995 by France;*
- *for the second six months of 1995 by Spain;*
- *for the subsequent periods of six months by the following countries in turn in the following order:*

  - *Italy*
  - *Ireland*
  - *Netherlands*
  - *Luxembourg*
  - *United Kingdom*
  - *Austria*
  - *Norway*
  - *Germany*
  - *Finland*
  - *Portugal*
  - *France*
  - *Sweden*
  - *Belgium*
  - *Spain*
  - *Denmark*
  - *Greece.*

([1]) This Decision will be adjusted if enlargement involves fewer than four countries.

The Council, acting unanimously on a proposal from the Member States concerned, may decide that a Member State may hold the Presidency during a period other than that resulting from the above order."

(b) Weighting of votes within the Council

- Present Member States : current weighting maintained
- Austria, Sweden : 4 votes per country
- Norway, Finland : 3 votes per country

9. OFFICIAL LANGUAGES

The official languages of the Union after enlargement will be the nine existing official languages, to which will be added on accession Finnish, Norwegian and Swedish.

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The following declaration will appear in the official record of the Conference:

"In adopting the institutional provisions of the Accession Treaty, the Member States and the applicant countries agree that, as well as examining the legislative role of the European Parliament and the other matters envisaged in the Treaty on European Union, the Intergovernmental Conference to be convened in 1996 will consider the questions relating to the number of members of the Commission and the weighting of the votes of the Member States in the Council. It will also consider any measures deemed necessary to facilitate the work of the Institutions and guarantee their effective operation."

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

A) EUROPEAN COUNCIL

CORFU EUROPEAN COUNCIL

OF 24 AND 25 JUNE 1994

IV. PREPARATION OF THE 1996 INTERGOVERNMENTAL CONFERENCE

The European Council, following the Ioannina Agreement, hereby establishes a Reflection Group to prepare for the 1996 Intergovernmental Conference consisting of representatives of the Ministers of Foreign Affairs of the Member States and the President of the Commission. It will be chaired by a person appointed by the Spanish government and begin its work in June 1995 . Two European Parliament representatives will participate in the work of the Reflection Group. The Group will also have exchanges of views with the other institutions and organs of the European Union.

The Institutions are invited to establish before the start of the work of the Reflection Group reports on the functioning of the Treaty on European Union which will provide an input for the work of the Group.

The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a revision is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement. (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the Institutions and guarantee their effective operation in the perspective of enlargement.)

The Secretary General of the Council will make the necessary arrangements for the secretariat of the Reflection Group in agreement with its president.

The Reflection Group will report in time for the meeting of the European Council at the end of 1995. The procedure laid down in the Treaty relating to revision will apply to the next phase.

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

A) EUROPEAN COUNCIL

CANNES EUROPEAN COUNCIL

OF 26 AND 27 JUNE 1995

IV - PREPARATION FOR THE 1996 INTERGOVERNMENTAL CONFERENCE

The European Council notes with satisfaction that preparations for the 1996 Intergovernmental Conference are now well under way. The Reflection Group of personal representatives of the Foreign Affairs Ministers and of the President of the Commission, with two representatives of the European Parliament also taking part, was set up in Messina on 2 June 1995. The Group has received reports from the institutions on the functioning of the Treaty on European Union, which will provide an input for its work. It has drawn up its programme of work.

The European Council confirms that, in line with its conclusions at Corfu, the Reflection Group will examine and elaborate suggestions relating to the provisions of the Treaty on European Union due for review and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the Treaty as set out in the reports. It will elaborate options in the run-up to the future enlargement of the Union on the institutional questions set out in its Brussels conclusions and in the Ioannina agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the institutions and guarantee their effective operation with a view to enlargement).

Furthermore, in view of the lessons which may be learnt more than a year and a half after the entry into force of the Treaty on European Union and of the challenges and risks linked in particular to the prospect of a further enlargement, the European Council considers that thoughts should now focus on a number of priorities to enable the Union to respond to its citizens' expectations:

- to analyse the principles, objectives and instruments of the Union, with the new challenges facing Europe;
- to strengthen common foreign and security policy so that it can cope with new international challenges;
- to provide a better response to modern demands as regards internal security, and the fields of justice and home affairs more generally;
- to make the institutions more efficient, democratic and open so that they are able to adjust to the demands of an enlarged Union;

- to strengthen public support for the process of European integration by meeting the need for a form of democracy which is closer to the citizens of Europe, who are concerned at employment and environment questions;
- to put the principle of subsidiarity into practice more effectively.

Lastly, the Group will bear in mind the advantages of seeking improvements in the working of the Institutions that do not require any amendment to the Treaties and can thus enter into force without delay.

As part of the strategy for preparing for the associated countries' accession to the Union, the necessary procedures should be established to ensure that they are kept fully informed of developments in the discussions at the Intergovernmental Conference, bearing in mind their status as future members of the Union.

The Heads of State and Government will continue discussing this matter at their informal meeting in Majorca on 22 and 23 September 1995 and the European Council will receive a full report from the Reflection Group for its meeting in Madrid in December 1995.

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

A) EUROPEAN COUNCIL

MADRID EUROPEAN COUNCIL

OF 15 AND 16 DECEMBER 1995

PART A

INTRODUCTION

The European Council, meeting in Madrid on 15 and 16 December 1995, took decisions on employment, the single currency, the Intergovernmental Conference and enlargement to bring in countries of Central and Eastern Europe and the Mediterranean.

The European Council considers that job creation is the principal social, economic and political objective of the European Union and its Member States, and declares its firm resolve to continue to make every effort to reduce unemployment.

The European Council adopted the scenario for the changeover to the single currency, confirming unequivocally that this stage will commence on 1 January 1999.

The European Council decided to name the currency, to be used from 1 January 1999, the "Euro".

The European Council continued its deliberation on the future of Europe, which was launched in Essen and continued in Cannes and Formentor.

In this connection, having welcomed the Reflection Group's report, the European Council decided to launch the Intergovernmental Conference on 29 March 1996 in order to establish the political and institutional conditions for adapting the European Union to present and future needs, particularly with a view to the next enlargement.

It is essential that the Conference achieve results sufficient to enable the Union to bring added value to all its citizens and to shoulder its responsibilities adequately, both internally and externally.

The European Council notes with satisfaction some significant achievements in the area of external relations which have occurred since its last meeting and in which the European Union has played a decisive role:

- the signing in Paris of the Dayton Agreement, which puts an end to the terrible war in former Yugoslavia and builds on considerable European efforts over the preceding months in military, humanitarian and negotiating terms. The European Council recognizes the decisive contribution made by the United States at a crucial moment;

- the New Transatlantic Agenda and the Joint EU–US Action Plan signed at the Madrid Summit on 3 December 1995, which are major joint commitments with the United States to revitalize and strengthen our association;

- the signing in Madrid of the Inter-Regional Framework Agreement between the European Union and Mercosur, the first agreement of this type to be concluded by the European Union;

- the Barcelona Declaration, launching a new, comprehensive Euro-Mediterranean association which will promote peace, stability and prosperity throughout the Mediterranean through a permanent process of dialogue and cooperation;

- the signing in Mauritius of the revised Lomé IV Convention by the European Union and the ACP States, which will consolidate the association between the two sides;

- the European Parliament's assent to the customs union between the European Union and Turkey, which opens the way for the consolidation and strengthening of a political, economic and security relationship crucial to the stability of that region.

The European Council began its proceedings by exchanging ideas with Mr Klaus HÄNSCH, President of the European Parliament, on the main subjects for discussion at this meeting.

Finally, a meeting took place today between the Heads of State and Government and the Ministers for Foreign Affairs of the associated countries of Central and Eastern Europe, including the Baltic States (CCEE), as well as Cyprus and Malta. There was a broad exchange of views on these conclusions, matters concerning the pre-accession strategy and various issues relating to international policies.

IV

LAYING THE FOUNDATIONS OF THE EUROPE OF THE FUTURE

THE POLITICAL AGENDA FOR EUROPE

The European Council identified the challenges which the Member States of the European Union must meet in order to prepare Europe for the 21st century. In the next five years, we must:

- carry out adjustments to the Treaty on European Union;

- make the transition to a single currency in line with the timetable and conditions set;

- prepare for and carry out the enlargement negotiations with the associated countries of Central, Eastern and Southern Europe which have applied for membership;

- determine, in parallel, the financial perspective beyond 31 December 1999;

- contribute to establishing the new European security architecture;

- actively continue the policy of dialogue, cooperation and association already under way with the Union's neighbouring countries, and in particular with Russia, Ukraine, Turkey and the Mediterranean countries.

Success in all these tasks will mean that a large community enjoying the benefits of freedom, prosperity and stability can be set up Europe-wide.

THE INTERGOVERNMENTAL CONFERENCE

1. The European Council received with great interest the Report by the Reflection Group, chaired by Mr Westendorp (Annex 15), which had been instructed by the European Council to prepare for the 1996 Intergovernmental Conference. It considers that the guidelines distilled within the Group, following a thorough analysis of the internal and external challenges facing the Union and the possible

responses, constitute a sound basis for the work of the Conference.

2. The Intergovernmental Conference will have to examine those provisions of the Treaty on European Union review of which is expressly called for in the Treaty, as well as those questions which it was decided should be discussed by the Conference, both in the Brussels and Corfu European Council conclusions and in declarations adopted at the time of interinstitutional agreements. The European Council also reaffirms the guidelines laid down at its Cannes meeting. The Intergovernmental Conference will, in general, have to examine the improvements which will have to be made to the Treaties to bring the Union into line with today's realities and tomorrow's requirements, in the light of the outcome of the Reflection Group's proceedings.

3. The European Council agrees that the formal review procedure stipulated in Article N of the Treaty will be carried out as quickly as possible so that the Conference can be officially opened in Turin on 29 March. The European Council takes note of the intention of the forthcoming Italian Presidency to adopt appropriate measures for preparing the Conference.

4. The Conference will meet regularly, in principle once a month, at the level of Foreign Affairs Ministers, who will have responsibility for all proceedings; preparations will be conducted by a working party made up of a representative of each Member State's Minister for Foreign Affairs and of the President of the Commission.

The Secretary-General of the Council will make the necessary arrangements to provide secretarial support for the Conference.

5. The European Parliament will be closely associated with the work of the Conference so that it is both briefed regularly and in detail on the progress of the discussions and can give its point of view, where it considers this necessary, on all matters under discussion. The detailed arrangements for such association will be determined by the Ministers for Foreign Affairs in line with the provisions which apply to the review of the Treaties.

6. The representatives of those countries of Central and Eastern Europe which have concluded Europe Agreements, and of Malta and Cyprus, will be briefed regularly on the progress of discussions and will be able to put their points of view at meetings with the Presidency of the European Union to be held, in principle, every two months. The European Economic Area and Switzerland will also be briefed.

PART B

THE INTERGOVERNMENTAL CONFERENCE

A STRATEGY FOR EUROPE

For six months, the members of the Reflection Group have been working on the European Council mandate to pave the way for the revision of the Treaty at the 1996 Conference and any other improvements in the Union's operation, in a spirit of openness and democracy.

We feel it has been our task not only to establish an annotated agenda for the Conference but also to set in motion a process of public discussion and explanation regarding the thrust of the changes to be made.

THE CHALLENGE

Men and women of Europe today, more than ever, feel the need for a common project. And yet, for a growing number of Europeans, the rationale for Community integration is not self-evident. This paradox is a first challenge.

When the European Communities were established some forty years ago, the need for a common design was clear because of the awareness of Europe's failure over the first half of this century.

Now, almost half a century later, the successive enlargements of the Union, the expansion of its tasks, the very complexity of its nature and the magnitude of the problems of our times, make it very difficult to grasp the true significance of, and the continuing need for, European integration.

Let us accept that complexity is the price that Europe pays to protect our plural identity. But we firmly believe that this creation of Europe's political ingenuity, which cannot take the place of but is now an inseparable counterpart to the Union's Member States, from which its main political legitimacy flows, has been making an invaluable contribution of its own: peace and prosperity based on a definition of common interests and action that is the result not of power politics but of a common body of law agreed by all.

Today Europe has changed, partly because of the Union' success. All those European nations rediscovering their freedom wish to join, or to cooperate more closely with, the European Union. Yet, in Western Europe there is a growing sense of public disaffection despite the Union's contribution to an unprecedented period of peace and prosperity.

We therefore need to explain clearly to our citizens why the Union, which is so attractive to others in Europe, remains necessary for us too.

One reason is that the world outside Europe has also changed. Goods, capital and services nowadays flow globally in an increasingly competitive market. Prices are set worldwide. The prosperity of the Europe of Today and Tomorrow depends on its ability to succeed in the global marketplace.

The end of the cold war may have increased the overall security of Europe. But it has also brought greater instability in Europe.

Furthermore, high levels of unemployment, external migratory pressures, increasing ecological imbalances and the growth of international organised crime have stimulated a public demand for greater security that cannot be satisfied by Member States acting alone.

In an increasingly interdependent world, that reality poses new challenges and opens up new opportunities for the Union.

THE RESPONSE

However, we are not starting from scratch. Over the last five years, Europe has adjusted successfully to changing times. In 1990, the Community welcomed in the 17 million Germans who had been living on the other side of the Berlin Wall.

The Maastricht Treaty succeeds in mapping out the path of adjustment by the Community to changing times: it establishes a European Union closer to its citizens, setting out the principle of subsidiarity; it establishes the path towards a single currency and puts forward a strategy of economic integration based on price stability that strengthens competitiveness and makes for growth in our economy. It reinforces social and economic cohesion and provides for high standards of environmental protection. It opens the way for a common foreign and security policy and attempts to bring about an area of freedom and of public security.

Since then, in very difficult economic circumstances, the European Union has been able to take timely decisions on progress in line with its new needs: it has agreed to the outcome of the Uruguay Round, it has managed to reach agreement on the Union's finances up to 1999 and it has been enlarged to bring in three new members.

Yet that is not enough. European Heads of State or Government have already identified the steps necessary to develop Europe's strategy for these changing times: the 1996 Conference, the transition to a single currency, the negotiation of a new financial agreement, the possible revision or extension of the Brussels Treaty setting up the WEU and, lastly, the most ambitious target, enlarging the Union to bring in associated countries of Central and Eastern Europe, including the Baltic States, Cyprus and Malta.

That next enlargement provides a great opportunity for the political reunification of Europe. Not only is it a political imperative for us, but it represents the best option for the stability of the continent and for the economic advancement not just of the applicant countries but for this Europe of ours as a whole. That enlargement is not an easy exercise. Its impact upon the development of the Union's policies will have to be assessed. It will require efforts both by applicants and present Union members that will have to be equitably shared. It is therefore not only a great chance for Europe but also a challenge. We must do it, but we have to do it well.

The Union cannot tackle all the steps in that European strategy at once, but it does not have any time to waste. The Heads of State or Government have personally taken responsibility for agreeing on a European agenda for carrying out this plan, which will only become a reality if it finds democratic backing from Europe's citizens.

THE 1996 CONFERENCE

The 1996 Conference is an important, but just one step in this process.

The Maastricht Treaty already foresees that a Conference should be convened in 1996 with a limited scope. This scope has subsequently been enlarged at various European Councils.

The Heads of State or Government have identified the need to make institutional reforms as a central issue of the Conference in order to improve the efficiency, democracy and transparency of the Union.

In that spirit, we have tried to identify the improvements needed to bring the Union up to date and to prepare it for the next enlargement.

We consider that the Conference should focus on necessary changes, without embarking on a complete revision of the Treaty.

Against this background, results should be achieved in three main areas:

- making Europe more relevant to its citizens;

- enabling the Union to work better and preparing it for enlargement;

- giving the Union greater capacity for external action.

I. The citizen and the Union

The Union is not and does not want to be a super-state. Yet it is far more than a market. It is a unique design based on common values. We should strengthen these values, which all applicants for membership also wish to share.

The Conference must make the Union more relevant to its citizens. The right way for the Union to regain the commitment of its citizens is to focus on what needs to be done at European level to address the issues that matter to most of them such as greater security, solidarity, employment and the environment.

The Conference must also make the Union more transparent and closer to the citizens.

Promoting European values

Europe's internal security rests on its democratic values. As Europeans we are all citizens of democratic States which guarantee respect for human rights. Many of us think that the Treaty must clearly proclaim these common values.

Human rights already form part of the Union's general principles. For many of us they should, however, be more clearly guaranteed by the Union, through its accession to the European Convention on Human Rights and Fundamental Freedoms. The idea of a catalogue of rights has also been suggested, and a provision allowing for the possibility of sanctions or even suspending Union membership in the case of any state seriously violating human rights and democracy. Some of us take the view that national governments already provide adequate safeguards for these rights.

Many of us think it important that the Treaty should clearly proclaim such European values as equality between men and women, non-discrimination on grounds of race, religion, sexual orientation, age or disability and that it should include an express condemnation of racism and xenophobia and a procedure for its enforcement.

One of us believes that the rights and responsibilities we have as citizens are a matter for our nation states: reaching beyond that could have the opposite effect to that intended.

Some of us also thought it worthwhile to examine the idea of establishing a Community service or European "peace corps" for humanitarian action, as an expression of Union solidarity; such a service could also be used in the event of natural disasters in the Union. Furthermore, some of us recommend that the Conference should examine how to better recognize in the Treaty the importance of access to public service utilities ("services publics d'intérêt général").

We believe that Europe also shares certain social values which are the foundation of our coexistence in peace and progress. Many of us take the view that the Social Agreement must become part of Union law. One of us believes that this would only serve to reduce competitiveness.

Freedom and internal security

The Union is an area of free movement for people, goods, capital and services. Yet people's security is not sufficiently protected on a European scale: while protection remains essentially a national matter, crime is effectively organized on an international scale. Experience of the implementation of the Maastricht Treaty over the last few years shows that opportunities for effective European action are still very limited. Hence, the urgency for a common response at European level, following a pragmatic approach.

We all agree that the Conference should strengthen the Union's capacity to protect its citizens against terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of internationally organized crime. This protection of citizens' security at European level must not diminish individual safeguards. For many of us, this requires further use of common Institutions and procedures, as well as common criteria. It is also for national parliaments to exercise political scrutiny over those who administer such common action.

Many of us take the view that, in order to act more efficiently, we need to put fully under Community competence matters concerning third country nationals, such as immigration, asylum and visa policy, as well as common rules for external border controls. Some would also like to extend Community competence to combating drug addiction and fraud on an international scale, and to customs cooperation.

For some of us, however the key to success has to be found in a combination of political will and more effective use of existing intergovernmental arrangements.

Employment

We know that **job creation** in an open society is based on sound economic growth and on business competitiveness, which must be fostered by initiatives at local, regional and national levels. We believe that, in the European Union, the main responsibility of ensuring the economic and social well being of citizens lies within the Member States. In an integrated economic area such as ours, however, the Union also has a responsibility for setting the right conditions for job creation. It is already doing so by the completion of the internal market and the development of other common policies, with a joint growth, competitiveness and employment strategy which is achieving positive results, and with its plan for Economic and Monetary Union.

We all agree that the provisions on the single currency which were agreed at Maastricht and ratified by our parliaments must remain unchanged.

While we are all aware that jobs will not be created simply by amendments to the Treaty, many of us want the Treaty to contain a clearer commitment on the part of the Union to achieving greater economic and social integration and cohesion geared to promote employment, as well as provisions enabling the Union to take coordinated action on job creation. Some of us advised against writing into the Treaty provisions which arouse expectations, but whose delivery depends primarily on decisions taken at business and state-level. In any case, most of us stress the need for stronger coordination of economic policies in the Union.

Environment

In essence, the environment has crossborder effects. Protection of the environment is an objective involving our survival not only as Europeans but also as inhabitants of the planet. Therefore the Conference should examine how to improve the capacity of the Union to act more efficiently and to identify whenever that action should remain within the Member State.

A more transparent Union

Citizens are entitled to be better informed about the Union and how it functions.

Many of us propose that the right of access to information be recognized in the Treaty as a right of the citizens of the Union. Suggestions have been made on how to improve the public access to Union's documents which should be examined by the Conference.

Prior to any substantial legislative proposal, information should be duly gathered from the sectors concerned, experts and society in general. The studies leading up to the proposal should be made public.

When such a proposal is made, national parliaments should be duly informed and documents supplied to them in their official languages and in due time to allow proper discussion from the beginning of the legislative process.

We all agree that the Union law should be more accessible. The 1996 Conference should result in a simpler Treaty.

Subsidiarity

The Union will be closer to the citizen if it focuses on what should be its tasks.

This means that it must respect the principle of subsidiarity. This principle must therefore not be construed as justifying the inexorable growth of European powers nor as a pretext for undermining solidarity or the Union's achievements.

We believe it necessary to reinforce its proper application in practice. The Edinburgh Declaration should be the basis for that improvement and some of us believe that its essential provisions should be given Treaty status.

II. Enabling the Union to work better and preparing it for enlargement

The Conference should examine the ways and means to improve the efficiency and democracy of the Union.

The Union must also preserve its decision-making ability after further enlargement. Given the number and variety of the countries involved, this call for changes to the structure and workings of the institutions. It may also mean that flexible solutions will have to be found, fully respecting the single institutional framework and the "acquis communautaire".

The European Council, consisting of the Heads of State or Government of the Member States and the President of the Commission, is the highest expression of the Union's political will and defines its general political guidelines. Its importance is bound to increase in view of the Union's political agenda.

Improving democracy in the Union means both fair representation in each of the institutions, and enhancing the European Parliament, within the existing institutional balance, and the role of national parliaments. In this context, it is recalled that, according to the Treaty, a uniform electoral procedure for the European Parliament should be established. Many of us believe that the European Parliament's procedures are too numerous and complex and therefore favour reducing them to three: consultation, assent and codecision.

The current codecision procedure is over-complicated and we propose that the Conference simplify it, without altering the balance between the Council and the European Parliament. Many of us also propose that the Conference should extend the scope of the codecision procedure. One member believes, however, that the European Parliament gained extensive new powers at Maastricht and therefore should grow into these powers before seeking more.

National parliaments should also be adequately involved. This does not imply that they have to be incorporated into the Union's institutions. For many of us its decision-making procedures should be organised in a way which allows national parliaments adequately to scrutinise and influence the positions of their respective governments in the decision-making of the Union. Some of us suggest a more direct involvement of national parliaments: in this context, the idea of a newly established advisory committee has been suggested by one of us. Cooperation among national parliaments and between them and the European Parliament should also be fostered.

The decision-making processes and working methods of the Council of Ministers will need review. The Union must be able to take timely and effective decisions. But efficient decision-making does not necessarily mean easy decision-making. The Union's decisions must have popular support. Many of us believe greater efficiency would be enhanced by more qualified majority voting in the Council, which, according to many, should become the general procedure in the enlarged Community. Some of us believe that this should only be countenanced, if democratic legitimacy is improved by a reweighting of votes to take due account of population. One of us opposes extension on principle.

We consider the role of the Council Presidency to be crucial for the efficient management of the Union's business and we support the principle of rotation. But the present system applied to an enlarged Union could become increasingly disjointed. Alternative approaches combining continuity and rotation should be examined further.

We agree that the Commission should retain its three fundamental functions: promotion of the common interest, monopoly of legislative initiative and guardianship of Community law. Its legitimacy, underlined by its parliamentary approval, is based on its independence, its credibility, its collegiality and its efficiency. The composition of the Commission was designed for a Community of six. We have identified options for its future composition in order to preserve the Commission's ability to fulfil its functions in view of an enlarged Union that may extend to more than twice the number of Member States having negotiated the Maastricht Treaty.

Broadly, one view within the Group is to retain the present system for the future, reinforcing its collegiality and consistency as required. This option would allow all members to have at least one Commissioner. Another view is to ensure that greater collegiality and consistency be attained by reducing the Commissioners to a lesser number than Member States and enhancing their independence. Procedures should be established to select those members on grounds of

qualification, and commitment to the general interest of the Union. When deciding the future composition of the Commission, the Conference may also examine the possibility of establishing senior and junior Commissioners.

Some of us believe that the Committee of the Regions has to play an important role in Community legislation and that the consultative role of this body should be better used.

Europe's achievements depend on its ability to take decisions together and then to comply with them. An improvement in the clarity and quality of Community legislation would contribute to this, as would better financial management and a more effective fight against fraud. The Conference should also improve the key role of the Court of Justice especially in ensuring uniform interpretation of and compliance with Community law.

III. Giving the Union greater capacity for external action

The Maastricht Treaty has established the Union's Common Foreign and Security Policy. In our opinion, this was the right decision at the right time, at a time with the end of the cold war increasing the burden of responsibility on the European Union to lay the foundations of peace and progress in Europe and elsewhere.

The current possibilities offered by the Treaty have provided some positive results. We believe, however, that the time has come to provide this common policy with the means to function more effectively.

The Union today needs to be able to play its part on the international stage as a factor for peace and stability. Although an economic power today, the Union continues to be weak in political terms, its role accordingly often confined to financing decisions taken by others.

Common Foreign Policy

We think that the Conference must find ways and means of providing the Union with a greater capacity for external action, in a spirit of loyalty and mutual solidarity. It must be capable of identifying its interests, deciding on its action and implementing it effectively. Enlargement will make this task more difficult, but also makes it even more imperative.

This means that the Union must be able to analyse and prepare its external action jointly. With that in mind, we propose the establishment of a common foreign policy analysis and planning unit. For most of us, this unit should be answerable to the Council. Many of us also think that it should be recruited from Member States, Council Secretariat and Commission and be established within the institutional framework of the Union. It has been suggested by some that the head of the unit, whose functions could eventually merge with those of the Secretary General of the WEU, should be the Secretary General of the Council.

It also calls for the capacity to take decisions. To that end, we propose that the Conference examines how to review decision-making and financing procedures in order to adapt them to the nature of foreign policy, which must reconcile respect for the sovereignty of States with the need for diplomatic and financial solidarity.It should be commonly agreed whether and if so how to provide for the possibility of flexible formulae which will not prevent those who feel it necessary for the Union to take joint action from doing so. Some members favour the extension of qualified majority voting to CFSP and some others propose to enhance the consultative role of the European Parliament in this area.

The Union must be able to implement its external actions with a higher profile. We have examined several possible options for ensuring that the Union is able to speak with one voice. Some of us have suggested the idea of a High Representative for the CFSP, so as to give a face and a voice to the external political action of the Union. This person should be appointed by the European Council and would act under precise mandate from the Council. Many of us have stressed the need for a structured cooperation between the Council, its Presidency and the Commission, so that the different elements of the external dimension of the Union they are responsible for function as a coherent whole.

This greater political role for the Union in the world should be consistent with its current external economic influence as the premier trading partner and the premier humanitarian aid donor. The Conference will have to find ways of ensuring that the Union's external policy is visible to its citizens and the world, that it is representative of its Member States and that it is consistent in its continuity and globality.

European security and defence policy

The multifaceted challenges of the new international security situation underline the need for an effective and consistent European response, based on a comprehensive concept of security.

We therefore believe that the Conference could examine ways to further develop the European identity, including in the security and defence policy field. This development should proceed in conformity with the objectives agreed at Maastricht, taking into consideration the Treaty provisions that the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

The Conference will have to take account of the reality that, in the view of NATO members, such a development should also strengthen the European "pillar" of the Atlantic Alliance and the transatlantic link. The Alliance continues to guarantee the collective defence of its members and plays a fundamental role in the security of Europe as a whole. Equally, the right of States which are not members of the Alliance to take their own defence decisions must be respected.

Many of us feel that the Conference should consider how to encourage the development of European operational capabilities, how to promote closer European cooperation in the field of armaments and how to ensure greater coherence of action in the military field with the political, economic or humanitarian aspects of European crisis management.

Against this background, many of us want to further strengthen relations between the EU and the Western European Union (WEU), which is an integral part of the development of the Union.

In this regard, several options for the future development of this relationship have already been suggested within the Group. One option advocates a reinforced EU/WEU partnership while maintaining full autonomy of WEU. A second option suggests that a closer link should be established enabling the Union to assume a directing role over WEU for humanitarian, peacekeeping and other crisis management operations (known as Petersberg tasks). A third option would be the incorporation of these Petersberg tasks into the Treaty. As a fourth option, the idea of a gradual integration of WEU into the EU has been supported by many of us: this could be pursued either by promoting EU/WEU convergence through a WEU commitment to act as implementing body of the Union for operational-military issues, or by agreeing on a series of steps leading to a full EU/WEU merger. In the latter case, the Treaty would incorporate not only the Petersberg tasks but also a collective defence commitment, either in the main body of the Treaty or in a Protocol annexed to it.

In this context, the idea that the IGC examines the possibility of including in the revised Treaty a provision on mutual assistance for the defence of the external borders of the Union has been put forward by some members.

It will be for the Conference to consider these and other possible options.

Europe and democracy are inseparable concepts. To date, all the steps in the construction of Europe have been decided by common accord by the democratic governments of its Member States, have been ratified by the national parliaments and have received popular support in our countries. This is also how we shall construct the future.

We realize that this reflection exercise by the Group is only one step in a public debate initiated and guided by the European Council. We hope that this public and joint exercise between our nations will lead to renewed support for a project which is more than ever necessary for Europe today.

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

B) COUNCIL OF THE UNION

COUNCIL OF THE EUROPEAN UNION

OF 29 MARCH 1994 AND

THE IOANNINA AGREEMENT

EUROPEAN UNION
THE COUNCIL

Brussels, 30 March 1994
(OR.F)

6064/94

RESTREINT

CAB 15
ELARG 5

COUNCIL DECISION
of 29 March 1994
concerning the taking of decision by qualified majority by the Council

THE COUNCIL OF THE EUROPEAN UNION,

DECIDES :

Article 1

If Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the adoption by the Council of a decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law, such as in Articles 189 B and 189 C of the Treaty establishing the European Community, a satisfactory solution that could be adopted by at least 68 votes. During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council lend him their assistance.

Article 2

The present decision shall be published in the Official Journal of the European Communities.

Done at Brussels, 29 March 1994.

For the Council
The president

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

B) COUNCIL OF THE UNION

REPORT OF 6 APRIL 1995 ON THE OPERATION OF THE TREATY ON EUROPEAN UNION

CONTENTS

INTRODUCTION

1. Following the agreement reached in March 1994 by the Foreign Affairs Ministers of the Member States of the European Union, the European Council agreed at Corfu to set up a Reflection Group to prepare for the 1996 Intergovernmental Conference, and to ask the Institutions to contribute to the Group's proceedings by drawing up reports on the functioning of the Treaty on European Union (TEU) ([1]).

This report is to be seen in the context of Article N.2 of the TEU ([2]), augmented ([3]) by the Corfu conclusions as follows:

> "The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a revision is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the Treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the Institutions and guarantee their effective operation in the perspective of enlargement)."

([1]) See Annex I(a) for Section IV of the conclusions of the Presidency of the European Council meeting on 24 and 25 June 1994 at Corfu, and the terms of the agreement reached in Ioannina, as contained in a statement in the minutes of the Accession Conferences, and an extract from the conclusions of the Presidency of the European Council meeting on 10 and 11 December 1993 in Brussels.

([2]) Article N.2 of the TEU states that "a conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B."
The provisions expressly concerned are the following:
1. Civil protection, energy and tourism (Declaration No 1 annexed to the TEU Final Act)
2. Extension of the scope of the "co-decision" procedure (Article 189b(8))
3. Security/defence (Article J.4(6)) and more generally CFSP (Article J.10)
4. Hierarchy of Community acts (Declaration No 16 annexed to the TEU Final Act)

The texts of Articles A and B of the TEU will be found in Annex I(b).

([3]) You are also reminded that the European Parliament, the Council and the Commission considered, in a statement attached to the Interinstitutional Agreement of 29 October 1993, that "the budgetary procedure provisions of the Treaty, including the arrangements relating to compulsory and non-compulsory expenditure, should be reviewed at the Intergovernmental Conference scheduled for 1996 in order to achieve interinstitutional cooperation on a partnership basis" (OJ of the European Communities No C 331, 7.12.1993, page 10). These three institutions also recorded in the modus vivendi approved on 20 December 1994 that "the problems of the implementing measures for acts adopted in accordance with the procedure referred to in Article 189b of the EC Treaty, when such measures are entrusted to the Commission, will be examined in the course of the revision of the Treaties planned for 1996, at the request of the European Parliament, the Commission and several Member States."

In response to the European Council's request, the Council herewith submits this contribution, prefaced by the following remarks.

2. The aim of this report is not to examine the general functioning of the European Union but to present a factual account of the functioning of the TEU insofar as it breaks new ground compared with the treaties that preceded it. It therefore takes stock of the innovations made by the Treaty in certain areas. It also seemed appropriate to extend the report to cover decisions by the Institutions in the area of public information and transparency. These decisions have no direct link with the provisions of the TEU but originated with the public debate that arose when the TEU was ratified.

The TEU came into force on 1 November 1993, and so the experience of its operation refers to a relatively short period (16 months), which is even shorter in the case of the three States that joined the Union on 1 January 1995. Given this lack of distance, and the fact that some of the new provisions – sometimes major ones – have not worked through in their entirety, or have not yet been invoked, the scope of the exercise is inevitably restricted, and a degree of caution is called for when assessing the initial findings.

In accordance with the terms of reference, the report seeks to do no more than present the experience gained in implementing the TEU as objectively and as factually as possible. Care has been taken not to anticipate the discussions of the Reflection Group, and no value judgments are offered other than those arising from a straightforward account of the facts. The report does not present any long-term considerations concerning possible reforms.

I. GENERAL STRUCTURE OF THE TREATY

A. *Single institutional framework*

3. According to Article A of the TEU, the European Union is founded on the European Communities, supplemented by the policies and forms of cooperation established by the Treaty, i.e. the common foreign and security policy (CFSP) and cooperation in the fields of justice and home affairs (JHA).

4. The TEU provided the European Union with a single institutional framework (Article C), which is also competent to deal with the three "pillars" and is responsible for ensuring the consistency and continuity of the action pursued by the constituent parts of the Union.

The single institutional framework – established in accordance with the arrangements laid down in the Council's conclusions of 12 May 1992 and in the report of the General Affairs Council to the European Council meeting on 29 October 1993 – is designed to enable all the Institutions to perform to the full the roles assigned to them in the TEU. This applies especially in the case of the Council, which has to deliberate under the same conditions both on Community matters and on CFSP or JHA matters. In accordance with Article 151 of the EC Treaty, Coreper's integratory function and the new role of the General Secretariat, made possible by the unity of its organization, enable the Council's proceedings to be prepared on a unified basis.

Some bodies have, however, had more difficulty in adapting to the single institutional framework, which makes it less easy, in the areas covered by Titles V and VI, to achieve the integration required and, as regards JHA, also limits the use made of the new instruments provided for in the TEU (joint action, common positions, conventions).

This weakness at the preparatory level – which will be analyzed in more detail in the chapters on the CFSP and JHA – is partly explained by the fact that the new system is still at an early stage. But the single institutional framework will not play its full part unless all steps are taken to ensure its smooth operation.

B. ***Subsidiarity***

5. The TEU establishes new principles of major importance, among them subsidiarity.

The principle is applied in accordance with the guidelines issued by the Edinburgh European Council (Annex I to Part A of the Presidency's conclusions). Its importance has been emphasized several times by the European Council and has been the subject of an agreement between the European Parliament, the Council and the Commission. It has been put into practice at all stages of the legislative process.

The Commission has made a systematic study of the Community legislation that existed or was being proposed to the Council when the TEU came into force. It has withdrawn a number of proposals and proposed the simplification or repeal of a number of acts. The initial results of this exercise, which will have to be continued were presented to the European Council at its meeting in Essen.

The Commission has undertaken to justify each of its new proposals in the light of the subsidiarity principle. It makes more regular use of "Green Papers" and "White Papers", prompting broad public debate, before new proposals are submitted.

The Commission's application of the subsidiarity principle has been accompanied by a reduction in the number of legislative proposals (see Annex II).

Subsidiarity is one of the criteria applied by the Council when considering any new proposal. The sometimes excessively detailed nature of Community acts has in the past, however, also been due to the negotiations in the Council.

The TEU's provisions on new areas of competence (such as education, culture and health) specifically limit the Community's action to complementarity measures (support programmes, to the exclusion of any form of harmonization). These provisions have been strictly observed by the legislators and have enabled a clearer distinction to be made between the respective fields of action of the Community and the Member States.

The introduction of the subsidiarity principle has thus been a positive step. Admittedly, first experience shows that the institutions and the Council are occasionally having difficulties in agreeing how it is to be evaluated and applied. But this ought not to lead to the Community "acquis" being called into question. There is still scope for further progress in this area, however.

II. THE CITIZEN AND THE UNION

6. "Bringing Europe closer to the people" has been perceived as a necessity over the years and especially during the procedures for ratifying the TEU, if the people's support for the European venture is to be increased. The TEU has contributed to this end in several ways, in particular by defining the foundations for a citizenship of the Union and, more indirectly, by provoking a debate that has highlighted the need to render the functioning of the Union more transparent and more comprehensible by keeping the public better informed. The TEU also enshrines the general principle of respect for "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, as general principles of Community law" (TEU Article F(2)). ([4])

([4]) On 25 April 1994, the Council requested, in accordance with Article 228(6) of the EC Treaty, the opinion of the Court of Justice on whether an agreement which provided for the accession of the European Community to the European Convention on Human Rights would be compatible with the EC Treaty.

A. *Citizenship*

7. The Council has taken the necessary decisions to implement the Treaty provisions on "citizenship of the Union", which give Member States' nationals additional rights and protection without in any way supplanting national citizenship. The necessary arrangements have been made concerning the right to vote and the protection of citizens abroad. The legal framework does exist, therefore, even if these new rights are not yet fully enjoyed by the citizens.

8. In compliance with the time limits specified in Article 8b of the EC Treaty, and despite genuine difficulties, provisions have been adopted to ensure that in municipal elections and elections to the European Parliament every citizen is entitled to vote and to stand for election in the Member State where he resides, under the same conditions as nationals of that State. During the European Parliament elections in June 1994 all citizens of the Union were able to exercise these rights in their Member State of residence on the basis of the Directive adopted by the Council on 6 December 1993 ([5]).

   Under the Council Directive of 19 December 1994, which has to be incorporated into national law by the end of 1995 ([6]), it will be possible for the same rights to be exercised in municipal elections.

9. Article 8c of the EC Treaty provides that every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the consular authorities of any Member State, on the same conditions as nationals of that State.

([5]) OJ No L 329, 30.12.1993, p. 34.
([6]) OJ No L 368, 31.12.1994, p. 38.

Member States have agreed on guidelines concerning the conditions under which such protection is to be provided. While the guidelines are still incomplete, they mark a significant step in the application of this right.

10. Article 138e of the EC Treaty makes provision for an **Ombudsman**, who would receive complaints from citizens concerning instances of maladministration in the activities of the Community Institutions or bodies. He would perform his duties in complete independence, which would have to be preserved. The regulations and conditions governing the performance of the Ombudsman's duties have been adopted by the European Parliament ([7]): it is now a matter of urgency that the Parliament should appoint someone to the post.

11. Article 8a of the EC Treaty confirms the basic principle that every citizen of the Union has the **right to move and reside** within the territory of any Member State.

In practical terms, this principle – which is closely linked to the idea of membership of the Union – has been widely implemented by the Community.

However, to date it has not been possible to agree on the inclusion of third-country nationals or on the agreement on external borders, or indeed on the European Information System or on back-up measures. The conditions are not yet right for the principle of freedom of movement to be fully applied between all the Member States with due regard for the internal security of the Union.

12. Article 8e of the EC Treaty offers the possibility of supplementing the rights of citizenship, with the Council acting to this end on the basis of a report by the Commission on the application of the provisions of this part of the Treaty, which report has to take account of the development of the Union. The Commission submitted an interim report at the end of 1993.

([7]) Decision of the European Parliament of 9 March 1994, OJ No L 113, 4.5.1994, p. 15.

B. ***Transparency***

13. While not covered by specific provisions, this topic was particularly emphasized during the debate at the time of the TEU's ratification. Following the political impetus given by the European Council at its meetings in Birmingham, Edinburgh, Copenhagen and Corfu, the Institutions adopted several specific measures aimed at greater transparency and better provision of information so that the role and the functioning of the Union could become better known and better understood by the general public.

The successive juxtaposition of treaties and the amendments to them, with the ensuing consequences in terms of the texts' readability ([8]), has increased the impression of complexity and adversely affected the way in which the Union and its functioning are understood.

14. In accordance with the Edinburgh conclusions, the Institutions have sought to make secondary legislation more readable and more accessible, especially with the important agreement established recently by the European Parliament, the Council and the Commission on an accelerated method for consolidating Community law. The Council has also laid down criteria for improving the quality of drafting of the legislation it adopts ([9]).

15. At the Council, the effort to improve information and openness has been reflected in the amendment of certain operating rules ([10]). The following points may be noted:

([8]) Since they were signed, the Treaties establishing the European Communities have undergone a number of amendments, notably with the Merger Treaty, the Treaties amending certain budgetary and financial provisions, the Single European Act, the TEU and the Acts of Accession. Not counting these last, the number of founding treaties existing today is ten.

([9]) See Council Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ No C 166, 17.6.1993, p. 1).

([10]) See the Council's new Rules of Procedure adopted on 6 December 1993 (OJ No L 304, 10.12.1993, p. 1), as amended on 6 February 1995 (OJ No L 31, 10.2.1995, p. 14).

- The Council regularly holds discussions, relayed audiovisually, on the six-month work programmes presented by the Presidency, and on major topics of Community interest or important legislative proposals. Twenty-one discussions have already been held (see Annex III(a)).

- The Council now systematically publishes the results of its votes when acting as legislator (see Annex III(b)). It is possible for any explanations of votes to be published as well. In the same vein, the Council systematically publishes in the Official Journal any common positions it adopts under the procedures referred to in Articles 189b and 189c together with the relevant explanatory memoranda.

- The Council allows greater access to its documents. On the basis of its Decision of 20 December 1993 ([11]), a large number of requests for access have been made, and the bulk of these have been granted (see Annex III(c)).

- The Council is seeking to ensure that the context and the results of its deliberations are presented to the public and the press more effectively.

The practical arrangements for applying the principle of transparency are still the subject of differences of assessment among Member States as to the best way of ensuring a balance between the confidentiality required for any negotiation to be effective and the need for the proceedings to be transparent, especially in the legislative field. However, some progress is possible in this area.

([11]) OJ No L 340, 31.12.1993, p. 43. This Decision implements, in respect of the Council, the principles established in the code of conduct approved by the Council and the Commission on 6 December 1993 (OJ No L 340, 31.12.1993, p. 41), and is in line with Declaration No 17 annexed to the TEU Final Act concerning the right of access to information.

III. INSTITUTIONAL SYSTEM

A. *Democracy and efficiency*

16. The changes made by the TEU reflect the desire to reinforce the democratic legitimacy of the institutional system while making the decision-making process more efficient.

It is in the light of this twofold objective that the experience of the first few months of application of the Treaty's new institutional provisions must be assessed.

The new provisions introduced by the TEU, especially those on increasing the powers of the European Parliament, sought to establish a firmer basis for the Union's democratic character. The European Parliament's role in this context is an essential one; but democratic legitimacy must be the expression of the Union's institutional system as a whole. On the question of efficiency, the continued extension of qualified-majority voting is a positive factor. However, the juxtaposition of a large number of procedures sometimes makes it difficult for the functioning of the Union to be properly understood by the outside world.

It is believed in some quarters that the lack of a real hierarchy of laws ([12]) is affecting the decision-making process.

([12]) In accordance with Declaration No 16 annexed to the TEU Final Act, the 1996 Intergovernmental Conference will have to consider to what extent it might be possible to review the classification of Community acts with a view to establishing an appropriate hierarchy between the different categories of act.

B. ***European Council/Council***

17. The European Council is an important element in the functioning of the institutional system of the European Union. In fulfilling its new responsibilities under the TEU, the European Council has further emphasized its role as a provider of political impetus and synthesis.

18. The Council also helps to ensure respect for the democratic functioning of the system, insofar as each of its members is politically responsible to the national parliament before which he answers for the positions adopted at Union level. This is particularly so in view of the increased interest shown by national parliaments in the working of the Union. Some Member States' constitutions have been amended to allow their parliaments to monitor the Union's activities more effectively.

19. The TEU confirmed the Council in its political and its legislative role, with the Parliament now being closely involved with the latter through the co-decision procedure. At the same time, the TEU sought to increase the Council's decision-making capacity by the extension of qualified-majority voting, which now covers a large proportion of the Community's areas of action; however, unanimity is still required in a large number of cases (see list in Annex V (a)).

Independently of its other aspects, the possibility of qualified-majority voting is a factor helping to speed up the decision-making process, not only because it offers a way out of certain deadlock situations, but also because the prospect of being placed in a minority is often a spur to seeking the necessary compromises.

Bearing in mind this last point, the relatively small number of decisions actually taken by a qualified majority – as shown in the table in Annex IV – does not fully show the part played by qualified-majority voting as a factor for efficiency in the implementation of Community policies.

20. The way in which the Council and its subordinate bodies have coped with the demands of the new co-decision procedure may be regarded as generally satisfactory. Fears had been expressed as to the Council's ability to adjust to the new procedure.

In particular, the drawing up of practical arrangements for the smooth conduct of the conciliation phase means that the Council can preserve throughout the procedure the balance achieved when a common position is adopted, while at the same time seeking constructive compromises with the European Parliament. To ensure that this procedure works properly it is necessary that, each for its own part, the Council and the European Parliament should always be able to act in a consistent manner.

21. On a more general level, recent experience of the functioning of the Council confirms that the continued efficiency and consistency of its activities also depends on curbing more effectively the growing number of meetings and effectively coordinating its various formations.

C. ***European Parliament***

22. The TEU reinforced the role of the European Parliament in two ways: greater involvement in the legislative power, and increased powers of political control. The European Parliament has sometimes tended to give a very broad interpretation to its powers under the Treaty.

23. The European Parliament's involvement in the legislative process has been reinforced by the introduction of the co-decision procedure, the extension of the sphere of application of the cooperation procedure and the extension of assent to the adoption

of legislative acts (see table in Annex V(b) illustrating the respective spheres of application of these procedures).

24. The **co-decision** procedure develops further the cooperation procedure of the Single European Act, in particular by introducing a conciliation phase between representatives of the two Institutions in cases where the Council does not accept all the amendments made by the European Parliament on second reading, and the possibility for the Parliament ultimately to reject the act passed by the Council.

Under this new procedure, some twenty legislative acts have been adopted within reasonable periods of time, laid down by the Treaty as from the second reading. In one case, the European Parliament was unable to adopt the joint text drawn up by the Conciliation Committee, and in another case the Parliament rejected, on third reading, the act passed by the Council. The table in Annex V(c) shows the results of the co-decision procedure.

25. Apart from the difficulties relating to the starting-up phase, the application of the new procedure has been complicated by:

- the linkage which was initially established with other matters (including committee procedure ([13]) and amounts deemed necessary), which has held up the adoption of several texts;

- the complexity of the procedure laid down in Article 189b, [...] despite the practical arrangements that were agreed for it;

([13]) Process for the adoption of measures implementing legislative acts, whereby such measures are adopted by the Commission assisted by a committee of experts from the Member States. A modus vivendi on the subject of committee procedure was recently established by the European Parliament, the Council and the Commission.

- the demand sometimes made by the European Parliament's representatives in the Conciliation Committee that amendments rejected by the European Parliament in plenary session (i.e. outside the normal conciliation sphere) should be incorporated;

- the relationship between the Conciliation Committee and the Parliament meeting in plenary session.

26. Generally speaking, the increase in the number of procedures has made the decision-making process more complex (see Annex V(d) for a list of the various decision-making procedures arising from the TEU).

27. The **assent** procedure, originally designed for the conclusion of international agreements, was extended by the TEU to areas (such as economic and social cohesion) which fall under the heading of legislative activity, for which it does not appear to be appropriate. A list of the assents given by the Parliament since the TEU came into force will be found in Annex V(e).

28. The European Parliament's powers of **political control** were increased by its involvement in the appointment of the Commission (Article 158 of the EC Treaty), by the possibility of setting up temporary committees of inquiry (Article 138c of the EC Treaty) (not yet used) and receiving petitions (Article 138d of the EC Treaty), by the power (not yet exercised) to appoint the Ombudsman after laying down the regulations governing him (Article 138e of the EC Treaty), and by the possibility, not yet used by the Parliament, of asking the Commission to submit legislative proposals (second paragraph of Article 138b of the EC Treaty). The Parliament's powers of **budgetary control** were also increased (Article 206 of the EC Treaty).

29. The TEU provides for the European Parliament to be more involved in the conclusion of agreements between the Community and one or more States or international organizations (Article 228 of the EC Treaty). Provision is made for consulting and informing the European Parliament on CFSP and JHA matters (TEU Articles J.7

and K.6 respectively). This takes place mainly at hearings of the Presidency held by the relevant Parliamentary Committees.

30. By a Council Decision of 1 February 1993, the number of Members of the European Parliament was altered to take account of the unification of Germany and with a view to enlargement. With the accession of Finland, Austria and Sweden, the European Parliament now has 626 Members ([14]).

D. ***Commission***

31. The new Commission was appointed in accordance with the procedure introduced by the TEU, which provides that the President and the other Members appointed shall be subject as a body to a vote of approval by the European Parliament before being appointed by the representatives of the Governments of the Member States. The procedure took seven months and involved individual hearings, by specialized committees of the European Parliament, of the persons nominated; it was felt in some quarters that this was too long.

32. Under the Treaties, the independence of the Commission, vis-à-vis both the European Parliament and the Council, is an essential element in the institutional balance. In this connection, the recent code of conduct concluded between the European Parliament and the Commission, which also directly affects the Council, has given rise to some questioning.

33. With enlargement, the number of Commissioners has risen from 17 to 20.
In accordance with the Corfu conclusions, the Reflection Group will draw up, with future enlargement of the Union in mind options concerning the number of members of the Commission.

([14]) See Council Decision (95/1/EC, Euratom, ECSC) of 1 January 1995 adjusting the instruments concerning the accession of new Member States (OJ No L 1, 1.1.1995, p. 1).

E. ***Interinstitutional relations***

34. In the context of implementing the TEU, interinstitutional dialogue has made it possible to establish certain arrangements concerning, among other things, the application of the subsidiarity principle, an accelerated method of consolidation and budgetary discipline. (See list of interinstitutional texts in Annex V(f)). The European Parliament has suggested extending this approach to other agreements (on the application of Titles V and VI of the TEU, on EMU, on social policy and on transparency), a course of action which the Council has not seen fit to embark upon.

35. The TEU's first months of application have seen the persistence of institutional conflicts, some of which it has proved possible to settle, at least provisionally, as in the case of measures implementing acts adopted by co-decision (committee procedure) or the inclusion of financial provisions in legislative acts; others have resulted in referral to the Court of Justice (reclassification of agricultural expenditure. The European Parliament has sometimes sought to use its budgetary powers (which no-one is questioning) to influence the formulation of policies as well.

F. ***National parliaments***

36. Declaration No 13 annexed to the TEU Final Acts speaks of the importance of encouraging greater involvement by national parliaments in the activities of the European Union, in particular through stepping up contacts between them and the European Parliament and ensuring national parliaments "receive Commission proposals for legislation in good time for information or possible examination".

In this connection, Declaration No 14 annexed to the TEU Final Act establishes the practice of joint meetings between the European Parliament and national parliaments. These two declarations have had some partial results, and meetings have taken place

between national-parliament bodies responsible for European affairs and the European Parliament. The Conference of Parliaments, however, has not met since the Treaty came into force.

G. ***Other institutions and bodies***

Court of Justice

37. The TEU gave new means of action to **the Court of Justice**, in particular providing for the possibility, at the Commission's request, of requiring Member States which did not conform to its judgments to pay a lump sum or penalty: the Commission has not yet made use of this possibility.

The TEU confirmed and enlarged the role of the Court of First Instance ([15]), with the exception of referrals for preliminary rulings. The Court of First Instance now deals with a very large number of cases and its workload is bound to increase further with the litigation concerning intellectual property.

Court of Auditors

38. The Court of Auditors, which has become an Institution, plays an increasing role and will henceforth be able to provide the European Parliament and the Council with the statement of assurance provided for in Article 188c of the EC Treaty.

([15]) See in Annex VII statistics on the progress of cases before the Court of Justice and the Court of First Instance and on the average length of proceedings.

Committee of the Regions

39. The Committee of the Regions, the new body representing regional and local authorities which was set up by the TEU, has begun its advisory activities, details of which are given in Annex VI. The establishment of the arrangements for the common organizational structure with the Economic and Social Committee, as provided for in Protocol No 16 to the TEU, has given rise to some difficulties and will have to be further clarified.

Economic and Social Committee

40. The Economic and Social Committee, whose prerogatives were reinforced by the TEU, plays a significant role in developing the social dialogue at Community level.

H. ***Other aspects***

41. The TEU inserted into the EC Treaty the means to ensure greater efficiency in terms of financial management.

Hence, in the interests of budgetary discipline, the Commission must ensure, in accordance with Article 201a of the EC Treaty, that resources are available before making legislative proposals or adopting implementing measures likely to have appreciable implications for the Community budget.

The protection of the financial interests of the Community is the subject of a proposal for a Regulation and of a draft Convention which are currently being studied by the Council.

Finally, major initiatives have been taken pursuant to Article 209a of the EC Treaty, which stipulates that Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud

affecting their own financial interests. In view of Article 209a, it is, moreover, for each Member State to adopt the necessary internal measures.

42. Certain factors are of importance for assessing the functioning of the Treaty, even though they do not directly concern the application of the TEU. For example, it is essential that everyone should be able to communicate with the Institutions of the Union in one of its official languages and that all acts should in due course be published in all of these languages. This point will not be dealt with in the present report.

IV. THE INTERNAL POWERS OF THE COMMUNITY

43. Taking account of the objectives set in its Article B, the TEU gave a more ambitious dimension to some of the Community's internal powers and conferred new ones. Where precise time limits were set (for example, Economic and Monetary Union, cohesion, citizenship of the Union), they have been observed. In other areas in which the TEU broke new ground by opening up further possibilities for Community action, results vary according to sector. A number of important factors are mentioned below, although it has to be understood that in these areas many decisions have been taken which do not concern the functioning of the Treaty.

EMU

44. The second phase of Economic and Monetary Union began, as planned, on 1 January 1994. All the measures necessary for implementing the second phase and relating, firstly, to the operation of the European Monetary Institute (EMI) and, secondly, to definitions for the application of certain specific provisions (prohibition of privileged access and monetary financing, excessive deficit procedure) were adopted as soon as the TEU entered into force.

A few weeks after the entry into force of the TEU, the Council adopted, on the basis of European Council conclusions, the first broad guidelines of the economic policies of the Member States and of the Community, further guidelines being adopted by the same procedure in July 1994 ([16]); in this context, the multilateral surveillance procedure was applied in 1994, marking, with the review of convergence programmes, increased coordination of economic policies. The Council also applied, for the first time, the new budgetary surveillance procedure in Member States aimed at avoiding excessive public deficits.

Economic and social cohesion

45. The Cohesion Fund provided for in Article 130d of the EC Treaty was set up in July 1994 ([17]), despite certain difficulties connected with the European Parliament assent procedure. The new provisions on economic and social cohesion also served as a framework for redefining the procedures for providing assistance under the Structural Funds ([18]).

Social policy

46. The TEU causes two legal bases to co-exist: the social chapter of the EC Treaty and the Protocol on social policy, which makes it possible to adopt Community acts valid for fourteen Member States.

([16]) See Council recommendations of 22.12.1993 (OJ No L 7, 11.1.1994, p. 9) and 11 July 1994 (OJ No L 200, 3.8.1994, p. 38).

([17]) Council Regulation No 1164/94 of 16.5.1994 (OJ No L 130, 25.5.1994, p. 1). Previously, pending the entry into force of the TEU, a financial cohesion instrument was introduced in March 1993 (Council Regulation No 792/93 of 30 March 1993, OJ No L 79, 1.4.1993, p. 74).

([18]) See the various Regulations adopted by the Council on 20 July 1993 (OJ No L 193, 31.7.1993).

The Agreement annexed to the Protocol on social policy has been used in two cases (Directive on European Works Councils and Resolution on the prospects for social policy); the dialogue between social partners at Community level, which some believe comes too late in the procedure, has not yet resulted in the conclusion of Europe-wide agreements.

Environment

47. Within the framework of the new legislative procedures introduced by the TEU, important progress was made with the adoption of measures concerning, for example, substances that deplete the ozone layer (cooperation) and the limitation on emissions of volatile organic compounds and packaging and packaging waste (co-decision). The Council attempted to promote a high level of protection and an integrated approach, emphasizing that the environment cut across different sectors; some delegations considered that these efforts were inadequate even to fulfil the commitments entered into at the UN Conference on Environment and Development.

Other policies

48. The TEU laid new foundations for Community action in the areas of trans-European networks, education, vocational training and youth, culture, public health, consumer protection and industry.

Most of these new legal bases have already been used. Major texts have been adopted in the form of action programmes on education and vocational training; others, relating particularly to trans-European networks, are in the process of being adopted.

In the past, the Community based its action in some of these areas on Article 235 of the EC Treaty; that Article is still being used for other purposes (see Annex VIII).

V. THE EXTERNAL RELATIONS OF THE UNION

49. The European Union's external action is divided into two major aspects: the traditional area of external economic relations, which is the province of the European Community, and the new area of the CFSP. The Council and the Commission are responsible for ensuring the coherence of all the Union's external action within the framework of its policies on external relations, security, economy and development, which these Institutions implement, each according to its powers (Article C of the TEU).

A. *External relations of the Community*

50. The TEU reorganized the substantive provisions relating to common commercial policy: it also clarified and regrouped in a single Article – Article 228 of the EC Treaty, reworded – the procedures for the negotiation and conclusion of agreements between the Community and one or more States or international organizations, in particular extending the scope of the European Parliament's assent.

In a recent judgment ([19]) the Court of Justice clarified the interpretation of certain provisions concerning the extent of the Commission's negotiating powers.

51. Opinion 1/94, delivered on 15 November 1994 by the Court of Justice in the context of conclusion of the Uruguay Round agreements, helped to clarify the matter of the division of powers between the Community and its Member States and stressed the need to harmonize the position to be adopted by the Community and its Member States. The Council, the Commission and the Member States will have to resolve the

([19]) See judgment of the Court of 9 August 1994 in Case C-327/91 (France v. Commission).

problem of the Union's representation in the framework of the new World Trade Organization and vis-à-vis third countries.

52. Community action in the area of development cooperation, formerly based mainly on Article 235 of the EC Treaty, now has a specific legal basis in the provisions of new Title XVII of the Treaty (Articles 130u et seq.). It is on that basis that the Community's cooperation agreements with developing countries are concluded; however, interpretation of these new provisions of the Treaty gives rise to differences of opinion, which have already led in one case to referral to the Court of Justice.

53. A specific legal basis – Article 228a – was inserted into the EC Treaty for Community action (economic sanctions) provided for in the context of joint action or a common position adopted within the meaning of the CFSP (see also Article 73g(1) of the EC Treaty). A list of these measures is given in Annex IX. Following a "running-in" period, this procedure is operating satisfactorily, subject to clarification of certain points.

B. ***Common foreign and security policy***

Initial assessment

54. Extrapolating from the experience of European Political Cooperation (hereinafter called EPC), which was set up by the Single European Act – the TEU provides, among the objectives of the Union, for "the implementation of a common foreign and security policy including the eventual framing of a common defence policy ...." and creates new instruments – joint action and common positions – for the achievement of that policy. Hence, the aim of Title V of the TEU, as compared with EPC, is to introduce greater consistency in framing policies, greater "capacity to act" (and not simply to

"react" to events) and to give the European Union a "higher profile" vis-à-vis the outside world.

55. During the first period of application of the TEU, the Council defined eleven common positions – mostly of a technical nature and, in certain cases (Rwanda, Ukraine, Burundi) of considerable political importance – and adopted fifteen joint actions of variable political significance, several of a technical nature (see Annex X (a) and (b)). Some of these acts were connected with the adoption by the Community of economic sanctions, to which they were a forerunner. The remainder covered areas as varied as the definition of overall strategies towards Rwanda and Ukraine, the sending of observers to the parliamentary elections in Russia, the Stability Pact, the process of transition to democracy in South Africa and the Middle East peace process, non-proliferation of nuclear weapons, former Yugoslavia, including the convoying of humanitarian aid in Bosnia-Herzegovina, and especially, in this context, the support provided by the Union to the administration of the town of Mostar in accordance with procedures laid down by the Council (administrator, Presidency, Advisory Working Party). Measures were adopted to harmonize the procedures and criteria for the export of dual-use goods; these measures constitute the first example of action combining legal bases from the EC Treaty and Title V of the TEU.

The results produced by the CFSP are not limited to defining common positions and adopting joint action but encompass, in addition to a hundred or so political statements, the many contacts and approaches which are an integral part of conducting a foreign policy. The Union has also evolved strategies towards groups of countries (countries of Central and Eastern Europe, the Mediterranean, Asia, Latin America and the Caribbean) and organized a conference with the countries of Southern Africa. Annex X contains a detailed review of the implementation of the provisions on the CFSP.

56. The first application of the provisions on the CFSP was the subject of particularly close appraisal, including appraisal by the public, among whom the CFSP had at the same time raised many expectations (as regards its potential) and called forth a great deal of criticism (in view of its achievements). Both the expectations and the criticisms were, no doubt, sometimes exaggerated; the provisions of the Treaty cannot alone provide ready-made solutions to problems, but only the means to tackle them. The political will to act is a determining factor in the proper use of the instruments of the Treaty.

Assessments of the initial performance of the CFSP differ. Some point to not inconsiderable results, not only in terms of quantity, but also of quality, and consider that a "running-in" period is normal in an area which is at the heart of national sovereignty. Others, on the other hand, referring in particular to former Yugoslavia, say they are disappointed by the results obtained so far, which they regard as falling short of initial ambitions, and question the effectiveness of the means offered by the Treaty, but the European Union originated the peace plan which is still the only overall plan for resolving the conflict.

Foreign policy

57. Experience of implementation of Title V of the TEU may be analyzed at the various stages of conducting a foreign policy: planning, decision-making and implementation.

- Planning and formulating policy

58. Neither the Council as such nor its General Secretariat has direct access to information; however, direct access, which would require support from capitals and embassies of Member States abroad, and the assistance of the Commission, is necessary for the planning and formulation of foreign policy. The processing and summarizing of

information, which are of crucial importance in this context, also leave something to be desired.

59. The provisions of Articles J.5(3), J.8(3) and J.9 enable the Commission to play an important role in implementing Title V.

60. The Political Committee plays an essential role in planning and formulating the Union's foreign policy.

61. Recourse to the instruments provided for by Title V took place in the context of the necessary adjustment to the new mechanisms and certain differences of opinion on the scope of the instruments. Hence, for example, the scope and respective roles of the instruments provided for in Article J.2 (common positions) and J.3 (joint action) gave rise to some differences. It is necessary to clarify and respect the functions of the various instruments: statement, common position and joint action.

62. The question arose, when the strategies on Rwanda and Ukraine were defined, whether a common position designed to establish an overall approach for the Union's policy towards a third country could take account of and mention all aspects of relations with that country on which the Community would be competent to adopt specific measures. This question elicited a response, considered by many necessary to ensure consistency of the Union's action, in the form of "instructions" for the application of Article J.2 of the TEU, which underlined the need for the powers of the Community and the responsibilities of the Commission to be fully respected.

- Decision-making

63. As regards preparation for decision-making, it is necessary for the bodies and structures of the old EPC to be properly integrated into the single institutional framework provided for by the TEU. The role of Coreper in the preparation of the Council's proceedings, the

importance of genuine merging of Working Parties, which is still far from complete, and the important role of the Working Party of CFSP Counsellors should also be stressed in this context, as well as the general coordinating role played by the Council's General Secretariat under the aegis of the Presidency.

64. Despite progress already made, the procedures are still at an early stage and must be improved. The use of the COREU procedure should be further defined. COREU is very useful as a means of exchanging information, but the preparation and adoption of legal texts by COREU causes difficulties.

Unanimity has been the rule. Neither the qualified majority, use of which is made possible by Article J.3(2) of the TEU, nor the possibility allowed for in Article J.3(7), has been used.

65. The level of involvement of the European Parliament in defining the CFSP (limited by the TEU to consultation and information) remains a subject of disagreement between the Council and the Parliament, which wanted to adopt procedures additional to those in the Treaty by means of an interinstitutional agreement.

- Implementation

66. The implementation of the common foreign policy may be analyzed in terms of "capacity to act" and "high profile". The TEU states that the Presidency is responsible for the implementation of joint action and expresses the Union's position vis-à-vis the outside world; it represents the Union in matters relating to the CFSP. The Presidency therefore has considerable room for manoeuvre, if necessary with the assistance of the Troika and under the Council's control, and also in full association with the Commission.

There has to be proper continuity in the Union's external representation. The order in which the Presidency of the Council is held was fixed by the Council's decision of 1 January 1995.

67. With the implementation of the CFSP, the increasing burdens on the Presidency and the proliferation of meetings at all levels with ever more numerous partners give rise to problems which have clarified the respective roles of the Presidency/Troika on the one hand, and the General Secretariat of the Council on the other, in the "administration" of the CFSP as well as the role of the Commission.

68. Monitoring of the implementation of the CFSP could be further systematized and made more effective, particularly through better use of the General Secretariat of the Council, without prejudice to the powers of the Presidency or the Commission.

69. Since the TEU did not explicitly assign legal personality to the Union, it must act through the Community and/or its Member States, particularly as regards legal commitments to the outside world. This has given rise to difficulties for which certain solutions are currently being considered.

70. The experience gained in the area of CFSP financing shows up the discrepancy between the European Parliament's powers of political control and its budgetary powers : the Parliament tries to increase its involvement in the CFSP by exercising its budgetary powers. The funding of the CFSP has given rise to controversy and has not yet been resolved.

Security and defence

71. The positive outcome of negotiations on the Stability Pact, which has been entrusted to the supervision of the OSCE, is a significant achievement in the field of preventive diplomacy. At the same time, the Union has helped to improve the OSCE's system of crisis prevention and its capacity for crisis management.

72. The first joint action in the area of security was preparation for the Conference of the States party to the Treaty on the Non-Proliferation of Nuclear Weapons.

73. Before the entry into force of the TEU, the European Union called on the Western European Union (WEU) to participate in several operations including the monitoring of the embargo against Serbia/Montenegro on the Danube and in the Adriatic. It did the same, after the entry into force of the TEU, for the administration of Mostar, although the new possibility offered by Article J.4(2) (implementation by the WEU of decisions and actions of the Union which have defence implications) was not used as such.

The relationship between the General Secretariats of the Council of the European Union and of the WEU is still under discussion.

VI. COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Initial assessment

74. Before the TEU was signed, the Member States of the European Communities cooperated, at intergovernmental level, in areas concerning freedom of movement and the security of persons (Coordinators' Group, CELAD, TREVI), customs cooperation (MAG) and judicial cooperation (within the framework of the old EPC).

The aim of the provisions of Title VI of the TEU, which govern cooperation in the fields of Justice and Home Affairs (JHA), is to strengthen and insert the action which has been taken by Member States for several years now into the framework of intergovernmental cooperation, allowing greater consistency of action, providing Member States with new instruments for action (joint action and joint positions) and placing these in the single institutional framework of the Union. In this field, too, the political will to act is a decisive factor in the full use of the instruments provided for in the TEU.

75. The initial results of the application of these provisions are inadequate although it is emphasized that the matters covered by this Title (asylum, border controls, immigration, combating international crime, and police cooperation) are very sensitive and time has been very short to allow a true assessment. The action plan approved by the European Council in Brussels in December 1993 has not yet been fully applied.

76. Extremely limited use has been made of the new instruments provided for in Title VI. The Council has, on the other hand, made considerable use of traditional instruments (statements, recommendations and resolutions), as shown in the list in Annex XI(a)).

Two joint actions – relating to travel facilities for school pupils originating in third countries and residing in a Member State and to the Europol Drugs Unit – were adopted and a convention on simplified extradition procedures signed. The Europol Convention should be finalized before the end of June 1995; the Convention on external borders is held up because of a problem unconnected with the provisions of the TEU ([20]). The "recommendations" adopted on asylum and immigration have, however, led to genuine effort to harmonize national laws.

Progress has also been made on the exchange of information, especially as regards the fight against drugs, forgery of documents and organized crime.

Attention should also be drawn to the importance of the work of the Consultative Commission on Racism and Xenophobia.

77. Leaving aside the particularly sensitive nature of the subjects covered, the difficulties encountered in applying Title VI also have to do with the imprecise demarcation of the Community's own powers and the multiplicity of structures used hitherto. Moreover, Title VI of the Treaty has not laid down any precise objectives or binding deadlines in these areas, except for Europol.

([20]) A list of the draft conventions prepared under TEU Title VI and currently being examined by the Council is given in Annex XI(b).

The dual EC/JHA approach

78. Title VI, the provisions of which relate both to the freedom of movement and the safety of persons, covers some subjects which are very closely associated with Community powers and others – such as police – which are at the heart of national sovereignty.

In the dual EC/JHA approach – illustrated by sectors such as external borders/visas and the protection of the Community's financial interests – the line between the respective spheres is somewhat blurred. The TEU also provided for the possibility of "communitarizing", by means of the bridging provisions in Article K.9 of the TEU and Article 100c of the EC Treaty, action relating to areas covered by Title VI, such as asylum policy, controls at external borders, immigration policy, combating drug dependence and international fraud and judicial cooperation in civil matters. No use has been made of that possibility.

A Regulation laying down a uniform format for visas has been adopted by the Council on the basis of Article 100c of the EC Treaty.

79. While Title VI is, generally speaking, excluded from the jurisdiction of the Court of Justice of the European Communities, Article K.3(2)(c) of the TEU states that conventions drawn up in this framework may nevertheless provide that the Court has jurisdiction to interpret their provisions and to give judgment in disputes on their application; this possibility, which has been mentioned in connection with every draft convention prepared within the framework of Title VI, is the subject of differences of opinion between the Member States and it has not been possible to apply it hitherto. Some feel that, if the Court of Justice is not given such powers, the uniform application provided for in the conventions will remain inadequate for want of a common interpretation. Others hold that it is not necessary to give the Court such powers.

Instruments and structures

80. The use made of the instruments provided for in Article K.3 of the TEU (joint positions, joint action, conventions) has been very limited, perhaps because of the Member States' continuing differences of opinion on the nature and the legal effects of such implements.

More traditional, and normally not legally binding, instruments such as recommendations and resolutions have been favoured in preference to the more operational instruments of Title VI; examination of the content of the texts adopted shows, however, that they sometimes contain specific undertakings which bind Member States without offering the guarantees which a legal instrument would provide. Here too, due regard must be had to the functions of the various instruments laid down by the Treaty.

No use has been made of the possibility offered by the Treaty of qualified majority voting.

81. The five-level structure – Council, Coreper, K.4 Committee, Steering Groups and Working Parties – has proved very cumbersome and has slowed down the decision-making process.

The K.4 Committee sometimes has difficulty in playing the role assigned to it by the Treaty; the function of its dependent steering groups and working parties should be reassessed.

82. The provisions of Articles K.3(2) and K.4(2) of the TEU offer the Commission the possibility of playing an important part in the implementation of Title VI.

83. There are still differences of opinion between the Council and the European Parliament on the degree of involvement of the European Parliament in the implementation of Title VI (limited by the TEU to consultation and information); the Parliament wanted to adopt specific procedures on the subject by means of an interinstitutional agreement. Some Member States feel strongly that the subject-matter covered by Title VI requires greater parliamentary control. The question of funding the implementation of Title VI is similar to that of funding the CFSP.

ANNEXES

CONTENTS

CONCLUSIONS OF THE PRESIDENCY OF THE CORFU EUROPEAN COUNCIL (24 and 25 JUNE 1994)

"[....]

IV. PREPARATION OF THE 1996 INTERGOVERNMENTAL CONFERENCE

The European Council, following the Ioannina Agreement, hereby establishes a Reflection Group to prepare for the 1996 Intergovernmental Conference consisting of representatives of the Ministers of Foreign Affairs of the Member States and the President of the Commission. It will be chaired by a person appointed by the Spanish Government and begin its work in June 1995. Two European Parliament representatives will participate in the work of the Reflection Group. The Group will also have exchanges of views with the other Institutions and organs of the European Union.

The Institutions are invited to establish before the start of the work of the Reflection Group reports on the functioning of the Treaty on European Union which will provide an input for the work of the Group.

The Reflection Group will examine and elaborate ideas relating to the provisions of the Treaty on European Union for which a revision is foreseen and other possible improvements in a spirit of democracy and openness, on the basis of the evaluation of the functioning of the Treaty as set out in the reports. It will also elaborate options in the perspective of the future enlargement of the Union on the institutional questions set out in the conclusions of the European Council in Brussels and in the Ioannina Agreement (weighting of votes, the threshold for qualified majority decisions, number of members of the Commission and any other measure deemed necessary to facilitate the work of the Institutions and guarantee their effective operation in the perspective of enlargement).

The Secretary-General of the Council will make the necessary arrangements for the secretariat of the Reflection Group in agreement with its president.

The Reflection Group will report in time for the meeting of the European Council at the end of 1995. The procedure laid down in the Treaty relating to revision will apply to the next phase."

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"DECLARATION OF THE TWELVE PRESENT MEMBER STATES OF THE EUROPEAN UNION" IN THE MINUTES OF THE NEGOTIATIONS FOR THE ACCESSION OF NORWAY ([1]), AUSTRIA, SWEDEN AND FINLAND TO THE EUROPEAN UNION

"The representatives of the twelve States referred to above have adopted the following Declaration at the end of the Conferences having elaborated the text of the Treaty on Accession of Norway, Austria, Sweden and Finland to the European Union:

(a) The twelve present Member States of the European Union have agreed that, in the hypothesis where four new Member States will join the Union, the threshold necessary for a qualified majority required by the Treaties shall be fixed at 64 votes. They have also agreed that the question of the reform of the Institutions, including the weighting

([1]) This Declaration has to be seen in the light of the outcome of the Norwegian referendum, which led Norway not to become a member of the European Union.
The figures regarding voting should therefore read as follows:
- in paragraph (a): "... the threshold necessary for a qualified majority required by the Treaties shall be fixed at 62 votes" (in accordance with Decision 95/1/EC, Euratom, ECSC of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union, OJEC No L 1, 1.1.1995, p. 1);
- in paragraph (c):
  = second line: "... a total of 23 to 25 ..."
  = seventh line: "... at least 65 votes ..."
  (in accordance with Decision 95/C/1/01 of the Council of the European Union of 1 January 1995 amending the Council Decision of 29 March 1994 concerning the taking of decisions by qualified majority by the Council, OJEC No C 1, 1.1.1995, p. 1).

of votes and the threshold of the qualified majority in the Council, shall be examined during the Conference of Representatives of the Governments of the Member States which shall be convened in 1996, in accordance with Article N(2) of the Treaty on European Union.

(b) Besides, they have agreed to invite the European Parliament, the Council and the Commission to establish a report on the functioning of the Treaty on European Union. These reports will provide input for the work of a Reflection Group of Representatives of the Foreign Ministers which should be created by the European Council in Corfu and start its work mid-1995. This Group will work in association with the European Parliament. It will, inter alia, prepare options based on the positions and arguments of all Member States on the weighting of votes and on the threshold of qualified-majority decisions, taking into account future enlargement.

(c) They have taken note that the Council has decided that, if Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the adoption by the Council of a decision by qualified majority, the Council will do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by the Treaties and by secondary law, such as in Articles 189b and 189c of the Treaty establishing the European Community, a satisfactory solution that could be adopted by at least 68 votes. During this period, and always respecting the Rules of Procedure of the Council, the President undertakes, with the assistance of the Commission, any initiative necessary to facilitate a wider basis of agreement in the Council. The Members of the Council lend him their assistance.

(d) They have finally agreed that the different elements of the present Declaration shall continue to be in operation until entry into force of an amendment to the Treaties, following the 1996 Conference."

BRUSSELS EUROPEAN COUNCIL
10 AND 11 DECEMBER 1993

CONCLUSIONS OF THE PRESIDENCY

Extract from Annex III

Declaration for the official record of the Accession Conference

"In adopting the institutional provisions of the Accession Treaty, the Member States and the applicant countries agree that, as well as examining the legislative role of the European Parliament and the other matters envisaged in the Treaty on European Union, the Intergovernmental Conference to be convened in 1996 will consider the questions relating to the number of Members of the Commission and the weighting of the votes of the Member States in the Council. It will also consider any measures deemed necessary to facilitate the work of the Institutions and guarantee their effective operation."

Text of TEU Articles A and B:

"Article A

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union".

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Article B

The Union shall set itself the following objectives:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;

- to strengthen the protection of the rights and interests of the nationals of its Member States though the introduction of a citizenship of the Union;

- to develop close cooperation on justice and home affairs;

- to maintain in full the "acquis communautaire" and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community."

TREND IN THE NUMBER OF LEGISLATIVE PROPOSALS SUBMITTED BY THE COMMISSION BETWEEN 1990 AND 1994

SOURCE: figures provided by the Commission.

LIST OF POLICY DEBATES PUBLICLY RETRANSMITTED BY AUDIOVISUAL MEANS
(Article 6(1) of the Council's Rules of Procedure)

COUNCIL	DATE	ITEM
ECONOMIC/FINANCIAL AFFAIRS	15.II.93	Programme of the Danish Presidency
GENERAL AFFAIRS	19.VII.93	Presentation of the Belgian Presidency's programme
ECONOMIC/FINANCIAL AFFAIRS	13.IX.93	Presentation of the Belgian Presidency's work programme
GENERAL AFFAIRS	7.II.94	Presentation of the Greek Presidency's work programme
ECOFIN	14.II.94	Presentation of the Greek Presidency's work programme
ECOFIN	11.VII.94	Presentation of the German Presidency's work programme
GENERAL AFFAIRS	18.VII.94	Presentation of the German Presidency's work programme
ECOFIN	16.I.95	Presentation of the French Presidency's programme
GENERAL AFFAIRS	23.I.95	Presentation of the French Presidency's work programme and tribute to Jacques Delors
ECOFIN	20.II.95	Presentation of the Commission's work programme

LIST OF OTHER DEBATES ON IMPORTANT ISSUES AFFECTING THE INTERESTS OF THE UNION
PUBLICLY RETRANSMITTED BY AUDIOVISUAL MEANS
(Article 6(2) of the Council's Rules of Procedure)

COUNCIL	DATE	ITEM
GENERAL AFFAIRS	1.II.93	– Danish Presidency's work programme – Opening of accession negotiations
AGRICULTURE	10.II.93	Proposal on agricultural prices and related measures (1993/1994) – Presentation by the Commission
GENERAL AFFAIRS	5.IV.93	Opening of negotiations with Norway
INTERNAL MARKET	5.IV.93	Sutherland Report
SOCIAL AFFAIRS	6.IV.93	Employment situation
INDUSTRY	3.V.93	Industrial competitiveness and environmental protection
DEVELOPMENT COOPERATION	25.V.93	Run-up to 2000
INTERNAL MARKET	11.XI.93	Strengthening the competitiveness of SMEs and craft enterprises and developing employment in the Community
ENVIRONMENT	2/3.XII.93	Green Paper on civil liability (discussed on 3.12.1993)
AGRICULTURE	21.II.94	Proposals on the prices of agricultural products and related measures for 1994/1995 – Presentation by the Commission
AGRICULTURE	21.II.95	Proposals on prices for agricultural products and related measures (1995/1996) – Presentation by the Commission

PUBLICATION OF VOTES CAST IN THE COUNCIL

I. Under the Council's Rules of Procedure, votes cast in the Council are automatically published when the Council acts as legislator, unless the Council decides otherwise, which has never been the case.

The Annex to the Council's Rules of Procedure states that the Council "acts as legislator within the meaning of the first indent of Article 7(5) when it adopts rules which are legally binding in or for the Member States whether by means of regulations, directives or decisions, on the basis of the relevant provisions of the Treaties, in particular on the basis of Article 43 of the Treaty establishing the European Community or in the framework of the procedures in Article 189b and Article 189c of that Treaty, with the exception of discussions leading to the adoption of internal measures, administrative or budgetary acts, acts concerning interinstitutional or international relations or non-binding acts such as conclusions, recommendations or resolutions. Votes shall not be made public in the case of discussions leading to indicative votes or the adoption of preparatory acts."

Votes are also published:

- when votes are cast by members of the Council or their representatives in the Conciliation Committee set up by Article 189b of the Treaty establishing the European Community;

- when the Council acts under Titles V and VI of the Treaty on European Union, by a unanimous Council decision taken at the request of one of its members;

- in other cases, by a Council decision taken at the request of one of its members.

II. Votes cast in the Council are published in press releases.

PUBLIC ACCESS TO INFORMATION

1. References

- Code of conduct concerning public access to Council and Commission documents
  (OJ No L 340/93, p. 41).

- Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ No L 340, p. 43).

2. Applications as at 31 March 1995

Number of applications submitted	Number of totally positive responses	Number of partially positive responses	Number of negative responses	Number of referrals to the Court of Justice
77 ([1])	25	20	22	1

([1]) This number corresponds to the applications admissible under Decision 93/731/EC. In some cases the applications for access concerned a non-existent or unfinalized document, or a document which did not originate with the Council or could not be identified because the applicant had not supplied enough information.

Total votes (per area)
for legislative acts ([2]) adopted
between 6 December 1993 and 31 March 1995

	T	N	A
Agriculture	114	17	10
Fisheries	51	4	7
Internal market	50	11	6
Environment	9	4	1
Transport	8		3
Social affairs	3		2
Research	27	1	1
Education	4		1
European citizenship	2		1
Consumer protection	1	1	
Transparency	2	2	
Other	12		
TOTAL	283	40	32

T = total number of legislative acts adopted
N = number of acts adopted with negative votes being cast (or with negative votes and abstentions)
A = number of acts adopted with abstentions only

([2]) As defined in the Annex to the Council's Rules of Procedure. Where a common position was followed by the adoption of a definitive act, the same votes have not been counted twice. The same applies to the Decision and the code of conduct concerning public access to documents.

LIST OF LEGAL BASES REQUIRING UNANIMITY WITHIN THE COUNCIL OR COMMON ACCORD OF THE MEMBER STATES

EC Treaty

Article 8a	– right of movement and residence save as otherwise provided in the Treaty
Article 8b	– right to vote in EP and municipal elections
Article 8e	– additional rights of citizenship
Article 45(3)	– compensatory aid for imports of raw materials
Article 51	– social security (coordination of arrangements)
Article 57(2)	– amendment of principles laid down by law governing the professions in a Member State
Article 73c	– measures which constitute a step back as regards liberalization of capital movements
Article 93	– State aid
Article 99	– taxation
Article 100	– approximation of laws for the common market where Article 100a is not applicable
Article 100c	– list of countries whose nationals require visas (until 1996)
Article 103a	– financial assistance for a Member State and economic measures in the event of severe difficulties
Article 104c(14)	– excessive deficits
Article 105(6)	– tasks for the ECB
Article 106(5)	– amendments to the Statute of the ESCB
Article 109(1) and (4)	– agreements on an exchange-rate system
Article 109a(2)	– appointment of the members of the Executive Board of the ECB (common accord of the Member States)
Article 109f(1)	– appointment of the President of the EMI (common accord of the Member States)
Article 109f(7)	– European Monetary Institute
Articles 109k(5) and 109l(4) and (5)	– EMU: institutional provisions
Article 121	– social security for migrant workers: assignment to the Commission of powers for implementation of common measures
Article 128	– culture
Article 130	– industry
Article 130b	– specific action outside the Structural Funds
Article 130d	– Structural Funds and Cohesion Fund
Article 130i	– adoption of the framework research programme
Article 130o	– setting-up of joint undertakings
Article 130s	– certain environmental provisions
Article 136	– overseas countries and territories
Article 138(3)	– adoption of a uniform electoral procedure for the EP
Article 145	– conferral of implementing powers
Article 151(2)	– appointment of the Council's Secretary-General
Article 157(1)	– alteration of the number of Members of the Commission
Article 158(2)	– appointment of the Members of the Commission (common accord of the Member States)
Article 159	– non-replacement of a Member of the Commission
Articles 165 and 166	– increase in members of the CJ and Advocates-General
Article 167	– appointment of Judges and Advocates-General (common accord of the Member States)
Article 168a(2) and (4)	– Court of First Instance (composition, proceedings, approval of Rules of Procedure)
Article 188	– amendment of Title III of the Statute of the CJ; approval of Rules of Procedure of the CJ
Article 188b	– Court of Auditors: appointment of members
Article 189a	– amendment of a Commission proposal

Article 189b(3)	–	second reading in co-decision procedure
Article 189c(d) and (e)	–	second reading in cooperation procedure
Article 194	–	appointment of members of the ESC
Article 198a	–	Committee of the Regions: appointment of members
Article 198b	–	Committee of the Regions: approval of Rules of Procedure
Article 201	–	provisions relating to the own resources system
Article 209	–	Financial Regulations
Article 216	–	determination of the seat of the institutions (common accord of the Member States)
Article 217	–	rules governing languages
Article 223	–	interests of the security of the Member States, trade in arms
Article 227	–	geographical scope of the Treaty
Article 228(2)	–	conclusion of certain agreements
Article 235	–	objective of the Community without provision for the necessary powers

CFSP (ref. declaration No 27 annexed to the TEU)

Article J.3 in conjunction with Article J.8	–	adoption of joint action
Article J.2(2) in conjunction with Article J.8	–	defining of common positions
Article J.11	–	decision to charge CFSP operational expenditure to the Community budget

(for the record) Declaration No 27 TEU

JHA

Article K.3 (in conjunction with Article K.4)	–	joint positions, joint action, conventions, etc.
Article K.8	–	charging to the Community budget of operational expenditure
Article K.9	–	crossover to Article 100c

PROTOCOLS

Articles 12 and 45 (see Article 165 ECT)	–	Protocol on the Statute of the CJ of the EC
Article 37	–	Protocol No 3 (Statute of the ESCB/ECB): seat of the ECB (common accord of the Member States)
Article 41(1)	–	Protocol No 3 (Statute of the ESCB/ECB): revision of the Statute
Article 13	–	Protocol No 4 (Statute of the EMI): seat of the EMI (common accord of the Member States)
Article 6	–	Protocol No 6 on the convergence criteria referred to in Article 109j of the EC Treaty
Article 2(3) and Article 4	–	Protocol No 14 on social policy

FINAL PROVISIONS OF TEU

Article N(1) TEU	–	amendment of the Treaties (common accord of the Member States)
Article O TEU	–	accession of new Member States

Article 189b (*)

Scope

Co-decision and qualified-majority voting in the Council

Article 49	:	free movement of workers
Article 54(2)	:	right of establishment
Article 56(2), second sentence	:	idem
Article 57(1)	:	idem
Article 57(2), third sentence	:	idem
Article 66	:	services
Article 100a	:	internal market
Article 100b	:	idem
Article 126	:	education (encouragement measures)
Article 129	:	health (encouragement measures)
Article 129a	:	consumers
Article 129d	:	trans-European networks (guidelines)
Article 130s(3)	:	environment: general action programme

Co-decision and unanimity

Article 128	:	Culture (except recommendations *)
Article 130i	:	Research (framework programme)

(*) The procedure referred to in Article 189b does not apply to the conclusion of international agreements (see first subparagraph of Article 228(3) of the EC Treaty)

* Unanimity but not co-decision

Article 189c (*)

Scope

Article 6	:	non-discrimination on the basis of nationality
Article 75(1)	:	transport
Article 84	:	transport
Article 103(5)	:	rules for the multilateral surveillance procedure
Article 104a(2)	:	arrangements for applying Article 104a(1)
Article 104b(2)	:	arrangements for applying Article 104
Article 105a(2)	:	harmonization measures on the circulation of coins
Article 125	:	Social Fund
Article 127	:	vocational training
Article 129d	:	trans-European networks (except guidelines)
Article 130e	:	economic and social cohesion
Article 130o(1) and (3)	:	research
Article 130s	:	environment
Article 130w	:	development cooperation
Article 118a	:	social policy
Article 2(2) of the Agreement annexed to the Protocol on social policy	:	minimum requirements

(*) The procedure referred to in Article 189c does not apply to the conclusion of international agreements (see first subparagraph of Article 228(3) of the EC Treaty)

ASSENT OF THE EUROPEAN PARLIAMENT

Scope

Article 8a(2)	:	citizenship
Article 105(6)	:	specific tasks of the ECB
Article 106(5)	:	amendments to the Statute of the ESCB/ECB
Article 130d	:	Structural Funds and Cohesion Fund
Article 138(3)	:	uniform electoral procedure (*)
Article 228(3)	:	certain international agreements
TEU Article O	:	accession of new Member States (*)

(*) Except in the case of accession and the case of the uniform electoral procedure, where the Parliament acts by an absolute majority of its component members, Parliament's assent is attained by an absolute majority of the votes cast.

STATISTICS RELATING TO ARTICLE 189b

(i) General table

Number of proposed acts subject to co-decision	124
Number of common positions of the Council	33
Number of common positions for which there has been a conciliation procedure	15

(ii) Details concerning the 15 cases of conciliation

Number of cases where conciliation has led to the adoption of a joint text	11
Number of cases where it has not led to a joint text (the Council confirming its position, the European Parliament rejecting it) - voice telephony	1
Number of cases where the joint text has not led to a final decision (the European Parliament rejecting the conciliation joint text in plenary session) - biotechnology	1
Number of cases awaiting a third reading	2

LIST OF DECISION-MAKING PROCEDURES

1. LEGISLATIVE PROCEDURE

(a) without consultation of the European Parliament:

- *by a simple majority in the Council (e.g. Article 213 of the EC Treaty), or*
- *by a qualified majority in the Council (e.g. measures provided for in Article 228a of the EC Treaty), or*
- *on the basis of unanimity (e.g. Articles 103a, 194 and 198a of the EC Treaty);*

(b) with consultation of the European Parliament:

- *by a qualified majority in the Council (Article 43 of the EC Treaty), or*
- *on the basis of unanimity (Articles 8b(1) and (2) or 99 and 100 of the EC Treaty);*

(c) in cooperation with the European Parliament;

(d) in co-decision with the European Parliament:

- *by a qualified majority in the Council, or*
- *on the basis of unanimity in the Council (culture, research framework programme);*

(e) after obtaining the European Parliament's assent:

- *by a simple majority in the EP (e.g. Article 8a(2) of the EC Treaty), or*
- *by a majority of the EP's component members (second subparagraph of Article 138(3) of the EC Treaty or Article O of the TEU);*

(f) by common accord with the European Parliament and the Commission (Article 138c of the EC Treaty).

2. BUDGETARY PROCEDURE

- with variants, depending whether CE or NCE are involved.

3. PROCEDURE FOR INTERNATIONAL AGREEMENTS

(a) without consultation of the European Parliament (agreements referred to in Article 113(3) of the EC Treaty);

(b) with consultation of the European Parliament (first subparagraph of Article 228(3);

(c) after obtaining the European Parliament's assent (second subparagraph of Article 228(3).

4. PROCEDURES FOR TITLES V AND VI OF THE TEU

(a) on a proposal from/at the initiative of the Commission;

(b) on a proposal from/at the initiative of a Member State.

5. OTHER PROCEDURES

(a) without any Commission proposal (e.g. some EMU cases and Article 213 of the EC Treaty);

(b) on a recommendation from the Commission (a number of EMU cases);

(c) on recommendations from the Commission and the Council, with decisions by the Council, meeting in the composition of Heads of State or Government (entry into the third stage of EMU);

(d) by common agreement of the Governments of the Member States (appointment of Members of the Commission and of the Court of Justice and location of institutions);

(e) by common agreement of the Governments of the Member States, meeting in the composition of Heads of State or Government (appointment of the President, Vice-President and members of the Executive Board and location of the ECB).

Consultation of other institutions or bodies of the European Union (Court of Auditors, Economic and Social Committee, Committee of the Regions, European Central Bank, Monetary Committee, European Monetary Institute, Political Committee and Article K.4 Committee) is provided for on either a mandatory or an optional basis under the above procedures.

ASSENTS GIVEN BY THE EUROPEAN PARLIAMENT
from 1 November 1993 to 28 February 1995

External relations

Regulation on certain procedures for applying the Agreement on the European Economic Area (EEA)

Agreement on the European Economic Area – interim "acquis"

Applications from Austria, Norway, Finland and Sweden for membership of the EU

Conclusion of the agreements resulting from the Uruguay Round multilateral trade negotiations (1986-1994)

Development

Conclusion of the Protocol on financial and technical cooperation between the EC and the Syrian AR

Environment

Substances that deplete the ozone layer – conclusion of an international agreement (Montreal Protocol)

Regional policy

Regulation establishing a Cohesion Fund

Interinstitutional texts concerning implementation of the Treaty on European Union

1. Texts approved at the interinstitutional meeting in Luxembourg on 25 October 1993 (OJ No C 329, 6.12.1993, pp. 132 et seq.)

   (a) Interinstitutional Declaration on democracy, transparency and subsidiarity
   (b) Interinstitutional Agreement between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity
   (c) Arrangements for the proceedings of the conciliation committee under Article 189b of the EC Treaty

2. Interinstitutional Agreement of 29 October 1993 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (OJ No C 331, 7.12.1993, p. 1)

3. Interinstitutional Agreement of 20 December 1994 between the European Parliament, the Council and the Commission on an accelerated working method for official consolidation of legislative texts

Interinstitutional text required by Article 138c of the Treaty on European Union

4. Decision of the European Parliament, the Council and the Commission on the detailed provisions governing the exercise of the European Parliament's right of inquiry (Article 138c of EC Treaty).

CASES BEFORE THE COURT OF JUSTICE AND THE CFI AND AVERAGE DURATION OF PROCEEDINGS

A. COURT OF JUSTICE (*)

Cases registered

Graph 1 – Cases before the Court

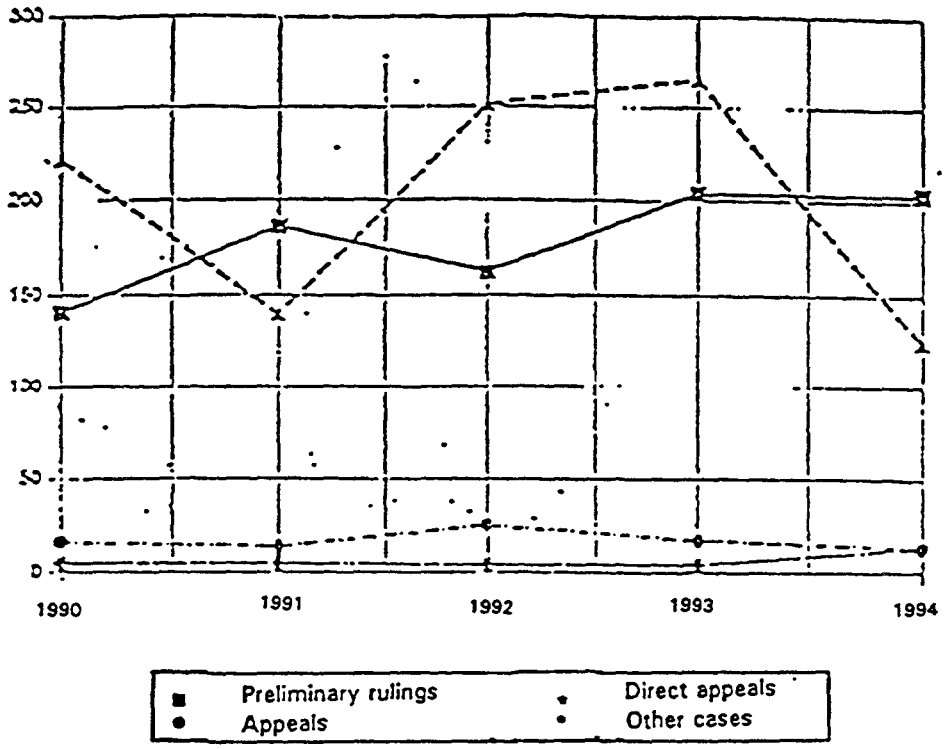


Table 1

Year / *Nature of proceedings*	*1990*	*1991*	*1992*	*1993*	*1994*
Preliminary rulings	141	186	162	204	203
Direct appeals	222	140	251	265	125
Appeals	16	14	25	17	13
Total	379	340	438	486	341
Other cases	5	5	4	4	13
TOTAL	384	345	442	490	354

If the milk-quota cases registered in 1992 and 1993 are excluded, the number of cases brought before the Court is seen to be constant.

It may be noted that 57,3% of the cases concern preliminary rulings.

(*) SOURCE: Court of Justice

Graph 2 – Cases disposed of [2]

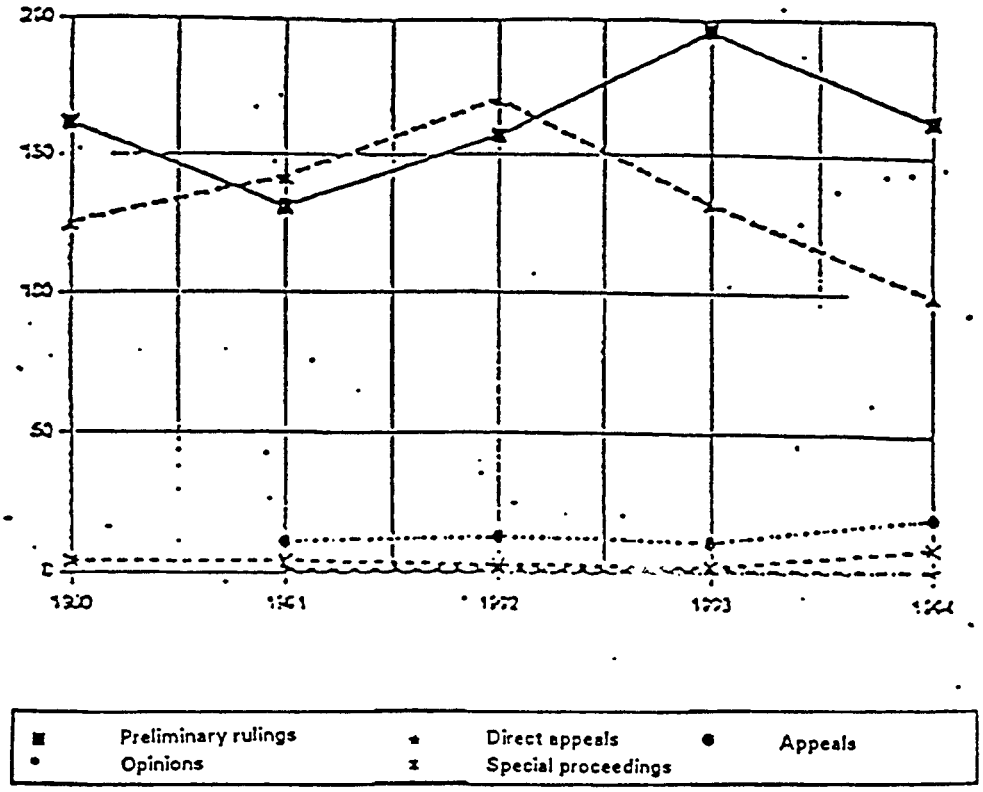


Table 2

Year *Nature of proceedings*	*1990*	*1991*	*1992*	*1993*	*1994*
Preliminary rulings	162	131	157	196	163
Direct appeals	125	142	171	132	100
Appeals	-	11	13	11	20
Opinions	-	1	1	1	1
Special proceedings	4	4	3	2	9
TOTAL	302	289	345	342	293

The number of cases disposed of includes those settled by a judgment (provided it is not interlocutory) or by an order terminating the proceedings (for example, when a case is removed from the register, does not proceed to judgment, or is inadmissible).

There was a slowing-down in the Court's judicial activities in 1994. A comparison of input and output statistics shows that the Court settles fewer cases than it receives over the same period.

(2) excluding the cases transferred to the CFI on 27 September 1993.

Graph 3 – Cases pending

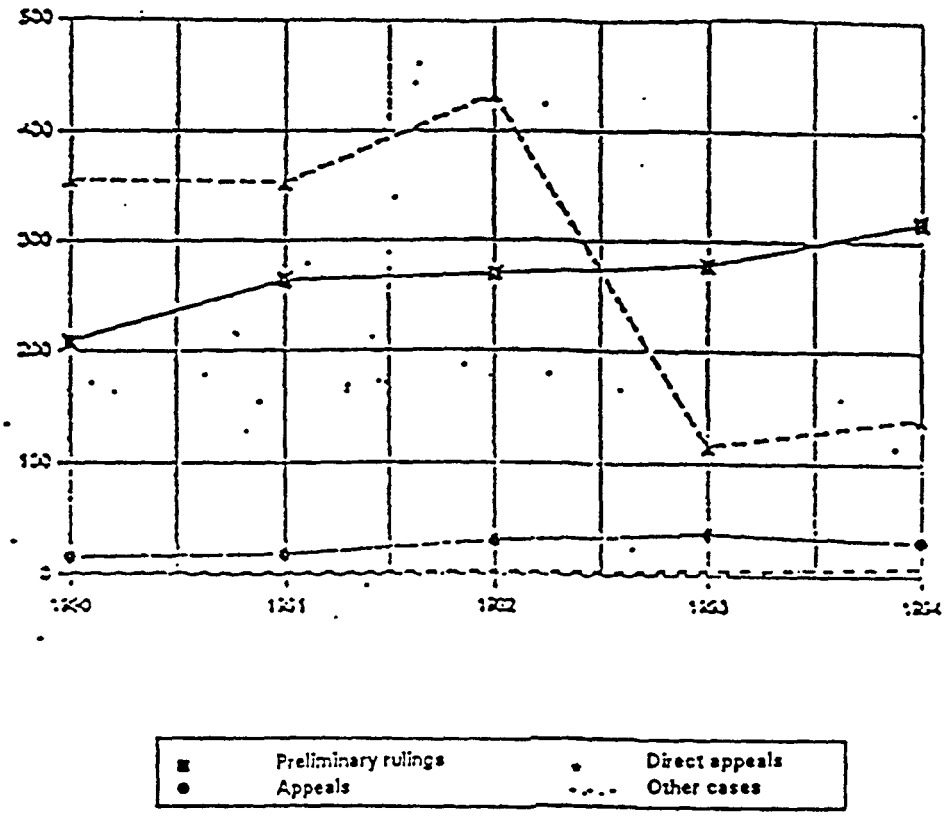


Table 3 [1]

Year *Nature of proceedings*	*1990*	*1991*	*1992*	*1993*	*1994*
Preliminary rulings	197 (209)	217 (264)	232 (269)	240 (277)	259 (317)
Direct appeals	343 (356)	335 (353)	405 (433)	109 (115)	134 (140)
Appeals	16 (16)	19 (19)	31 (31)	36 (37)	29 (30)
Opinions	-	1 (1)	2 (2)	1 (1)	3 (3)
Special proceedings	2 (2)	2 (2)	1 (1)	3 (3)	4 (4)
TOTAL	558 (583)	574 (639)	671 (736)	389 (433)	429 (494)

[1] The figures in brackets indicate the total number of cases after splitting the joined cases counted singly in the figure outside the brackets.

Average duration of proceedings before the Court

Graph 4 – Duration of proceedings (in months)

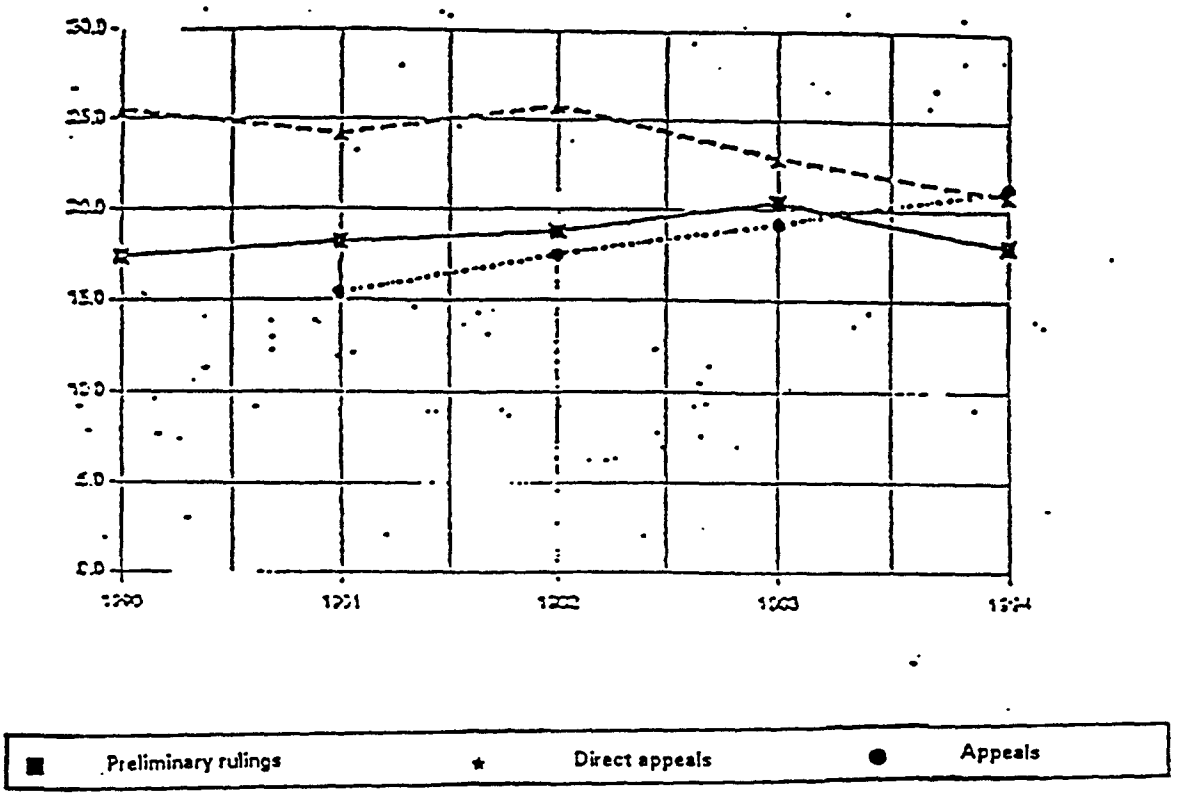


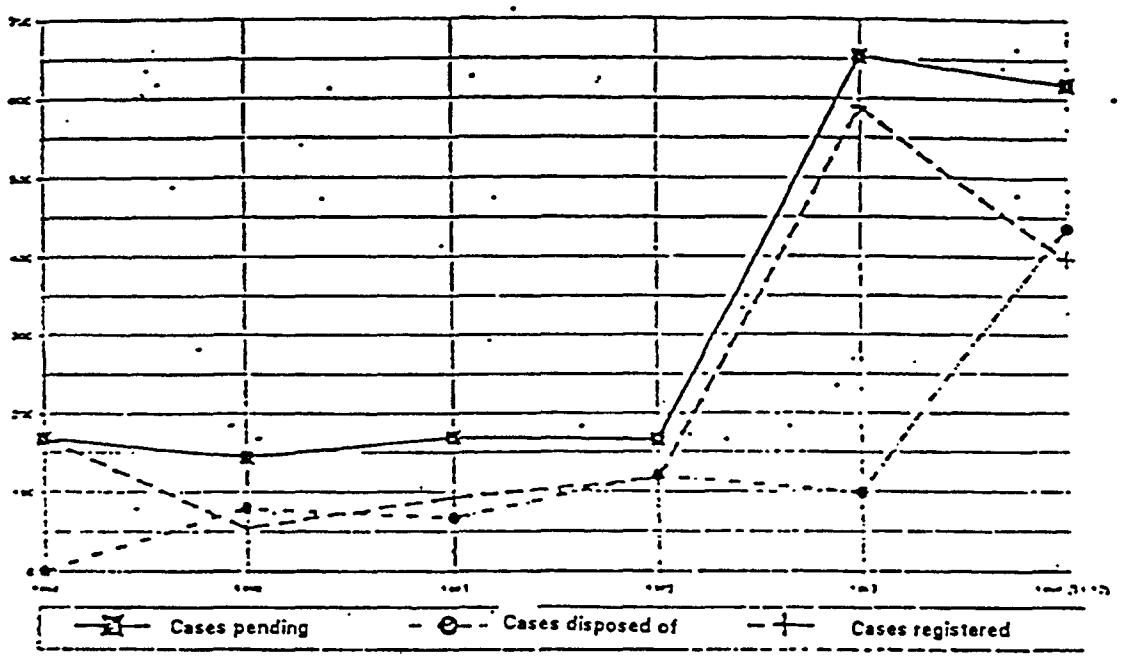
Table 4

Year *Nature of proceedings*	*1990*	*1991*	*1992*	*1993*	*1994*
Preliminary rulings	17.4	18.2	18.8	20.4	18
Direct appeals	25.5	24.2	25.8	22.9	20.8
Appeals	-	15.4	17.5	19.2	21.2

B. COURT OF FIRST INSTANCE

CFI CASES

up to 31 December 1994

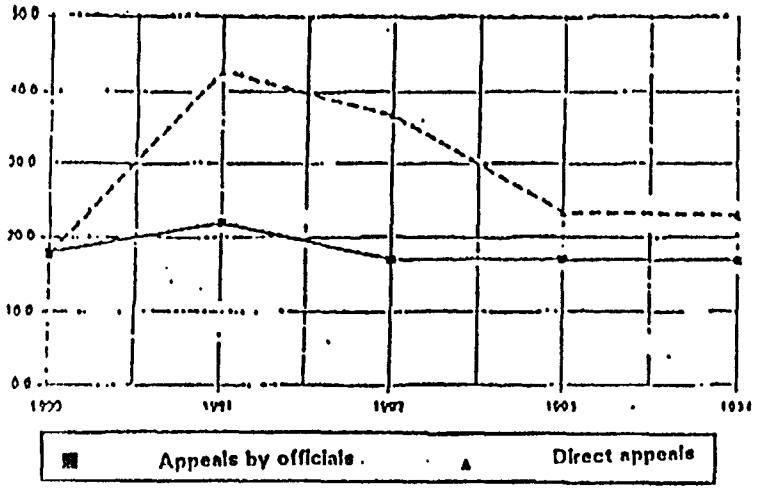


	1989	1990	1991	1992	1993	1994 (31.12)
Cases registered	169	55	93	116	589	397
Cases disposed of	1	80	67	120	99	436
Cases pending	168	144	169	166	653	618

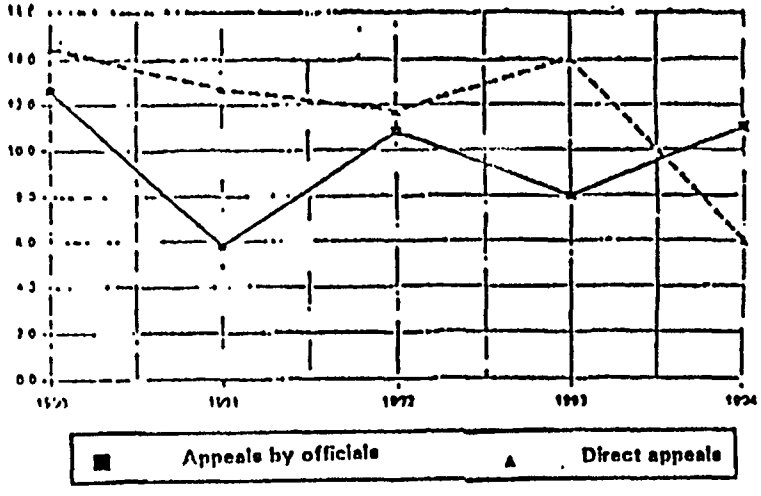
SOURCE: CFI; provisional figures.

Average duration of proceedings before the CFI

COURT OF FIRST INSTANCE
Duration of proceedings (in months) - JUDGMENTS



COURT OF FIRST INSTANCE
Duration of proceedings - ORDERS



Year Nature of proceedings	1990	1991	1992	1993	1994
Appeals by officials	17.9	21.9	17.0	17.0	16.9
Direct appeals	17.6	42.9	36.6	23.3	23.0

Year Nature of proceedings	1990	1991	1992	1993	1994
Appeals by officials	12.6	5.8	10.8	8.0	11.0
Direct appeals	14.5	12.7	11.7	14.1	6.0

NUMBER OF OPINIONS ISSUED BY THE COMMITTEE OF THE REGIONS

(up to 31 March 1995)

on referral by the Council	16
on referral by the Commission	6
own initiative	10

OPINIONS ISSUED BY THE COMMITTEE OF THE REGIONS
(referral by the Council)

REF.	SUBJECT	DOCUMENT	DATE
CDR 16/94	Proposal for a Council Regulation establishing a Cohesion Fund and proposal for a Council Regulation establishing a cohesion financial instrument	COM(93) 699	5, 6 April 94
CDR 42/94	Commission communication on the development of the Integrated Services Digital Network (ISDN) as a trans-European network Proposal for a Council Decision on a series of guidelines for the development of ISDN as a trans-European network Proposal for a Council Decision adopting a multiannual Community action concerning the development of ISDN as a trans-European network (TEN-ISDN)	COM(93) 347	17, 18 May 94
CDR 43/94	Proposal for a Decision of the European Parliament and of the Council establishing the Community Action Programme SOCRATES	COM(93) 708 - 94/0001 COD	17, 18 May 94
CDR 44/94	Proposal for a Decision of the Council and the Ministers for Health of the Member States, meeting within the Council, concerning the extension to the end of 1994 of the 1991-1993 plan of action in the framework of the "Europe against AIDS" programme	COM(93) 453	17, 18 May 94
CDR 45/94	Proposal for a European Parliament and Council Decision establishing Phase Three of the "Youth for Europe" programme designed to promote the development of exchanges among young people and of youth activities in the Community	COM(93) 523 - COD 474	17, 18 May 94
CDR 46/94	Proposal for a European Parliament and Council Decision laying down a series of guidelines on trans-European energy networks Proposal for a Council Decision laying down a series of measures aimed at creating a more favourable context for the development of trans-European networks in the energy sector	COM(93) 685	17, 18 May 94
CDR 48/94	Proposal for a Council Decision on a series of guidelines for trans-European data communications networks between administrations Proposal for a Council Decision adopting a multiannual Community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA)	COM(93) 69	17, 18 May 94

REF.	SUBJECT	DOCUMENT	DATE
CDR 176/94	Proposal for a European Parliament and Council Decision on Community guidelines for the development of the trans-European transport network	COM(94) 106	27, 28 September 94
CDR 177/94	Proposal for a Council Directive on the interoperability of the European high speed train network	COM(94) 107	27, 28 September 94
CDR 181/94	Proposal for a Council Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals	COM(94) 38	27, 28 September 94
CDR 182/94	Proposal for a Council Directive concerning the quality of bathing water	COM(94) 36	27, 28 September 94
CDR 183/94	Proposal for a European Parliament and Council Decision adopting an action plan 1995-1999 to combat cancer within the framework for action in the field of public health	COM(94) 83	27, 28 September 94
CDR 244/94	Proposal for a European Parliament and Council Decision establishing 1996 as the European Year of Lifelong Learning	COM(94) 264	15, 16 November 94
CDR 245/94	Proposal for a Council Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment	COM(93) 575	15, 16 November 94
CDR 246/94	Programme of Community action on health promotion, information, education and training within the framework for action in the field of public health	COM(94) 202	15, 16 November 94
CDR 248/94	Programme of Community action on the prevention of drug dependence within the framework for action in the field of public health	COM(94) 223	15, 16 November 94

OPINIONS ISSUED BY THE COMMITTEE OF THE REGIONS
(referral by the Commission)

REF.	SUBJECT	DOCUMENT	DATE
CDR 39/94	The future of Community initiatives under the Structural Funds	COM(94) 46	17, 18 May 94
CDR 40/94	Community initiative concerning urban areas (URBAN)	COM(94) 61	17, 18 May 94
CDR 41/94	Community initiative on the modernization of the textile and clothing industry in Portugal	COM(94) 82	17, 18 May 94
CDR 47/94	Green paper on the access of consumers to justice and the settlement of consumer disputes in the single market	COM(94) 576	17, 18 May 94
CDR 49/94	Proposal for a Council Regulation (EC) laying down general rules for the granting of Community financial aid in the field of trans-European networks	COM(94) 62	17, 18 May 94
CDR 231/94	Europe's way to the Information Society	COM(94) 347	2 February 95

OPINIONS ISSUED BY THE COMMITTEE OF THE REGIONS
(own initiative)

REF.	SUBJECT	DOCUMENT	DATE
CDR 171/94	Commission communication on the White Paper "Growth, Competitiveness and Employment"	COM(94) 700	27, 28 September 94
CDR 178/94	Green Paper on strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union	COM(94) 96	27, 28 September 94
CDR 179/94	Green Paper on a common approach in the field of mobile and personal communications in the European Union	COM(94) 145	27, 28 September 94
CDR 242/94	Proposal for a Council Regulation (EC) on reform of the common organization of the market in wine	COM(94) 117	15, 16 November 94
CDR 243/94	White Paper on European Social Policy - A way forward for the Union	COM (94) 333	15, 16 November 94
CDR 249/94	Effects of the use of bovine somatotropin on milk production in the regions of the European Union		15, 16 November 94
CDR 18/95	Integrated programme in favour of SMEs	COM (94) 207	1 February 95
CDR 19/95	Development of rural tourism		2 February 95
CDR 20/95	Charging of EAGGF expenditure		2 February 95
CDR 22/95	Energy and economic and social cohesion	COM (93) 645	2 February 95

NUMBER OF OPINIONS ISSUED BY THE ECONOMIC AND SOCIAL COMMITTEE

(up to 31 March 1995)

on referral by the Council	138
on referral by the Commission	39
own initiative	31
additional opinions	11
information reports	2

OVERALL FIGURES CONCERNING RECOURSE TO TEC ARTICLE 235 AS A LEGAL BASIS FOR COMMUNITY ACTS

	Decisions	Regulations	Recommendations	Directives	TOTAL
1992	17	14	4		35
1993	13	8		1	22
1994	15	12			27
Jan/Mar 1995		2			2

Since the Treaty on European Union came into force, Article 235 has been used for the adoption of Regulations establishing a number of bodies (European Monitoring Centre for Drugs and Drug Addiction, Translation Centre for the bodies of the Union, the European Training Foundation, the European Agency for Safety and Health at Work, the European Centre for the Development of Vocational Training, the Trade Mark Office and the Office for the Protection of New Varieties of Plants, the International Science and Technology Centre).

It has also been used for the adoption of Decisions and/or Regulations in the financial field (establishment of a Guarantee Fund for external action, financial contributions by the Community to the International Fund for Ireland, macro-financial assistance for Albania and Moldova, further macro-financial assistance for Romania, interest subsidies for SMUs, Community guarantee to the EIB in the event of losses resulting from loans granted for projects carried out by the CCEE).

It has been used for the adoption of Decisions and Regulations in areas as varied as the consolidation of existing Community legislation on the definition of the ecu after the entry into force of the TEU, the introduction of Community plan variety rights, the Community trade mark, the continuation of the Handynet system and budgetary discipline.

BREAKDOWN OF FIGURES ON THE USE

OF ARTICLE 235

ACCORDING TO WHETHER IT WAS THE SOLE LEGAL BASIS

OR COMBINED WITH OTHER BASES

235 alone

	Decisions	Regulations	Recommendations	Directives	TOTAL
1992	9	14	4		27
1993	9	5		1	15
1994	12	12			24
Jan/Mar 1995		2			2

235 + other legal bases

	Decisions	Regulations	Recommendations	Directives	TOTAL	Other legal bases
1992	8				8	113
1993	4	3			7	51-113-128-130R-130S-203
1994	3				3	203-43 Multiple basis chosen for the Decision concluding the Uruguay Round
Jan/Feb 1995						

ANNEX IX

IMPLEMENTATION IN EU LEGISLATION OF UN SECURITY COUNCIL RESOLUTIONS ON SANCTIONS BASED ON ARTICLE 228a

Country	UN Security Council resolution	Presidency proposal for common position	Common position adopted (Procedure)	Commission proposal for Community implementing legislation	Legal base	Implementing legislation adopted (Procedure)
FRY (1)	970(95) 12.1.95	13.1.95 meeting doc.	23.1.95 ("A" item)	Text before Council considered to be formal proposal (*) Regulation	 228a	23.1.95 ("A" item)
Haiti	944(94) 29.9.94	11.10.94 BON 1525	14.10.94 Coreu written procedure	13.10.94 (*) Regulation	 228a	19.10.94 (written procedure)
FRY (1)	943(94) 23.9.94	29.9.94 meeting doc.	10.10.94 ("A" item)	10.10.94 (*) Regulation	 228a	10.10.94 ("A" item)
Bosnia (under Bosnian Serb control)	942(94) 23.9.94	29.9.94 meeting doc.	10.10.94 ("A" item)	10.10.94 (*) Regulation Regulation	 228a + 73g 228a	10.10.94 ("A" item)
FRY (1)	757(92) 30.5.92	26.5.94 meeting doc.	13.6.94 ("A" item)	24.6.93 (*) Regulation	 228a	11.7.94 ("A" item)
Haiti	917(94) 6.5.94	20.5.94 SEC 605	30.5.94 ("A" item)	19.5.94 (*) Regulation Regulation Recommendation	 228a 228a + 73g 73g	30.5.94 ("A" item)
Libya	883(93) 11.11.93	12.11.93 BRU 1290	22.11.93 ("A" item)	23.11.93 (*) Regulation Regulation	 228a 228a	29.11.93

(*) It should be noted that in certain cases, a decision by the Representatives of the governments of Member States meeting within the Council was also required for ECSC products.

(1) Federal Republic of Yugoslavia.

ACTS BASED ON ARTICLE 228a OF THE EC TREATY

Libya

Council Regulation No 3274/93 of 29 November 1993 preventing the supply of certain goods and services to Libya (OJ No L 295, 30.11.1993, p. 1)

Council Regulation No 3275/93 of 29 November 1993 prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council Resolution 883 (1993) and related resolutions

Former Yugoslavia

Council Regulation No 1733/94 of 11 July 1994 prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council Resolution 757(1992) and related resolutions (OJ No L 182, 16.7.1994)

Council Regulation No 2471/94 of 10 October 1994 introducing a further discontinuation of the economic and financial relations between the European Community and the areas of Bosnia-Herzegovina under the control of Bosnian Serb forces (OJ No L 266, 15.10.1994, p. 1)

Council Regulation No 2472/94 of 10 October 1994 suspending certain elements of the embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ No L 266, 15.10.1994, p. 8)

Council Regulation No 109/95 amending Regulation No 2472/94 suspending certain elements of the embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ No L 20, 27.1.1995, p. 1)

Haiti

Council Regulation (EC) No 1263/94 of 30 May 1994 introducing a discontinuation of certain economic and financial relations with Haiti (OJ No L 139, 2.6.1994, p. 1)

Council Regulation (EC) No 1264/94 of 30 May 1994 prohibiting the satisfying of claims by the Haitian authorities with regard to contracts and transactions the performance of which was affected by the measures imposed by or pursuant to United Nations Security Council Resolutions 917(1994), 841(1993), 873(1993) and 875(1993) (OJ No L 139, 2.6.1994, p. 4)

Council Recommendation of 30 May 1994 concerning a discontinuation of certain economic and financial relations with Haiti (OJ No L 139, 2.6.1994, p. 7)

Council Regulation (EC) No 2543/94 of 19 October 1994 repealing Regulation (EC) No 1263/94 introducing the discontinuation of certain economic and financial relations with Haiti (OJ No L 271, 21.10.1994, p. 1)

ANNEX X(a)

LIST OF COMMON POSITIONS ADOPTED BY THE COUNCIL SINCE THE ENTRY INTO FORCE OF THE TREATY ON EUROPEAN UNION (1 NOVEMBER 1993)

TITLE	DATE	DECISION No	OFFICIAL JOURNAL
1. FORMER YUGOSLAVIA			
Council Decision on the common position, defined on the basis of Article J.2 of the Treaty on European Union and concerning the prorogation of the suspension of certain trade restrictions with the Federal Republic of Yugoslavia (Serbia and Montenegro)	23.01.1995	95/140/CFSP	L 21 (28.01.95)
Council Decision on the common position defined on the basis of Article J.2 of the Treaty on European Union and concerning the reduction of economic and financial relations with those parts of the territory of the Republic of Bosnia-Herzegovina under the control of the Bosnian Serb forces	10.10.1994	94/672/CFSP	L 266 (15.10.1994)
Council Decision concerning the common position defined on the basis of Article J.2 of the Treaty on European Union and regarding the suspension of certain restrictions on trade with the Federal Republic of Yugoslavia (Serbia and Montenegro)	10.10.1994	94/673/CFSP	L 266 (15.10.1994)
Council Decision on the common position defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning prohibition of the satisfaction of the claims referred to in paragraph 9 of the UN Security Council Resolution No 757 (1992)	13.6.1994	94/366/CFSP	L 165 (1.7.1994)
2. UKRAINE			
Common position defined by the Council on the basis of Article J.2 of the Treaty on European Union on the objectives and priorities of the European Union towards Ukraine	28.11.1994	94/779/CFSP	L 313 (6.12.1994)

TITLE	DATE	DECISION No	OFFICIAL JOURNAL
3. HAITI			
Council Decision concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the termination of the reduction of economic relations with Haiti [1]	14.10.1994	94/681/CFSP	L 271 (21.10.1994)
Council Decision concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti	30.5.1994	94/315/CFSP	L 139 (2.6.1994)
4. RWANDA			
Council Decision on the common position adopted by the Council on the basis of Article J.2 of the Treaty on European Union concerning the objectives and priorities of the European Union towards Rwanda	24.10.1994	94/697/CFSP	L 283 (29.10.1994)
5. SUDAN			
Council Decision on the common position defined on the basis of Article j.2 of the Treaty on European Union concerning the imposition of AN embargo on arms, munitions and military equipment on Sudan	15.3.1994	94/165/CFSP	L 75 (17.3.1994)
6. LIBYA			
Council Decision on the common position defined on the basis of Article J.2 of the Treaty on European Union with regard to the reduction of economic relations with Libya	22.11.1993	93/614/CFSP	L 295 (30.11.1993)
7. BURUNDI			
Council Decision on the Common position defined on the basis of Article J.2 of the treaty on European Union relative to Burundi	24.03.95		L 72 (1.4.1995)

(1) Only the French text is authentic.

LIST OF JOINT ACTIONS ADOPTED BY THE COUNCIL SINCE THE ENTRY INTO FORCE OF THE TREATY ON EUROPEAN UNION (1 NOVEMBER 1993)

TITLE	DATE	DECISION No	OFFICIAL JOURNAL
1. FORMER YUGOSLAVIA			
Council Decision supplementing Decision 94/790/CFSP concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar	06.02.1995	95/23./CFSP	L 33 (13.2.1995)
Council Decision concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar	12.12.1994	94/790/CFSP	L 326 (17.12.1994)
Council Decision extending the application of Decision 93/603/CFSP concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union on support for the convoying of humanitarian aid in Bosnia and Herzegovina	12.12.1994	94/789/CFSP	L 326 (17.12.1994)
Supplementing Decision concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union on support for the convoying of humanitarian aid in Bosnia and Herzegovina	27.07.1994	94/510/CFSP	L 205 (8.8.1994))
Council Decision adapting and extending the application of Decision 93/603/CFSP concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union on support for the convoying of humanitarian aid in Bosnia and Herzegovina	16.5.1994	94/308/CFSP	L 134 (30.5.1994)
Council Decision extending the application of Decision 93/603/CFSP concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union on support for the convoying of humanitarian aid in Bosnia and Herzegovina	7.3.1994	94/158/CFSP	L 70 (12.3.1994)
Council Decision supplementing the joint action for the convoying of humanitarian aid in Bosnia-Herzegovina	20.12.1993	93/729/CFSP	L 339 (31.12.1993)
Council Decision concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union on support for the convoying of humanitarian aid in Bosnia and Herzegovina	8.11.1993	93/603/CFSP	L 286 (20.11.1993)

TITLE	DATE	DECISION No	OFFICIAL JOURNAL
2. SOUTH AFRICA			
Council Decision on a joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning support for the transition towards a democratic and multi-racial South Africa	6.12.1993	93/678/CFSP	L 316 (17.12.1993)
3. STABILITY PACT			
Council Decision on the continuation of the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the inaugural conference on the stability pact	14.6.1994	94/367/CFSP	L 165 (1.7.1994)
Council Decision concerning the joint action by the Council on the basis of Article J.3 of the Treaty on European Union on the inaugural conference on the stability pact	20.12.1993	93/728/CFSP	L 339 (31.12.1993)
4. MIDDLE EAST PEACE PROCESS			
Council Decision on a joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union, in support of the Middle East peace process	19.4.1994	94/276/CFSP	L 119 (7.5.1994)
5. NON-PROLIFERATION			
Council Decision concerning the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union regarding preparation for the 1995 Conference of the States parties to the Treaty on the Non-Proliferation of Nuclear Weapons	25.7.1994	94/509/CFSP	L 205 (8.8.1994)
6. RUSSIAN PARLIAMENTARY ELECTIONS			
Council Decision concerning the joint action decided on by the Council on the basis of Article J.3 of the Treaty on European Union concerning the dispatch of a team of observers for the Parliamentary elections in the Russian Federation	9.11.1993	93/604/CFSP	L 286 (20.11.1993)
7. DUAL-USE GOODS			
Council Decision on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods	19.12.94	94/942/CFSP	L 367 (31.12.94)

1993 CFSP STATEMENTS – after entry into force of TEU (1.11.93)

Statement No	Subject	date
102	ECOMSA BRIEF	4.11.93
103	NAGORNO-KARABAKH	9.11.93
104	KEMPTON PARK NEGOTIATIONS	18.11.93
105	CONGO	18.11.93
106	NIGERIA	18.11.93
107	JUDICIAL PROCESS AT TIRASPOL	25.11.93
108	YEMEN	25.11.93
109	PHILIPPINES	26.11.93
110	INDIA AND PAKISTAN	30.11.93
111	GEORGIA	30.11.93
112	HUMAN RIGHTS	11.12.93
113	FORMER YUGOSLAVIA	11.12.93
114	RUSSIAN ELECTIONS	16.12.93
115	INDIA	20.12.93
116	KAZAKHSTAN	22.12.93
TOTAL : 15		

1994 CFSP STATEMENTS

Statement No	Subject	date
1	CONGO	12.1.94
2	AZERBAIJAN	17.1.94
3	USA/RUSSIA/UKRAINE AGREEMENT	18.1.94
4	BOSNIA AND HERZEGOVINA	21.1.94
5	YEMEN	31.1.94
6	LESOTHO	3.2.94
7	AFGHANISTAN	7.2.94
8	RUSSIA	7.2.94
9	UKRAINE	7.2.94
10	SARAJEVO	7.2.94
11	BURUNDI	11.2.94
12	APPOINTMENT OF AYALA LASSO TO THE UN	21.2.94
13	SUDAN	21.2.94
14	YEMEN	24.2.94
15	HEBRON	26.2.94
16	NIGERIA AND CAMEROON	28.2.94
17	TOGO	28.2.94
18	NAMIBIA	2.3.94
19	SOUTH AFRICA	2.3.94
20	SKRUNDA	3.3.94
21	SOMALIA	4.3.94
22	MIDDLE EAST	8.3.94
23	ACCESSION OF KAZAKHSTAN TO THE NPT	9.3.94
24	AFGHANISTAN	17.3.94
25	BALTIC COUNTRIES	18.3.94
26	LIBERIA	22.3.94
27	TOGO	23.3.94
28	MOLDOVA	24.3.94
29	BURUNDI	25.3.94
30	FRIENDSHIP TREATY WITH LITHUANIA	30.3.94

31	TURKEY - HUMAN RIGHTS	31.3.94
32	NORTH KOREA NUCLEAR ISSUE	31.3.94
33	SOUTH AFRICA	7.4.94
34	ISRAEL	8.4.94
35	RWANDA AND BURUNDI	12.4.94
36	RWANDA	18.4.94
37	BOSNIA	18.4.94
38	UKRAINE	19.4.94
39	GEORGIA	22.4.94
40	SOUTH AFRICA	22.4.94
41	RWANDA	25.4.94
42	UGANDA	25.4.94
43	ESTONIA	3.5.94
44	GAZA-JERICHO	4.5.94
45	RWANDA	6.5.94
46	SOUTH AFRICA	6.5.94
47	AGREEMENTS BETWEEN LATVIA AND RUSSIA	10.5.94
48	YEMEN	6.5.94
49	GUATEMALA	11.5.94
50	RWANDA	16.5.94
51	TAJIKISTAN	17.5.94
52	CRIMEA	22.5.94
53	SOUTH AFRICA	27.5.94
54	MALAWI	27.5.94
55	HAITI	27.5.94
56	CROATIAN/SERBIAN/MOSLEM AGREEMENT	10.6.94
57	MOSTAR	15.6.94
58	LATVIAN CITIZENSHIP	21.6.94
59	ETHIOPIA	24.6.94
60	NIGERIA - ARREST OF MOSHAAD ABIOLA	30.6.94
61	ANGOLA	30.6.94
62	GUATEMALA	7.7.94

63	VISIT OF ARAFAT TO GAZA AND JERICHO	7.7.94
64	FORMER YUGOSLAVIA	18.7.94
65	EAST TIMOR	18.7.94
66	YEMEN	19.7.94
67 - CANCELLED		
68	RWANDA	22.7.94
69	GUINEA-BISSAU – ELECTIONS	22.7.94
70	GAMBIA	25.7.94
71	HUSSEIN/RABIN MEETING	26.7.94
72	BURUNDI	27.7.94
73	ZAIRE	27.7.94
74	TAJIKISTAN	28.7.94
75	RUSSO-BALTIC RELATIONS	28.7.94
76	ACCESSION OF KYRGYZSTAN TO THE NPT	29.7.94
77	NAGORNO-KARABAKH	5.8.94
78	LESOTHO	24.8.94
79	NIGERIA	25.8.94
80	WITHDRAWAL FROM LATVIA AND ESTONIA OF TROOPS FROM THE FORMER USSR	31.8.94
81	NAGORNO-KARABAKH	15.9.94
82	LESOTHO	16.9.94
83	HAITI	19.9.94
84	ALGERIA	26.9.94
85	BURUNDI	5.10.94
86	IRAQ	11.10.94
87	GAMBIA	13.10.94
88	HAITI	15.10.94
89	ISRAEL	20.10.94
90	JORDAN/ISRAEL	26.10.94
91	MOZAMBIQUE	27.10.94
92	NIGER	27.10.94
93	SUDAN	31.10.94
94	SÃO TOME AND PRINCIPE	3.11.94

95	GAMBIA	3.11.94
96	ANGOLA	3.11.94
97	MOZAMBIQUE	21.11.94
98	CHILE-ARGENTINA CONCERNING LAGUNA DEL DESIERTO	12.12.94
99	INDONESIA – SENTENCING OF MUCHTAR PAKPAHAN	22.11.94
100	ANGOLA – PEACE	22.11.94
101	MEETING OF APEC LEADERS – BOGOR, 15.11.94	23.11.94
102	MOLDOVA	29.11.94
103	ACCESSION OF UKRAINE TO THE NPT – POSITION OF UKRAINIAN PARLIAMENT	30.11.94
104	SRI LANKA	29.11.94
105	MOLDAVA	28.11.94
106	RWANDA	28.11.91
107	UKRAINE – ACCESSION TO THE NPT	8.12.94
108	TURKEY – SENTENCING OF 8 FORMER MEMBERS OF THE TURKISH NATIONAL ASSEMBLY	9.12.94
109	FORMER YUGOSLAVIA	10.12.94
110	NAMIBIA – ELECTIONS	14.12.94
111	NEGOTIATIONS BETWEEN LITHUANIA AND RUSSIA – MILITARY TRANSIT TO AND FROM KALININGRAD	22.12.94
TOTAL : 110		

Information supplied by the Press Office on 31 March 1995.

CFSP STATEMENTS MADE UNDER THE FRENCH PRESIDENCY

REFERENCE	DATE	SUBJECT
P.001 (4060/95 Presse 001)	05/01/95	Declaration by the Presidency on behalf of the European Union on the situation in the Palestinian Territories
P.002 (4215/95 Presse 011)	17/01/95	Declaration by the Presidency on behalf of the European Union concerning Chechnya
P.003 (4377/95 Presse 016)	20/01/95	Declaration by the Presidency on behalf of the European Union concerning Somalia
P.004 (4380/95 Presse 019)	23/01/95	Declaration by the European Union on the attack in Netanya
P.005 (4382/95 Presse 021)	23/01/95	Declaration by the European Union on Algeria
P.006 (4384/95 Presse 023)	23/01/95	Statement by the European Union on the former Yugoslavia
P.007 (4385/95 Presse 024)	23/01/95	Declaration by the European Union on Chechnya
P.008 (4386/95 Presse 025)	30/01/95	Statement by the Presidency on behalf of the European Union on accession of Algeria to the Treaty on the Non-Proliferation of Nuclear Weapons
P.009 (4545/95 Presse 026)	30/01/95	Declaration by the Presidency on behalf of the European Union on the situation in Sri Lanka
P.010 (4546/95 Presse 027)	30/01/95	Declaration by the Presidency on behalf of the European Union on Afghanistan
P.011 (4549/95 Presse 030)	01/02/95	Declaration by the Presidency on behalf of the European Union on the Frontier Conflict between Ecuador and Peru
P.012 (4550/95 Presse 031)	01/02/95	Declaration by the Presidency on behalf of the European Union on the attack in Algiers on 30 January
P.013 (4552/95 Presse 033)	06/02/95	Declaration by the European Union following the Cairo Summit
P.014 (4553/95 Presse 034)	06/02/95	Declaration by the European Union on former Yugoslavia
P.015 (4554/95 Presse 035)	06/02/95	Declaration by the European Union on Chechnya
P.016 (4717/95 Presse 037)	07/02/95	Declaration by the Presidency on behalf of the European Union on the legislative elections in Niger
P.017 (4720/95 Presse 040)	13/02/95	Declaration by the Presidency on behalf of the European Union on the situation of the trade union leader, Mr Pakpahan

P.018 (4721/95 Presse 041)	13/02/95	Declaration by the Presidency on behalf of the European Union on the Sixth Anniversary of the Iranian Fatwa against **Salman Rushdie**
P.019 (4723/95 Presse 043)	14/02/95	Declaration by the Presidency on behalf of the European Union on **Sierra Leone**
P.020 (4724/95 Presse 044)	15/02/95	Declaration by the Presidency on behalf of the European Union on the release of members of the **OMONIA** movement
P.021 (4947/95 Presse 050)	21/02/95	Declaration by the Presidency on behalf of the European Union on **Angola**
..... (4948/95 Presse 051) (*)	22/02/95	Statement by the Presidency on behalf of the European Union on the occasion of the publication of the Anglo-Irish framework document on **Northern Ireland**
P.022 (4949/95 Presse 052)	23/02/95	Statement by the Presidency on behalf of the European Union on the accession of Argentina to the Treaty on the Non-Proliferation of Nuclear Weapons
P.023 (4952/95 Presse 055)	28/02/95	Statement by the Presidency on behalf of the European Union concerning **Pakistan**
P.024 (5215/95 Presse 060)	02/03/95	Declaration by the Presidency on behalf of the European Union regarding the situation in the **South China Sea**
P.025 (5218/95 Presse 063)	03/03/95	Declaration by the Presidency on behalf of the European Union concerning **North Korea**
P.026 (5426/95 Presse 072)	13/03/95	Declaration by the Presidency on behalf of the European Union concerning the situation in **Burma**
P.027 (5430/95 Presse 076)	19/03/95	Declaration by the Presidency on behalf of the European Union on the Union's objectives and priorities regarding **Burundi**
P.028 (5740/95 Presse 079)	20/03/95	Statement by the President on behalf of the European Union on the constitutional situation in **Kazakhstan**
P.029 (5746/95 Presse 085)	21/03/95	Declaration by the Presidency on behalf of the European Union concerning the **Gambia**
P.030 (5747/95 Presse 086)	20/03/95	Declaration by the Presidency on behalf of the European Union regarding **Sri Lanka**
P.031 (5956/95 Presse 089)	22/03/95	Declaration by the Presidency on behalf of the European Union concerning **Nigeria**

Information supplied by the Press Office on 31 March 1995.

(*) This is not a CFSP statement.

POLITICAL DIALOGUE COMMITMENTS
LIST OF MEETINGS HELD UP TO 31.03.1995

LEVEL OF DIALOGUE	COUNTRY	FORMAT	FREQUENCY	DATE
HEADS OF STATE	CANADA	PRES + CION	REGULARLY	06.07.94
	CYPRUS	–	NOT SPECIFIED	23.06.94
	JAPAN	–	ONCE A YEAR	06.07.93
	RUSSIA	–	TWICE A YEAR	11.11.93
	UNITED STATES	PRES + CION	ONCE PER PRESIDENCY	11.01.94 12.07.94
MINISTERS	ALBANIA	NOT SPECIFIED	REGULARLY	14.02.94 (PRES + CION)
	AUSTRALIA	TROIKA OR PRES + CION	NOT SPECIFIED	23.09.93 17.01.94 (PRES + CION)
	ASEAN	COUNCIL TROIKA + CION	TWICE A YEAR ONCE A YEAR	23.09.93 26.07.94
	BALTIC STATES	NOT SPECIFIED	REGULARLY	17.05.94 28.09.94 (TROIKA + CION)
	EEA	NOT SPECIFIED	TWICE A YEAR	06.03.95
	CENTRAL AMERICA	COUNCIL SAN JOSE MINISTERIAL MEETING	IN MARGINS OF UNGA ONCE A YEAR	29.09.94 26.03.94
	CHINA	TROIKA + CION	IN MARGINS OF UNGA	26.09.94
	CYPRUS	PRES + CION ASSOCIATION COUNCIL	NOT SPECIFIED ONCE A YEAR	15.12.94 18.04.94
	GULF CO-OPERATION COUNCIL	CO-OPERATION COUNCIL COUNCIL	ONCE A YEAR IN MARGINS OF UNGA	07.05.94 28.09.94
	INDIA	TROIKA + CION	NOT SPECIFIED	08.02.94
	JAPAN	TROIKA + CION	ONCE PER PRESIDENCY	28.09.94
	LEBANON	MINISTERS (16 + 1) CO-OPERATION COUNCIL	NOT SPECIFIED	06.03.95

LEVEL OF DIALOGUE	COUNTRY	FORMAT	FREQUENCY	DATE
	MALTA	PRES + CION	WHENEVER NECESSARY	07.04.94
	NON ALIGNED	TROIKA + CION	ONCE A YEAR	28.09.94
	RIO GROUP	MINISTERIAL CONFERENCE COUNCIL	ONCE A YEAR IN MARGINS OF UNGA	22.04.94 27.09.94
	RUSSIA	TROIKA + CION	AD HOC	18.02.94 29.09.94
	TURKEY	ASSOCIATION COUNCIL	ONCE A YEAR	19.12.94
	UKRAINE	TROIKA + CION	AD HOC	10.03.94 04.10.94
	UNITED STATES	COUNCIL PRES + CION	ONCE PER PRESIDENCY AD HOC	29.09.94 31.01.94
	MULTILATERAL CCE	COUNCIL	ONCE PER PRESIDENCY	19.04.94 31.10.94
POLITICAL DIRECTORS	BALTIC STATES	PRES + CION	REGULARLY	06.09.94 (TROIKA + CION)
	CANADA	PRES + CION	ONCE PER PRESIDENCY	22.11.94 (TROIKA + CION)
	JAPAN	TROIKA + CION	ONCE PER PRESIDENCY	03.12.93 18.04.94 23.11.94
	PAKISTAN	TROIKA + CION	NOT SPECIFIED	07.11.94
	RUSSIA	TROIKA + CION	TWICE A YEAR	04.11.93 06.06.94
	TURKEY	TROIKA + CION	NOT SPECIFIED	12.07.94
	UNITED STATES	TROIKA + CION	ONCE PER PRESIDENCY	18.05.94 21.11.94 20.01.95
	MULTILATERAL CCE	15 + CION ([1])	ONCE PER PRESIDENCY	03.06.94 25.10.94

POLITICAL DIALOGUE COMMITMENTS (AS STANDING ON 31.12.94)

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
ALBANIA						
HOS	....	....	....	....	....	
MIN	NOT SPECIFIED	REGULAR	....	PR + CION 14.2.94	....	
PD	PRES + CION	REGULAR	....	....	....	
BASIS	JOINT DECLARATION ISSUED AT SIGNATURE OF COOPERATION AGREEMENT 11.05.92					
AUSTRALIA						
HOS	....	....	....	....	....	
MIN	TROIKA OR PRES + CION	NOT SPECIFIED	PR + CION 23.9.93	PR + CION 17.1.94	....	
PD	PRES + CION	ONCE PER PRESIDENCY	....	....	....	
BASIS	COUNCIL DECISION OF 7.5.90					
ASEAN						
HOS	....	....	....	....	....	
MIN	COUNCIL TR + CION (ASEAN PMC)	EVERY 2 YEARS ONCE PER YEAR	.... 26.7.93	....	23.09.94 26.07.94	
ASEAN REG.FORUM	TR + CION	BACK TO BACK ASEAN PMC	....	....	25.07.94	
PD/SEN.OFFICIALS	TR + CION (ASEAN PMC SOM)	ONCE PER YEAR	20.5.93	....	....	
BASIS	EC/ASEAN MINISTERIAL DECISIONS OF NOVEMBER 1978 AND OCTOBER 1992 PROPOSAL FOR ARF MEETING WAS MADE AT ASEAN PMC OF 26.07.93 PROPOSAL FOR ASEAN PMC SOM WAS MADE ON 08.01.93					
BALTICS						
HOS	....	....	....	....	....	
MIN	NOT SPECIFIED	REGULAR	....	TR + CION 17.05.94	TR + CION 28.09.94	
PD	PRESIDENCY + CION	REGULAR	....	....	TR + CION 06.09.94	
BASIS	JOINT DECLARATION ISSUED AT SIGNATURE OF COOPERATION AGREEMENT 11.05.92					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
CANADA						
HOS	PRES + CION	REGULARLY	....	....	06.07.94	
MIN	PRES + CION	ONCE PER PRESIDENCY	....	....	....	30.5.95
PD	PRES + CION	ONCE PER PRESIDENCY	....	....	22.11.94 TR + CION	14.03.95
BASIS	DECLARATION ON EU/CANADA RELATIONS (22.11.90)					
CENTRAL AMERICA						
HOS	....	....	....	....	....	
MIN	COUNCIL SAN JOSE MINISTERIAL	IN MARGIN OF UNGA ONCE PER YEAR	30.9.93	.... 28.3.94	29.9.94	.... 23.02.95
PD	....	....	....	....	....	
BASIS	SAN JOSE MINISTERIAL: FINAL ACT LUXEMBOURG CONF. 12.11.85					
CHINA						
HOS	....	....	....	....	....	
MIN	TROIKA + CION TROIKA + CION HOM BEIJING + CH.M.F.A PR + CH AMB TO PRESIDENCY	IN MARGIN OF UNGA IRREGULAR ONCE PER PRESIDENCY ONCE PER PRESIDENCY	27.9.93	....	26.09.94	
PD/S.OFF.	TROIKA + CION	IRREGULAR	....	....		
BASIS	EXCHANGE OF LETTERS BETWEEN EU AND CHINA IN MAY 1994					
CYPRUS						
HOS	PRES + CION	NOT SPECIFIED	....	PR + CO 23.6.94	....	
MIN	PRES + CION ASSOCIATION COUNCIL	NOT SPECIFIED ONCE PER YEAR	....	.... 18.4.94	15.12.94	
PD	PRES + CION	SEMI-ANNUAL	....	....	....	
BASIS	COUNCIL DECISION 18.07.1988 + DECISION ASSOCIATION COUNCIL 21.12.92					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
GULF COOPERATION COUNCIL						
HOS	....	....	....	....	....	
MIN	COOPERATION COUNCIL COUNCIL	ONCE PER YEAR IN THE MARGIN OF UNGA	.... 30.9.93	7.5.94	.... 28.9.94	29.5.95 ....
PD	....	....	....	....	....	
BASIS						
INDIA						
HOS	....	....	....	....	....	
MIN	TROIKA + CION	NOT SPECIFIED	....	8.2.94	....	
PD	....	....	....	....	....	
BASIS	EU/INDIA POLITICAL STATEMENT 20.12.93					
JAPAN						
HOS	PRES + CION	ONCE PER YEAR	6.7.93	....	....	
MIN	TROIKA + CION	ONCE PER PRESIDENCY	29.9.93 UNGA	....	28.9.94 UNGA	24.5.95
PD	TROIKA + CION	ONCE PER PRESIDENCY	3.12.93	18.4.94	23.11.94	30.6.95
BASIS	EU/JAPAN JOINT DECLARATION 18.07.91					
MALTA						
HOS	....	....	....	....	....	....
MIN	ASSOCIATION COUNCIL PRES + CION	ONCE PER YEAR AS NECESSARY	....	.... 7.4.94	....	
PD	PRES + CION	ONCE PER PRESIDENCY	....	....	....	
BASIS	EXCHANGE OF LETTERS 29.04.88					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
NEW ZEALAND						
HOS	....	....	....	....	....	
MIN	PRES + CION TROIKA + CION	AS NECESSARY ASEAN PMC	.... 27.7.93	....	....	
PD	PRES + CION	ONCE PER PRESIDENCY	....	....	....	
BASIS	DECISION OF POLITICAL COMMITTEE 06.09.90					
NON-ALIGNED						
HOS	....	....	....	....	....	
MIN	TROIKA + CION	ONCE PER YEAR (UNGA)	29.9.93	....	28.9.94	
PD	....	....	....	....	....	
BASIS	DECISION BY POLITICAL COMMITTEE 05.09.90					
PAKISTAN						
HOS	....	....	....	....	....	
MIN	....	....	....	....	....	
PD/DEPUTY PD	TROIKA + CION	NOT SPECIFIED	4.12.94	....	7.11.94	
BASIS	DECISION OF POLITICAL COMMITTEE 12.02.92					
RIO GROUP						
HOS	....	....	....	....	....	
MIN	MINISTERIAL CONFERENCE COUNCIL	ONCE PER YEAR IN THE MARGIN OF UNGA	.... 29.9.93	22.4.94	.... 27.9.94	17.3.95 ....
PD	....	....	....	....	....	
BASIS	DECLARATION OF 20.12.90					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
RUSSIA						
HOS	PRES + CION	TWICE PER YEAR	11.11.93	....	....	
MIN	COOPERATION COUNCIL TROIKA + CION	ONCE PER YEAR AD HOC	.... 29.9.93 (12 + 6) UNGA	.... 18.2.94	.... 29.9.94 (16 + 6) UNGA	.... 9.3.95
PD/SEN.OFF	TROIKA + CION	TWICE PER YEAR	4.11.93	6 6.94		30.1.95
BASIS	PARTNERSHIP AND COOPERATION AGREEMENT 24.06.94					
SOUTH KOREA						
HOS	....	....	....	....	....	
MIN	PRES + CION TROIKA + CION	AD HOC MARGIN ASEAN PMC	.... 28.7.93	....	....	
PD	PRES + CION	REGULARLY	....	....	....	
BASIS	DECISION OF POLITICAL COMMITTEE 06.06.89					
SRI LANKA						
HOS	....	....	....	....	....	
MIN	TROIKA + CION	NOT SPECIFIED	....	....	....	
PD/SEN.OFF	TROIKA + CION	NOT SPECIFIED	....	....	....	
BASIS	EU/SRI LANKA POLITICAL STATEMENT 16.05.94					
TURKEY						
HOS	PRES + CION	AS NECESSARY	....	....	....	
MIN	ASSOCIATION COUNCIL TROIKA + CION	ONCE PER YEAR SEMESTER WHEN NO ASS.COUNCIL	8.11.93	....	19.12.94	.... 23.3.95
PD	TROIKA + CION	NOT SPECIFIED	15.9.93	....	12.7.94	27.2.95
BASIS	ASSOCIATION COUNCIL DECISION 09.11.92					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
UKRAINE						
HOS	NOT SPECIFIED	AS NECESSARY	....	....		
MIN	COOPERATION COUNCIL TROIKA + CION	ONCE PER YEAR AD HOC	....	.... 10.3.94	.... 4.10.94 16 + CION	.... 20.6.95
PD/SENIOR OFFICIALS	NOT SPECIFIED	REGULARLY	....	....		5.1.95 TROIKA
BASIS	EU/UKRAINE COOPERATION AGREEMENT 14.06.94					
USA						
HOS	PRES + CION	ONCE PER PRESIDENCY	....	11.1.94	12.7.94	
MIN	COUNCIL PRES + CION	ONCE PER PRESIDENCY AD HOC	28.9.93 UNGA 16.7.93	.... 31.1.94	29.9.94 UNGA	30.5.95 26.1.95
PD	TROIKA + CION	ONCE PER PRESIDENCY	28.10.93	18.5.94	21.11.94	20.1.95
BASIS	EU/US DECLARATION 23.11.90					

EEA						
HOS	PRES COUNCIL + PRES CION	NOT SPECIFIED				6.3.95
MIN		TWICE PER YEAR				
PD		NOT SPECIFIED				
BASIS	EXCHANGE OF LETTERS TO BE FINALIZED					

LEBANON						
MIN	16 + 1	NOT SPECIFIED				6.3.95
PD						
BASIS	COOPERATION COUNCIL					

COUNTRY	FORMAT	FREQUENCY	B	GR	GER	FR
CCE						
HOS (MULTILATERAL)	COUNCIL PRES + CION	NOT SPECIFIED ONCE PER YEAR	....	....	....	
HOS (BILATERAL) HUNGARY	NOT SPECIFIED (IN FRAMEWORK OF ASSOCIATION COUNCIL)	NOT SPECIFIED	....	....	....	
HOS (BILATERAL) BU + PO + RO + SL + CZ	PRES + CION (IN THE FRAMEWORK OF ASSOCIATION COUNCIL)	AS NECESSARY	....	....	....	
MIN (MULTILATERAL)	COUNCIL TROIKA + CION	ONCE PER PRESIDENCY AS NECESSARY	....	19.4.94	31.10.94	10.4.95 ....
MIN (BILATERAL)	IN THE FRAMEWORK OF ASSOCIATION COUNCIL)	ONCE PER YEAR	....	....	....	
PD (MULTILATERAL)	15 + CION (*) TROIKA + CION	ONCE PER PRESIDENCY AS NECESSARY	....	3.6.94	25.10.94	3.4.95 ....
PD (BILATERAL)	PRES + CION	NOT SPECIFIED	....	....	....	
BASIS	COPENHAGEN SUMMIT 22.06.93 COUNCIL DECISION 08.03.94					

(*) PREFERABLY IN THE RUN-UP TO EACH REGULAR EUROPEAN COUNCIL.

In principle, the EU holds Association or Cooperation Councils once a year with the following countries: Egypt, Israel, lebanon, Morocco, Syria and Tunisia (although there has never been a Cooperation Council with Lebanon and the first Cooperation Council wit Syria took place on 28.11.94). In the framework of these councils, political dialogue issues are usually referred to by both parties in their respective "positions" and are also discussed informally over dinner.
Furthermore, political dialogue meetings are held, in the margin of UNGA, with Egypt and Israel.

(a) Egypt : Troika + Cion 27.09.94
(b) Israel : Troika + Cion 27.09.93 and 29.09.94 (meetings at Political Directors' level have also been held on 13.07.93 and 08.06.94).

JUSTICE AND HOME AFFAIRS

(a) TABLE OF TEXTS ADOPTED

Joint actions

SUBJECT	REFERENCE
Decision 94-795/JAI on a joint action adopted by the Council on the basis of Article K.3(2)(b) of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State	Publication OJ No L 327, 19.12.1994
Joint action concerning the Europol Drugs Unit on the basis of Article K.3(2)(b) of the Treaty on European Union	Publication OJ No L 62, 20.3.1995, p. 1

Convention

SUBJECT	REFERENCE
Convention on simplified extradition procedure between the Member States of the European Union	Publication OJ No C [illegible] 1995

Resolutions

SUBJECT	REFERENCE
Resolution on the interception of telecommunications	Press release 10550/93 (Presse 209)
Resolution on fraud on an international scale – protection of the financial interests of the European Union	Press release 10550/93 (Presse 209)
Resolution on limitations on admission of third-country nationals to the Member States for employment	Press release 7760/94 (Presse 128-G)
Resolution relating to the limitations on the admission of third-country nationals to the Member States for the purpose of pursuing activities as self-employed persons	Press release 11321/94 (Presse 252-G)
Resolution on the admission of third-country nationals to the territory of the Member States of the EU for study purposes	Press release 11321/94 (Presse 252-G)
Resolution on the legal protection of the financial interests of the Communities	Publication in OJ No C 355, 14.12.1994

Recommendations

SUBJECT	REFERENCE
Fight against money laundering	Press release 10550/93 (Presse 209)
Recommendation on the responsibility of organizers of sporting events	Press release 10550/93 (Presse 209)
Recommendation on environmental crime	Press release 10550/93 (Presse 209)
Recommendation on the organization of a training module on the operational analysis of crime	Press release 10550/93 (Presse 209)
Recommendation for the exchange of information on the occasion of major events or meetings	Press release 11321/94 (Presse 252-G)
Recommendation concerning the adoption of a standard travel document for the expulsion of third-country nationals	Press release 11321/94 (Presse 252-G)
Council Recommendation on a specimen bilateral re-admission agreement between an EU Member State and a third country	Press release 11321/94 (Presse 252-G)
Council Recommendations (5) on the fight against trade in human beings for the purposes of prostitution	Press release 10550/93 (Presse 209-G)

Decisions

SUBJECT	REFERENCE
Forwarding to the European Parliament of documents on international organized crime – Recommendations to the Council and report of the ad hoc working party	Press release 10550/93 (Presse 209-G)
EDU/Europol Appointment of Mr STORBECK as coordinator of the Europol Drugs Unit, extension of the term of office of Mr BRUGGEMANN as caretaker deputy coordinator until the end of 1994	Press release 7760/94 (Presse 128-G)
EDU/EUROPOL staff Appointment from 1.1.1995 for three years or until the entry into force of the Convention of two assistant coordinators and two members of the Steering Committee	Referred to in press release 11321/94 (Presse 252-G)

Statements

SUBJECT	REFERENCE
Financing of terrorism	Press release 10550/93 (Presse 209)
Statement on extradition	Press release 10550/93 (Presse 209)

Conclusions

SUBJECT	REFERENCE
Conclusions on racism and xenophobia	Press release 10550/93 (Presse 209)
Conclusions on international organized crime	Official communication to the EP
Conclusions on the application of Article K.9 of the TEU to asylum policy	Press release 7760/94 (Presse 128)
Text on evidence in the context of the Dublin Convention	Press release 7760/94 (Press 128-G)
Form of laissez-passer for the transfer of an asylum applicant from one Member State to another	Press release 7760/94 (Presse 128-G)
Procedure for drawing up joint reports on the situation in third countries	Press release 7760/94 (Presse 128-G)
CIREA – Distribution and confidentiality of joint reports on the situation in certain third countries	Press release 7760/94 (Presse 128-G)
Standard form for determining the State responsible for examining an application for asylum	Press release 7760/94 (Presse 128-G)
Conclusions on the Commission communication on immigration and asylum	Press release 7760/94 (Presse 128-G)
Conclusions on conditions for the readmission of persons who are illegally resident in a Member State but who hold a residence permit for another Member State (Article 8(2) of the draft External Frontiers Convention)	Press release 10314/94 (Presse 219-G)
Enlarged and strengthened relations with third countries, in particular the countries of Central and Eastern Europe – exchanges of information in the area of international sports events	Press release 11321/94 (Presse 252-G)
Conclusions of the EU Council on the operating procedures and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI)	Official communication to the EP Press release 11321/94 (Presse 252)
Conclusions on the implementation of Article K.5 of the TEU: – expression of common approaches in international organizations and conferences	Press release 11321/94 (Presse 252-G)

SUBJECT	REFERENCE
Conclusions concerning a contribution to the development of a strategic plan of the Union to combat fraud in the internal market	Press release 11321/94 (Presse 252-G)
Conclusions of the JHA Council on relations with third countries in the JHA field	Press release 11321/94 (Presse 252-G)
Racism and xenophobia. Adoption of the contribution of the JHA Council	adopted on 10.3.1995

Other

SUBJECT	REFERENCE
1994 programme of joint surveillance operations on air and sea traffic	Press release 5044/94 (Presse 24-G)
Guidelines for joint reports on third countries	Press release 7760/94 (Presse 128-G)
Second report on CIREA's activities	Press release 7760/94 (Presse 128-G)
List of honorary consuls already empowered to issue visas who, as a transitional measure, will be empowered to issue uniform visas (viz. certain honorary consuls of Denmark and the Netherlands who are to qualify for this exemption from the rule precluding honorary consuls from having power to issue uniform visas)	Press release 7760/94 (Presse 128-G)
Assessment of the terrorist threat; document relating to the internal and external threat to Member States of the Union	Press release 7760/94 (Presse 128-G)
Interim report to the Council on money laundering	Press release 7760/94 (Presse 128-G)
Guidelines for the training of instructors	Press release 11321/94 (Presse 252-G)
European Council report on the implementation of the action plan in the field of Justice and Home Affairs in December 1993	Press release 11321/94 (Presse 252-G)
EDU/EUROPOL activities report (1.1.1994/31.12.1994)	Press release 5423/94 (Presse 69-G)
EDU/EUROPOL work programme (January to June 1995)	Press release 5423/94 (Presse 69-G)
Strategy to combat drugs	Press release 5423/94 (Presse 69-G)
Report on organized crime in the European Union in 1993	Press release 5423/94 (Presse 69-G)
Customs strategy at external frontiers	Press release 5423/94 (Presse 69-G)

DRAFT CONVENTIONS UNDER EXAMINATION

1. Draft Convention on the crossing of the external frontiers

2. Draft Convention setting up a European Information System (EIS)

3. Draft Convention on the establishment of Europol

4. Draft Convention on the uses of information technology for customs purposes (CIS)

5. Draft Convention on the protection of the Communities' financial interests

6. Draft Convention on extradition between the Member States of the European Union

7. Draft Agreement between the Member States of the European Union on the enforcement of driving disqualifications

8. Draft Convention on scope, jurisdiction and the enforcement of judgements in matrimonial matters (Brussels Convention II)

9. Draft Convention on the service in the States of the European Union of Judicial and Extrajudicial Documents in Civil or Commercial Matters

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

B) COUNCIL OF THE UNION

DRAFT MANDATE FOR THE

1996 INTERGOVERNMENTAL CONFERENCE

OF 16 JANUARY 1995

Proposal for amendment of the Treaties
on which the European Union is founded

It is proposed to convene a conference of representatives of the governments of the Member States under Article N(1) of the Treaty on European Union.

In accordance with the objectives set out in Articles A and B of the Treaty on European Union, the intergovernmental conference is to examine those provisions of the Treaty for which revision is provided. The Conference will also be examining certain topics mentioned in the conclusions of the European Councils meeting in Brussels (10 and 11 December 1993) and Corfu (24 and 25 June 1994), in the Ioannina agreement and in certain interinstitutional texts.

The intergovernmental conference will have to examine the improvements and amendments which need to be made to the Treaties on which the European Union is founded in order to bring the Union into line with today's realities and tomorrow's requirements, bearing in mind, in accordance with the conclusions of the European Council meeting in Madrid on 15 and 16 December 1995, the outcome of the Reflection Group's proceedings and the following objectives:

- bringing Europe closer to its citizens;
- enabling the Union to function better and preparing it for enlargement;
- endowing the Union with a greater capacity for external action.

EUROPEAN COUNCIL

AND

COUNCIL OF THE UNION

C) REFLECTION GROUP

REPORT OF 5 DECEMBER 1995

INDEX

FIRST PART:

A STRATEGY FOR EUROPE

FIRST PART: A STRATEGY FOR EUROPE

For six months, the members of the Reflection Group have been working on the European Council mandate to pave the way for the revision of the Treaty at the 1996 Conference and any other improvements in the Union's operation, in a spirit of openness and democracy.

We feel it has been our task not only to establish an annotated agenda for the Conference but also to set in motion a process of public discussion and explanation regarding the thrust of the changes to be made.

THE CHALLENGE

Men and women of Europe today, more than ever, feel the need for a common project. And yet, for a growing number of Europeans, the rationale for Community integration is not self-evident. This paradox is a first challenge.

When the European Communities were established some forty years ago, the need for a common design was clear because of the awareness of Europe's failure over the first half of this century.

Now, almost half a century later, the successive enlargements of the Union, the expansion of its tasks, the very complexity of its nature and the magnitude of the problems of our times, make it very difficult to grasp the true significance of, and the continuing need for, European integration.

Let us accept that complexity is the price that Europe pays to protect our plural identity. But we firmly believe that this creation of Europe's political ingenuity, which cannot take the place of but is now an inseparable counterpart to the Union's Member States, from which its main political legitimacy flows, has been making an invaluable contribution of its own: peace and prosperity based on a definition of common interests and action that is the result not of power politics but of a common body of law agreed by all.

Today Europe has changed, partly because of the Union' success. All those European nations rediscovering their freedom wish to join, or to cooperate more closely with, the European Union. Yet, in Western Europe there is a growing sense of public disaffection despite the Union's contribution to an unprecedented period of peace and prosperity.

We therefore need to explain clearly to our citizens why the Union, which is so attractive to others in Europe, remains necessary for us too.

One reason is that the world outside Europe has also changed. Goods, capital and services nowadays flow globally in an increasingly competitive market. Prices are set worldwide. The prosperity of the Europe of Today and Tomorrow depends on its ability to succeed in the global marketplace.

The end of the cold war may have increased the overall security of Europe. But it has also brought greater instability in Europe.

Furthermore, high levels of unemployment, external migratory pressures, increasing ecological imbalances and the growth of international organised crime have stimulated a public demand for greater security that cannot be satisfied by Member States acting alone.

In an increasingly interdependent world, that reality poses new challenges and opens up new opportunities for the Union.

THE RESPONSE

However, we are not starting from scratch. Over the last five years, Europe has adjusted successfully to changing times. In 1990, the Community welcomed in the 17 million Germans who had been living on the other side of the Berlin Wall.

The Maastricht Treaty succeeds in mapping out the path of adjustment by the Community to changing times: it establishes a European Union closer to its citizens, setting out the principle of subsidiarity; it establishes the path towards a single currency and puts forward a strategy of economic integration based on price stability that strengthens competitiveness and makes for growth in our economy. It reinforces social and economic cohesion and provides for high standards of environmental protection. It opens the way for a common foreign and security policy and attempts to bring about an area of freedom and of public security.

Since then, in very difficult economic circumstances, the European Union has been able to take timely decisions on progress in line with its new needs: it has agreed to the outcome of the Uruguay Round, it has managed to reach agreement on the Union's finances up to 1999 and it has been enlarged to bring in three new members.

Yet that is not enough. European Heads of State or Government have already identified the steps necessary to develop Europe's strategy for these changing times: the 1996 Conference, the transition to a single currency, the negotiation of a new financial agreement, the possible revision or extension of the Brussels Treaty setting up the WEU and, lastly, the most ambitious target, enlarging the Union to bring in associated countries of Central and Eastern Europe, including the Baltic States, Cyprus and Malta.

That next enlargement provides a great opportunity for the political reunification of Europe. Not only is it a political imperative for us, but it represents the best option for the stability of the continent and for the economic advancement not just of the applicant countries but for this Europe of ours as a whole. That enlargement is not an easy exercise. Its impact upon the development of the Union's policies will have to be assessed. It will require efforts both by applicants and present Union members that will have to be equitably shared. It is therefore not only a great chance for Europe but also a challenge. We must do it, but we have to do it well.

The Union cannot tackle all the steps in that European strategy at once, but it does not have any time to waste. The Heads of State or Government have personally taken responsibility for agreeing on a European agenda for carrying out this plan, which will only become a reality if it finds democratic backing from Europe's citizens.

THE 1996 CONFERENCE

The 1996 Conference is an important, but just one step in this process.

The Maastricht Treaty already foresees that a Conference should be convened in 1996 with a limited scope. This scope has subsequently been enlarged at various European Councils.

The Heads of State or Government have identified the need to make institutional reforms as a central issue of the Conference in order to improve the efficiency, democracy and transparency of the Union.

In that spirit, we have tried to identify the improvements needed to bring the Union up to date and to prepare it for the next enlargement.

We consider that the Conference should focus on necessary changes, without embarking on a complete revision of the Treaty.

Against this background, results should be achieved in three main areas:

- making Europe more relevant to its citizens;

- enabling the Union to work better and preparing it for enlargement;

- giving the Union greater capacity for external action.

I. <u>The citizen and the Union</u>

The Union is not and does not want to be a super-state. Yet it is far more than a market. It is a unique design based on common values. We should strengthen these values, which all applicants for membership also wish to share.

The Conference must make the Union more relevant to its citizens. The right way for the Union to regain the commitment of its citizens is to focus on what needs to be done at European level to address the issues that matter to most of them such as greater security, solidarity, employment and the environment.

The Conference must also make the Union more transparent and closer to the citizens.

Promoting European values

Europe's internal security rests on its democratic values. As Europeans we are all citizens of democratic States which guarantee respect for human rights. Many of us think that the Treaty must clearly proclaim these common values.

Human rights already form part of the Union's general principles. For many of us they should, however, be more clearly guaranteed by the Union, through its accession to the European Convention on Human Rights and Fundamental Freedoms. The idea of a catalogue of rights has also been suggested, and a provision allowing for the possibility of sanctions or even suspending Union membership in the case of any state seriously violating human rights and democracy. Some of us take the view that national governments already provide adequate safeguards for these rights.

Many of us think it important that the Treaty should clearly proclaim such European values as equality between men and women, non-discrimination on grounds of race, religion, sexual orientation, age or disability and that it should include an express condemnation of racism and xenophobia and a procedure for its enforcement.

One of us believes that the rights and responsibilities we have as citizens are a matter for our nation states: reaching beyond that could have the opposite effect to that intended.

Some of us also thought it worthwhile to examine the idea of establishing a Community service or European "peace corps" for humanitarian action, as an expression of Union solidarity; such a service could also be used in the event of natural disasters in the Union. Furthermore, some of us recommend that the Conference should examine how to better recognize in the Treaty the importance of access to public service utilities ("services publics d'intérêt général").

We believe that Europe also shares certain social values which are the foundation of our coexistence in peace and progress. Many of us take the view that the Social Agreement must become part of Union law. One of us believes that this would only serve to reduce competitiveness.

Freedom and internal security

The Union is an area of free movement for people, goods, capital and services. Yet people's security is not sufficiently protected on a European scale: while protection remains essentially a national matter, crime is effectively organized on an international scale. Experience of the implementation of the Maastricht Treaty over the last few years shows that opportunities for effective European action are still very limited. Hence, the urgency for a common response at European level, following a pragmatic approach.

We all agree that the Conference should strengthen the Union's capacity to protect its citizens against terrorism, drug trafficking, money laundering, exploitation of illegal immigration and other forms of internationally organized crime. This protection of citizens' security at European level must not diminish individual safeguards. For many of us, this requires further use of common institutions and procedures, as well as common criteria. It is also for national parliaments to exercise political scrutiny over those who administer such common action.

Many of us take the view that, in order to act more efficiently, we need to put fully under Community competence matters concerning third country nationals, such as immigration, asylum and visa policy, as well as common rules for external border controls. Some would also like to extend Community competence to combating drug addiction and fraud on an international scale, and to customs cooperation.

For some of us, however the key to success has to be found in a combination of political will and more effective use of existing intergovernmental arrangements.

Employment

We know that **job creation** in an open society is based on sound economic growth and on business competitiveness, which must be fostered by initiatives at local, regional and national levels. We believe that, in the European Union, the main responsibility of ensuring the economic and social well being of citizens lies within the Member States. In an integrated economic area such as ours, however, the Union also has a responsibility for setting the right conditions for job creation. It is already doing so by the completion of the internal market and the development of other common policies, with a joint growth, competitiveness and employment strategy which is achieving positive results, and with its plan for Economic and Monetary Union.

We all agree that the provisions on the single currency which were agreed at Maastricht and ratified by our parliaments must remain unchanged.

While we are all aware that jobs will not be created simply by amendments to the Treaty, many of us want the Treaty to contain a clearer commitment on the part of the Union to achieving greater economic and social integration and cohesion geared to promote employment, as well as provisions enabling the Union to take coordinated action on job creation. Some of us advised against writing into the Treaty provisions which arouse expectations, but whose delivery depends primarily on decisions taken at business and state-level. In any case, most of us stress the need for stronger coordination of economic policies in the Union.

Environment

In essence, the environment has crossborder effects. Protection of the environment is an objective involving our survival not only as Europeans but also as inhabitants of the planet. Therefore the Conference should examine how to improve the capacity of the Union to act more efficiently and to identify whenever that action should remain within the Member State.

A more transparent Union

Citizens are entitled to be better informed about the Union and how it functions.

Many of us propose that the right of access to information be recognized in the Treaty as a right of the citizens of the Union. Suggestions have been made on how to improve the public access to Union's documents which should be examined by the Conference.

Prior to any substantial legislative proposal, information should be duly gathered from the sectors concerned, experts and society in general. The studies leading up to the proposal should be made public.

When such a proposal is made, national parliaments should be duly informed and documents supplied to them in their official languages and in due time to allow proper discussion from the beginning of the legislative process.

We all agree that the Union law should be more accessible. The 1996 Conference should result in a simpler Treaty.

Subsidiarity

The Union will be closer to the citizen if it focuses on what should be its tasks.

This means that it must respect the principle of subsidiarity. This principle must therefore not be construed as justifying the inexorable growth of European powers nor as a pretext for undermining solidarity or the Union's achievements.

We believe it necessary to reinforce its proper application in practice. The Edinburgh Declaration should be the basis for that improvement and some of us believe that its essential provisions should be given Treaty status.

II. Enabling the Union to work better and preparing it for enlargement

The Conference should examine the ways and means to improve the efficiency and democracy of the Union.

The Union must also preserve its decision-making ability after further enlargement. Given the number and variety of the countries involved, this call for changes to the structure and workings of the institutions. It may also mean that flexible solutions will have to be found, fully respecting the single institutional framework and the "acquis communautaire".

The European Council, consisting of the Heads of State or Government of the Member States and the President of the Commission, is the highest expression of the Union's political will and defines its general political guidelines. Its importance is bound to increase in view of the Union's political agenda.

Improving democracy in the Union means both fair representation in each of the institutions, and enhancing the European Parliament, within the existing institutional balance, and the role of national parliaments. In this context, it is recalled that, according to the Treaty, a uniform electoral procedure for the European Parliament should be established. Many of us believe that the European Parliament's procedures are too numerous and complex and therefore favour reducing them to three: consultation, assent and codecision.

The current codecision procedure is over-complicated and we propose that the Conference simplify it, without altering the balance between the Council and the European Parliament. Many of us also propose that the Conference should extend the scope of the codecision procedure. One member believes, however, that the European Parliament gained extensive new powers at Maastricht and therefore should grow into these powers before seeking more.

National parliaments should also be adequately involved. This does not imply that they have to be incorporated into the Union's institutions. For many of us its decision-making procedures should be organised in a way which allows national parliaments adequately to scrutinise and influence the positions of their respective governments in the decision-making of the Union. Some of us suggest a more direct involvement of national parliaments: in this context, the idea of a newly established advisory committee has been suggested by one of us. Cooperation among national parliaments and between them and the European Parliament should also be fostered.

The decision-making processes and working methods of the Council of Ministers will need review. The Union must be able to take timely and effective decisions. But efficient decision-making does not necessarily mean easy decision-making. The Union's decisions must have popular support. Many of us believe greater efficiency would be enhanced by more qualified majority voting in the Council, which, according to many, should become the general procedure in the enlarged Community. Some of us believe that this should only be countenanced, if democratic legitimacy is improved by a reweighting of votes to take due account of population. One of us opposes extension on principle.

We consider the role of the Council Presidency to be crucial for the efficient management of the Union's business and we support the principle of rotation. But the present system applied to an enlarged Union could become increasingly disjointed. Alternative approaches combining continuity and rotation should be examined further.

We agree that the Commission should retain its three fundamental functions: promotion of the common interest, monopoly of legislative initiative and guardianship of Community law. Its legitimacy, underlined by its parliamentary approval, is based on its independence, its credibility, its collegiality and its efficiency. The composition of the Commission was designed for a Community of six. We have identified options for its future composition in order to preserve the Commission's ability to fulfil its functions in view of an enlarged Union that may extend to more than twice the number of Member States having negotiated the Maastricht Treaty.

Broadly, one view within the Group is to retain the present system for the future, reinforcing its collegiality and consistency as required. This option would allow all members to have at least one Commissioner. Another view is to ensure that greater collegiality and consistency be attained by reducing the Commissioners to a lesser number than Member States and enhancing their independence. Procedures should be established to select those members on grounds of qualification, and commitment to the general interest of the Union. When deciding the future composition of the Commission, the Conference may also examine the possibility of establishing senior and junior Commissioners.

Some of us believe that the Committee of the Regions has to play an important role in Community legislation and that the consultative role of this body should be better used.

Europe's achievements depend on its ability to take decisions together and then to comply with them. An improvement in the clarity and quality of Community legislation would contribute to this, as would better financial management and a more effective fight against fraud. The Conference should also improve the key role of the Court of Justice especially in ensuring uniform interpretation of and compliance with Community law.

III. Giving the Union greater capacity for external action

The Maastricht Treaty has established the Union's Common Foreign and Security Policy. In our opinion, this was the right decision at the right time, at a time with the end of the cold war increasing the burden of responsibility on the European Union to lay the foundations of peace and progress in Europe and elsewhere.

The current possibilities offered by the Treaty have provided some positive results. We believe, however, that the time has come to provide this common policy with the means to function more effectively.

The Union today needs to be able to play its part on the international stage as a factor for peace and stability. Although an economic power today, the Union continues to be weak in political terms, its role accordingly often confined to financing decisions taken by others.

Common Foreign Policy

We think that the Conference must find ways and means of providing the Union with a greater capacity for external action, in a spirit of loyalty and mutual solidarity. It must be capable of identifying its interests, deciding on its action and implementing it effectively. Enlargement will make this task more difficult, but also makes it even more imperative.

This means that the Union must be able to analyse and prepare its external action jointly. With that in mind, we propose the establishment of a common foreign policy analysis and planning unit. For most of us, this unit should be answerable to the Council. Many of us also think that it should be recruited from Member States, Council Secretariat and Commission and be established within the institutional framework of the Union. It has been suggested by some that the head of the unit, whose functions could eventually merge with those of the Secretary General of the WEU, should be the Secretary General of the Council.

It also calls for the capacity to take decisions. To that end, we propose that the Conference examines how to review decision-making and financing procedures in order to adapt them to the nature of foreign policy, which must reconcile respect for the sovereignty of States with the need for diplomatic and financial solidarity.It should be commonly agreed whether and if so how to provide for the possibility of flexible formulae which will not prevent those who feel it necessary for the Union to take joint action from doing so. Some members favour the extension of qualified majority voting to CFSP and some others propose to enhance the consultative role of the European Parliament in this area.

The Union must be able to implement its external actions with a higher profile. We have examined several possible options for ensuring that the Union is able to speak with one voice. Some of us have suggested the idea of a High Representative for the CFSP, so as to give a face and a voice to the external political action of the Union. This person should be appointed by the European Council and would act under precise mandate from the Council. Many of us have stressed the need for a structured cooperation between the Council, its Presidency and the Commission, so that the different elements of the external dimension of the Union they are responsible for function as a coherent whole.

This greater political role for the Union in the world should be consistent with its current external economic influence as the premier trading partner and the premier humanitarian aid donor. The Conference will have to find ways of ensuring that the Union's external policy is visible to its citizens and the world, that it is representative of its Member States and that it is consistent in its continuity and globality.

European security and defence policy

The multifaceted challenges of the new international security situation underline the need for an effective and consistent European response, based on a comprehensive concept of security.

We therefore believe that the Conference could examine ways to further develop the European identity, including in the security and defence policy field. This development should proceed in conformity with the objectives agreed at Maastricht, taking into consideration the Treaty provisions that the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

The Conference will have to take account of the reality that, in the view of NATO members, such a development should also strengthen the European "pillar" of the Atlantic Alliance and the transatlantic link. The Alliance continues to guarantee the collective defence of its members and plays a fundamental role in the security of Europe as a whole. Equally, the right of States which are not members of the Alliance to take their own defence decisions must be respected.

Many of us feel that the Conference should consider how to encourage the development of European operational capabilities, how to promote closer European cooperation in the field of armaments and how to ensure greater coherence of action in the military field with the political, economic or humanitarian aspects of European crisis management.

Against this background, many of us want to further strengthen relations between the EU and the Western European Union (WEU), which is an integral part of the development of the Union.

In this regard, several options for the future development of this relationship have already been suggested within the Group. One option advocates a reinforced EU/WEU partnership while maintaining full autonomy of WEU. A second option suggests that a closer link should be established enabling the Union to assume a directing role over WEU for humanitarian, peacekeeping and other crisis management operations (known as Petersberg tasks). A third option would be the incorporation of these Petersberg tasks into the Treaty. As a fourth option, the idea of a gradual integration of WEU into the EU has been supported by many of us: this could be pursued either by promoting EU/WEU convergence through a WEU commitment to act as implementing body of the Union for operational-military issues, or by agreeing on a series of steps leading to a full EU/WEU merger. In the latter case, the Treaty would incorporate not only the Petersberg tasks but also a collective defence commitment, either in the main body of the Treaty or in a Protocol annexed to it.

In this context, the idea that the IGC examines the possibility of including in the revised Treaty a provision on mutual assistance for the defence of the external borders of the Union has been put forward by some members.

It will be for the Conference to consider these and other possible options.

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Europe and democracy are inseparable concepts. To date, all the steps in the construction of Europe have been decided by common accord by the democratic governments of its Member States, have been ratified by the national parliaments and have received popular support in our countries. This is also how we shall construct the future.

We realize that this reflection exercise by the Group is only one step in a public debate initiated and guided by the European Council. We hope that this public and joint exercise between our nations will lead to renewed support for a project which is more than ever necessary for Europe today.

SECOND PART:

AN ANNOTATED AGENDA

I. REFORM OF THE EUROPEAN UNION: A COMMITMENT TO THE FUTURE

A. WHY REFORM?: MANDATE AND CHALLENGES

1. In addition to the **mandate** contained in the Treaty on European Union (TEU) and the commitments subsequently entered into by the Council and the European Councils, all of which were aimed either at completing the work of Maastricht or at dealing with specific institutional issues raised as a result of the most recent enlargement or preparing adequately for the next one, there are further **substantive reasons** for holding the 1996 Intergovernmental Conference (IGC 96).

   The Group has identified two fundamental reasons, namely **improving the functioning of the Union** on the one hand, and, on the other, creating the conditions to enable it to cope successfully with the **internal and external challenges** facing it, and notably the next **enlargement.**

The mandate of the Conference

2. The mandate of the 1996 Conference, the legal basis for which is Article N of the TEU, was in part set by the **Treaty** itself and its accompanying Declarations. Hence:

   - The fifth indent of Article B makes clear that, to maintain in full the "acquis" communautaire and build on it, the Conference will have to analyse to what extent "the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community";

   - Article 189b(8) provides for a possible extension of the co-decision procedure to other areas;

   - Article J.4(6) and Article J.10 provide for possible revision of the CSFP "with a view to furthering the objective of this Treaty and having in view the 1998 deadline laid down in the modified Brussels Treaty of the WEU".

   - Declaration No 1 sets out the possibility of introducing energy, tourism and civil protection as new titles into the Treaty establishing the European Community;

   - Finally, Declaration No 16 requests that consideration be given to the question of introducing a hierarchy of Community acts into the TEU.

3. In the framework of the **negotiations for the accession** of Austria, Finland, Norway and Sweden, various institutional issues arose which were dealt with at the **Brussels European Council**, in the **"Ioannina compromise"** and at the **Corfu European Council.** All those issues (reform of the institutions in general, including the weighting of votes and the number of votes for a qualified majority in the Council, the number of members of the Commission and "any other measures necessary to facilitate the work of the institutions in a spirit of democracy and openness and guarantee their effective operation with a view to enlargement") will also have to be dealt with at the IGC 96.

As a result of **inter-institutional agreements** between the European Parliament, the Council and the Commission, questions relating to budgetary discipline and procedure and the implementation of Community acts (committee procedure) have been added to the Conference agenda.

4. It goes without saying that this planned agenda is likely to be supplemented, in accordance with **Article N**, by other topics raised by the member States or the institutions. Notwithstanding that possibility, in the light of the experience acquired after the entry into force of the Treaty on European Union, and taking into account the challenges and difficulties posed in particular by the prospect of further enlargement, the **Cannes European Council** felt that the discussion in the Reflection Group should focus on a number of **priorities** to enable the Union to respond to its citizens' expectations. These priorities are:

   - to analyse the principles, objectives and instruments of the Union, with the new challenges facing Europe;

   - to strengthen common foreign and security policy so that it can cope with new international challenges;

   - to provide a better response to modern demands as regards internal security, and the fields of justice and home affairs more generally;

   - to make the institutions more efficient, democratic and open so that they are able to adjust to the demands of an enlarged Union;

   - to strengthen public support for the process of European integration by meeting the need for a form of democracy which is closer to the citizens of Europe, who are concerned about employment and environment questions;

   - to put the principle of subsidiarity into practice more effectively.

The new challenges facing Europe

Internal challenges

5. A key challenge facing the Union **internally** is the need to ensure that European construction becomes a venture to which citizens can relate.

Most Europeans consider that community integration is an invaluable asset, assuring peace in an increasingly unstable continent and prosperity in a global market. Nevertheless, the growing popular dissatisfaction with public matters in general affects also the European construction, partly due to economic, social, political and institutional reasons: a high level of unemployment, which is particularly serious in the case of young people and the long-term unemployed; environmental degradation; social rejection and exclusion; major changes in our demographic structures, which undermine the European social model; the crisis in the political contract between representatives and those represented; the European Union's growing complexity and the lack of information on, and understanding of, its raison d'être; finally, the worrying phenomenon of organized crime (drug trafficking, money laundering, terrorism).

As a result, there is a growing call for public security that cannot be met by States acting alone, and that is not receiving a satisfactory response from the Union. This is due to the gaps or shortcomings in the Union's mechanisms and to the lack of political will to remedy these.

External challenges

6. Other major challenges are a result of the profound changes taking place outside the Union as the end of the century approaches.

The magnitude of some of the challenges which can only be met by adopting an equally broad, global approach is demonstrated by questions such as major political instability in the European region following the end of the cold war, despite greater overall security; strong migratory pressures which are particularly acute in Europe; risks of ecological imbalances which the Union and the member States cannot afford to ignore, etc., and an increasing globalization of the economy which highlights Europe's loss of some of the comparative advantages gained through its social and technological innovations.

The challenge of enlargement

7. The next enlargement represents both a political imperative and a new opportunity for Europe, but at the same time it presents the Union with a major challenge requiring an adequate response:

- firstly, in the framework of the Intergovernmental Conference, through the reforms designed to improve the Union's functioning in general and institutional reform in particular;

- secondly, in view of the impact which enlargement will have on applicant countries and on the Union.

The next enlargement will be a great opportunity for Europe and will also be different from the previous ones because of the large number of applicant countries and the heterogeneity of their political, economic and social situations. To ensure that the next enlargement does not weaken, change the nature of or actually break up the Union, the reforms needed to cope with the challenges involved must first be made. The enlargement negotiations cannot begin until the 1996 Conference has been concluded satisfactorily. The success of the former thus depends on the success of the latter.

The responses

8. As we have just seen, the new situation inside and outside Europe raises questions and requires the European Union and the Member States to provide responses which will ensure greater political stability while simultaneously allowing economic development and the proper social climate to be maintained within an open, global and competitive economy. In other words, responses which will enable the European Union to continue acting as a crucial factor for peace and prosperity on our continent.

   Some of Europe's responses to these challenges have already been identified, as in the case of **Economic and Monetary Union**, achievement of which is a priority for Europe, as agreed in the Maastricht Treaty and ratified by the national parliaments. The Group strongly feels that the EMU should carry on its process of implementation in accordance with what was agreed.

9. The **next enlargement** also constitutes a response to the challenges of security and political and economic stability in Europe. However, in order to achieve it, reforms of the Union are required in some areas and, very significantly, in the Union's institutions. Other possible responses have already been formulated, as stated in the introduction, by the Treaty itself or by subsequent European Councils. It is the Reflection Group, however, that has been given the task of identifying and producing concrete proposals. The Group shares the points which follow.

10. As stated above, the Union's principal **internal** challenge is to reconcile itself with its citizens. Therefore, enhancing its legitimacy in their eyes has to be the prime task of the coming reform.

    The achievement of this aim will depend on **a clear definition** of the Union's **objectives**, i.e. the joint goals sought, the **credibility of common policies and the cooperation machinery** designed to attain those objectives (or, to put it another way, the suitability of the instruments for the purpose of achieving the objectives set) and the preservation of the Union's **internal cohesion.**

    - The Group has come to the conclusion that the coming reform must equip the Union with the necessary means to give priority to the problems which are of the greatest concern to the citizens of Europe. A majority of personal representatives include **unemployment, social exclusion, lack of internal security** and **environmental degradation** among the problems to be tackled as a matter of urgency.

    - A further response to the challenge posed by citizens' alienation from the Union must be sought in a correct and systematic application of the principles of **democracy, efficiency, transparency, subsidiarity and solidarity** in the European Union.

Those principles should be put into practice through concrete measures, such as improved application of the subsidiarity principle ("who does what?"); Community legislation concentrating on essentials; promotion of competitiveness on a European scale; simplification (of texts and procedures); effective enforcement of the rights of the Union's citizens; promotion of equality between men and women; greater political responsibility for the Institutions combined with increased accountability on their part; the fight against fraud; greater transparency in the functioning of the Institutions, which should be given the means to take decisions with the broadest possible backing from citizens; and closer involvement of national parliaments in the Union's tasks.

- The mechanisms for maintaining **solidarity and cohesion** within the Union must also be adapted and reinforced.

11. On the other hand, the responses to the challenges posed by the profound changes which have taken place **outside** the Union, in the political and security context as well as in the economic and commercial sphere, need to be based on reinforcement of the instruments set up to achieve the highest possible levels of **external stability and security.**

    - The key task here, therefore, is to take all the steps necessary to provide the Union with a genuine, **external identity** that will enable it to promoté its values and defend its interests. This will clearly only be possible if the Common Foreign and Security Policy really functions, with full consistency being ensured between the political and economic aspects of the Union's external action.

    - In view of the new challenges that have arisen with regard to security in Europe, it is also necessary to enable the Union to continue **moving towards** the eventual framing of **a common defence policy,** which might in time lead to a common defence.

B. PRINCIPLES AND OBJECTIVES

<u>The objective to be achieved</u>

12. A prime objective to be achieved can be established from a mere enumeration of the challenges and the responses to them: maintenance of strong European **integration** and **cooperation** in this new end-of-the-century context, as, together with the organizations responsible for European security and national policies, they are both a guarantee of peace and prosperity for the citizens of the Union.

    The Group emphasizes that this guarantee of prosperity and peace is not perpetual and that it would be a grave error to underestimate the Community's main contribution to the Member States and their citizens, namely a shared view of life that has ruled out war as a means of settling differences and has decided to follow resolutely the path of growth respecting the environment, competitiveness and employment, promoting stringency in public finances and in combating inflation as the best way to meet citizens' demands. The Group accordingly feels that the Conference must endorse and reinforce the Union's common objectives, which aim at peace and freedom, internal and external security, democracy, protection of the human rights and prosperity for the citizens of Europe and solidarity between them.

Flexibility, its rationale and its limits

13. The success of this ever-closer Union among the peoples of Europe depends, as we have seen, on its ability to meet citizens' demands. However, it must also be based on common principles which must be reaffirmed. They inspire the **common core** which characterizes the Community as an entity based on the rule of law, and in particular involve:

    - maintenance and development of the **"acquis communautaire"** as a whole, as provided for by Article B of the Treaty. Maintenance of the "acquis communautaire" should not however prevent the necessary adjustments from being made in order to respond to new situations. Neither, as we shall see below, should it prevent flexible formulae from being found on a case-by-case basis and where necessary to enable new stages of integration to be entered upon at different paces, without the objectives of a common project being jeopardized in any circumstances;

    - consolidation of a **single institutional framework** as the best guarantee for the consistency of the Union's action and a means of enabling the citizen to clearly identify those responsible for areas where the decisions taken clearly affect him.

    It should be emphasized that respect for these two principles should constitute an adequate response to the growing need for consistency of action by the Union as a whole, irrespective of the outcome of the Conference on the options of a bicephalous Union/Community structure, division into Treaty "pillars", or unification.

14. On the basis of this common core, the prospect of enlargement and the existence in the Union of differentiated integration arrangements, raises the question of **flexibility and its limits** in relation to the outcome of the Conference and the approach to be adopted to enlargement. An unequivocal answer to the question "What do we want to accomplish together?" will clarify what the reform is expected to achieve. If a common will is ultimately found to be lacking, that should not prevent those who wish and even need to make the Union progress from doing so subject to clear limits. It will have to be considered on a case-by-case basis and when necessary what should be the allowed flexibility that will make it possible for the Union to manage diversity without jeopardizing the "acquis" and the common objectives.

15. Therefore, the Group rejects any formula which could lead to an *à la carte* Europe. As regards the guidelines to allow flexibility, there is a large majority view sharing the following criteria:

    - flexibility should be allowed only when it serves the Union's objectives and if all other solutions have been ruled out and on a case-by-case basis;

    - differences in the degree of integration should be temporary;

- no-one who so desires and fulfils the necessary conditions previously adopted by all can be excluded from full participation in a given action or common policy;

- provision should be made for ad hoc measures to assist those who want to take part in a given action or policy but are temporarily unable to do so;

- when allowing flexibility the necessary adjustments have to be made to maintain the "acquis", and a common basis should be preserved to prevent any sort of retreat from common principles and objectives;

- a single institutional framework has to be respected, irrespective of the structure of the Treaty.

Several members, while agreeing with most of the above, stress that such flexible arrangements in the Union should only be possible when agreed by all, as in the past. Some members believe that, whereas such arrangements should in principle be temporary, they need not always be so, especially where they do not concern "core disciplines" of the EC.

16. It should be pointed out however that the degrees of flexibility admissible are different both under each of the three "pillars" and also in the case of the present Member States and those acceding on next enlargement:

- Whereas derogations must not be allowed in the Community "pillar" if they jeopardize the internal market and create discriminatory conditions for competitiveness, CFSP and some Justice and Home Affairs issues enable a greater degree of flexibility (see below, when treating those subjects).

- The formulae applicable to the acceding countries should in principle be transitional arrangements based on consideration of their specific circumstances and can only be more closely defined when their respective accessions are negotiated. Nevertheless, a "critical mass" of "acquis" essential for accession has to be preserved in spite of any flexible arrangement.

C. CONTEXT AND TIMETABLE

17. The Conference is not an isolated event. It forms part of a broader context parallel to the Conference in some respects and subsequent to it in others. This context includes, inter alia, the following elements which will form Europe's agenda up to the end of the century:

- analysis of the impact of enlargement on policies and resources;

- renegotiation of the own resources system and the financial perspective for 2000 and beyond, depending on the previous point among other things;

- transition to the third stage of Economic and Monetary Union;

- debate on the WEU bearing in mind the 1998 deadline;

- negotiations on enlargement and its ratification.

18. The comprehensive examination of the best way to manage **Europe's agenda** up to the end of the century has been taken on personally by the members of the European Council, i.e. Europe's highest level of political leadership. All the above points, although having their own momentum, are clearly linked in one way or another to the reform of the Union; it will therefore be necessary to consider the relationship between them, so that they can be achieved without obstructing one another.

    To sum up, only once the 1996 Conference has reached a satisfactory conclusion will it be possible for the other tasks to be tackled on more solid bases, although this does not prevent appropriate preparatory work from being carried out at the same time. The Group therefore considers that the Conference should start and conclude its proceedings in good time in order to enable the other important elements on the schedule to be dealt with properly.

19. We have already seen that **enlargement** is a response by the Union to the new challenges facing the continent of Europe. However, as we shall see below, it is also a challenge in itself. This is because of its threefold impact on an institutional system conceived for the six founding States, on the internal and external security of the Union and on the need to preserve and strengthen the Community as an entity based on the rule of law. It is furthermore possible that enlargement will also have a definite impact on Community policies and give a new dimension to the problem of the Union's resources.

20. Therefore, the Group above all agrees in stressing that enlargement must take place but it has to be duly prepared so that it is successfully achieved. To avoid enlargement or have it miscarry would create a serious crisis not only in the applicant countries but also in the present Union.

    Who will be acceding to the Union when enlargement takes place? It is clear that accession should be open to all European countries wishing to accede which comply with the criteria laid down at the Copenhagen European Council. Each case must be dealt with on its own merits during the negotiations. However, the aim of the Reflection Group is to identify the reforms desirable and sufficient to enable the Union to incorporate associated Central and Eastern European countries, including the Baltic States, Cyprus and Malta.

    When? In accordance with the conclusions of the Essen European Council, negotiations with the associated States of Central and Eastern Europe, including the Baltic States which fulfil the above criteria, can only start after the Conference has ended. In accordance with those of the Cannes European Council, Cyprus and Malta will start six months after the end of the Conference taking into account its outcome.

    How? The next enlargement will have to combine a global approach to meet common demands with flexible adjustment structures which make it possible in each case to adopt an appropriate time scale for the process of full incorporation of applicants into the present Union's common policies.

21. The question of whether and if so how common policies should be revised in the light of enlargement is not within the Group's mandate. There is, however, agreement on the need to maintain the "acquis communautaire" and build on it (Articles B and N) as a basic principle for the present Member States and as a major guide for the applicant countries. This should not prevent progressive implementation of the "acquis" by the applicant countries.

A broad majority of members of the Group favours the separation of the Conference exercise from the study of the impact of enlargement in relation to future development of common policies, for the following three reasons: firstly, a revision of policies does not require amendment of their respective legal bases; secondly, the effect of enlargement on common policies will not be immediate but will be spread over time in accordance with the model for enlargement which in general seems possible for the next set of applicants; finally, it is not appropriate to combine two such politically sensitive exercises.

Some members consider that the analysis of the impact of the enlargement on policies and resources should be developed simultaneously with IGC. One member stresses that, each of the EU's major tasks from now until the end of the century are aspects of the same overall strategy, the results of which will be judged with an assessment of all the efforts, concessions and opportunities involved in the common project.

D. WHAT KIND OF CONFERENCE?

The scope of the Conference. The need for transparency

22. The Group considers that the Conference should formulate **adequate responses** to the above challenges. This means that on top of improving the present functioning of the Union it must make the reforms necessary to incorporate into the Union a greater number of Member States than was the case in earlier enlargements. The forthcoming enlargement will make the Union much more heterogeneous than at present as regards differences in size of countries, variety of languages, disparity of income levels and differing sensitivities with regard to Foreign Policy or Justice and Home Affairs.

The Maastricht Treaty foresees a specific scope for the Conference. As seen above, this scope has subsequently been enlarged at various European Councils. The Heads of State or Government have identified the need to make institutional reforms as an important issue of the Conference in order to improve the efficiency, democracy and transparency of the Union. According to these elements, the Group has convened that the scope of the Conference should be **targeted** to deliver the **necessary results** without opening a general revision of the Treaty.

23. The Group favours **comprehensive** treatment of all the Conference issues **as part of a single exercise.** A single Conference keeping a general vision of the essential issues and which is not split seems the most appropriate method of achieving consistent results able to cope with challenges facing the Union.

24. It should also be emphasized that the necessary results can be achieved by **amending the Treaties** and also by **improving** the Union's **procedures and working methods.** The Cannes European Council has recommended the Group to bear in mind the advantages of seeking improvements in the working of the Institutions that do not require any amendment to the Treaties and can thus enter into force without delay. It should be pointed out, however, that in the report often the proposals for practical improvements refer to matters that, according to alternative options, should be subject to Treaty reforms. The choice between them is not of technical but political nature, since they express a different level of political ambition for the Union.

25. It is also considered that the proceedings of the 1996 IGC should be as **transparent** as possible. The concerns of the Institutions, the organizations representing civil society and the future applicants must be given an appropriate hearing. The public must also be provided with all important information enabling it to follow closely a discussion which is directly relevant to citizens' fundamental concerns. This is essential, not only so that citizens can feel that they are participating in the construction of Europe but also because their opinions are essential for carrying out the reform.

26. The Group is aware that, if citizens consider the reform inappropriate or insufficient or feel that they were not involved in it by means of adequate information, it will run the risk of not being approved. As the reforms resulting from the Conference are an essential part of Europe's agenda until the end of the century, the Group stresses the importance of holding **a Conference** the content and course of **which meets the expectations** on the basis of which it was convened. We consider that there is therefore an obligation to achieve sufficient results, and this obligation must be met by the Parties to the Conference.

27. In the light of the above points and of its mandate, the Group considers that the Conference should confine itself to its own specific aims, namely realizing the (legal or practical) reforms to enable the Union to meet the current challenges facing Europe, continuing and building on the achievements of Maastricht and preparing the ground for the forthcoming enlargement.

    The Conference will moreover form part of an open process. It is an important step in the process but will certainly not be the last. The Union will continue to develop in the future after the 1996 Conference.

28. Against this background, the Group without seeking to limit the Conference's sovereign power, recommends that results should be achieved in three main areas:

    - **Making Europe more relevant to its citizens;**

    - **Enabling the Union to work better and preparing it for enlargement;**

    - **Giving the Union greater capacity for external action.**

II. THE CITIZEN AND THE UNION

29. The Group considers that a key element, not only for an understanding of the reasons for reform of the Treaty but also in order to guarantee the success of the Conference, is to place the citizen at the centre of the European venture by endeavouring to meet his expectations and concerns, that is to say, to make Europe the affair of its citizens. Therefore, **serving the citizens interests and perspectives** for the future should be the main **guiding principle for** the envisaged **reform.**

30. The Group believes that there are European common values that the Union should protect and promote. They are the basis of our democracies, of our security and are also present in the feeling of belonging in the citizens. Essential elements are to be found in respect for fundamental rights, non-discrimination, clarification of the rights and obligations of both citizens of the Union and third-country nationals in the Union. Furthermore, the citizens' concern about greater security, employment, environment, transparency and a Union closer to them should be properly taken into account by the Union. This is all developed under this heading.

A. PROMOTING EUROPEAN VALUES

Human rights and fundamental rights

31. A basic approach in this area would, in the first place, consist in spelling out the general principle of respec for **fundamental rights** laid down in Article F.2 and making it more workable. This pi ciple clearly applies "erga omnes", i.e. covers all persons within the Union whether citizens of the Union or citizens of third countries.

32. In this connection reference has been made by some to the possibility of expressly including in Article F2 an obligation of the Member States to respect human rights and fundamental freedoms and add that non-compliance would prompt the Union to take suitable action. Such an explicit statement would enhance the Union's image as a community of shared values. It is important to ensure this both for present members and for those who will accede at the next enlargement.

33. It is generally felt within the Group that during the current process of European construction, and above all in the run-up to enlargement, there is an urgent need to ensure full observance of fundamental rights, both in relations between the Union and the Member States and between States and individuals. The majority opinion within the Group is that an Article should be inserted into the Treaty providing for penalties which could go as far as **suspension** of the rights inherent in membership in the case of any State which commits a serious and repeated breach of fundamental human rights or basic democratic principles. Reference was even made to the possibility of **expulsion.**

However, most representatives were wary about agreeing to such a possibility as they thought it would be unnecessary if suspension of rights achieved the desired effects and felt there might be a danger that this would call into question the irreversibility of membership of the Union.

34. As for the possibility of **complaints by individual natural persons** concerning human rights, the great majority of members of the Group makes the point that there is at present an inconsistency in the fact that, while the Member States are subject to the monitoring mechanisms of the European Convention on Human Rights, the Institutions of the Union and Community law remain exempt from such control. The protection of individual human rights has hitherto been ensured solely by the Court of Justice in Luxembourg.

    It is a widely held view within the Group that the Union, if it takes on legal personality, or the Community at any rate, **should accede to the European Convention on Human Rights.** It is recalled here that the Court of Justice has been asked for an opinion on this question.

    Opposing this majority feeling, some members regard Union or Community accession to the European Convention on Human Rights as unnecessary.

35. Independently of the above, some members point out the advantages of including a **Bill of Rights**, either in the enacting terms or in an Annex or in the Preamble. The Group has looked at a comparative study of fundamental rights guaranteed in the Member States, which was made by the Council Secretariat and shows the technical difficulties of such an exercise despite the fact that all Member States guarantee the protection of human rights on their territory.

    At European Union level, from the point of view of **individual protection**, it is felt by those members that only accession by the Community to the European Convention and/or inclusion of a Bill of Rights in the enacting terms would confer additional protection either by the Luxembourg and Strasbourg Courts in the first case, or only by the Luxembourg Court in the second.

    It has also been noted that the implications for the Union of the various proposals in relation to fundamental rights will need to be carefully studied by the Conference.

    Some members do not see the usefulness of including a Charter of Fundamental Rights in the Treaty, since all Member States already guarantee such rights on their territory.

    An intermediate view would accept inclusion in the preamble to the Treaty – thereby producing no direct legal effects but obtaining a high political profile – of a catalogue of the rights and obligations of the citizen compiled by bringing together all those scattered throughout the various provisions of the Treaty.

36. A large majority of the Group stresses the need to incorporate in title VIII of the EC Treaty the Social Agreement as an expression of common european values so that a proper social climate may accompany economic integration. One member will not agree with that incorporation, since he believes it will reduce competitiveness.

37. Some members of the Group referred to other forms of recognition in this area. Among such ideas was the possibility of including in the Treaty socio-economic rights and more specifically incorporating the **European Social Charter**, the right to **employment**, the right to a **healthy environment**. Even the idea of including in the Treaty the prohibition of the **death penalty** has been suggested by some members.

38. Various representatives also proposed that the citizens of **third countries** established in the Union be given a special **status** with certain rights (right of free movement and right of residence). Some members have made it conditional upon the existence of a common immigration policy.

Non-discrimination

39. With a view to the Union embodying European common values further, the Group analysed the following possibilities:

- A general clause prohibiting discrimination (in addition to the one prohibiting discrimination on grounds of nationality in Article 6) extending beyond nationality notably to grounds of gender, race, religion, disability, age and sexual orientation.

- The strengthening and extension to all areas not just of equal pay for equal work pursuant to Article 119, but also of the general principle of **equality between men and women**, which should be formulated positively in the Treaty and not simply as a result of prohibiting discrimination. In this context some members favour a reference in the Treaty regarding the integration of a gender perspective in all policies and programmes in the Union.

- Express condemnation in the Treaty of **racism and xenophobia** (including explicit reference to **anti-semitism**) and **intolerance** by means of a provision similar to the one proposed in 1993 by the European Parliament.

- Special consideration for disabled persons both by referring to them in the non-discrimination clause in Article 6 of the TEU and by a provision in one of its chapters. In the latter case, some feel that a safeguard clause should be provided making it possible to limit any disproportionate economic consequences which might derive from such a provision.

All these options received majority support within the Group subject to a more detailed assessment of their legal and economic implications by the Conference. One member, however, felt that new or increased Community references in these sensitive areas were unnecessary, and that such rights were best secured in a national context.

Citizenship of the Union

40. The Group notes that introduction into the TEU of the principle of citizenship of the Union – in addition to and not instead of national citizenship – by Article B, third indent, and its development in Articles 8 to 8e was intended as a response to the need to involve citizens more closely in the process of European construction. However, it also recognizes that this purpose was viewed differently in the various Member States; while in most of them the concept of citizenship increased the feeling of belonging to the Union, in some, by contrast, it was not readily understood that citizenship of the Union was intended to be complementary to, rather that to replace national citizenship.

41. It is logical that this variety of situations should be reflected in the Group's attitudes.

- The broad majority of the Group regards citizenship of the Union as an essential aspect of making the Treaty acceptable to European public opinion, and they therefore strongly support its development. This could be achieved, for example, by deepening the **specific rights** of citizens of the Union already included in the Treaty (achieving unrestricted freedom of movement and residence, completing diplomatic and consular protection in third countries), by the inclusion of new rights, and also through simplification of the Treaty articles relating to citizenship. A specific right to information on Union's matters and how it functions should be granted to the citizens.

- Opposing this majority view, some members point out that citizenship of the Union is perceived as a threat to national identity in some Member States and that they do not think it appropriate to develop either the content or the essence of the concept.

- The Group suggests that the Treaty should make even more clearly that citizenship of the Union does not replace national citizenship.

42. Some members have drawn the Group's attention to the positive effects on the feeling of belonging which would be achieved by **abolishing use of the passport** for the purpose of crossing its internal borders.

43. The Group also discussed the idea of a European voluntary-service **"peace corps"** for humanitarian actions. A sizeable majority of the representatives favour this in principle and note that it would foster a feeling of solidarity and belonging to the Union among young people. A proposal was also made by some Members that the peace-corps' tasks include assisting Member States to deal with major natural disasters in the Union (floods, fires, earthquakes, etc.). The point is, however, made that the procedure for implementing such an idea might raise difficulties which would have to be resolved but which the Group could not discuss in detail.

Public service utilities

44. A majority is in favour to consider during the IGC the reinforcement of the concept of **public service utilities** ("services publics d'intérêt général") as a principle supplementing market criteria. It has been pointed out that in modern economies, a number of services (such as the supply of electricity and water, postal services, education, telephone and some forms of public transport) are supplied on the basis that they must meet certain criteria such as universal availability which should be guaranteed irrespectively of the public or private nature of the supplier. Therefore it is the consumer's access that should be protected instead of the nature of the supplier.. According to some members the Treaty should contain better and more complete provisions concerning the role of public services and services of general interest so as to garantee that ~~the need for an improved competitiveness and reasonable cost does not affect~~ the availability, the quality and the universality of the services provided to the citizen. Others believe that the general interest would best be served by maintaining the existing provisions of the Treaty which, they believe, ensure an appropriate balance between competition policy and the need for public service utilities.

competition does not affect

B. FREEDOM AND INTERNAL SECURITY

General considerations

45. Consolidation of internal security within an area of free movement without internal frontiers is one of the principal challenges currently facing the Union. Accordingly, as requested by the Cannes European Council, the Group has given priority to this aspect. Thus:

- the Group considers that there is a clear demand on the part of the public for **greater security** for citizens within the Union in the face of phenomena such as terrorism and other forms of organized crime (drug trafficking and others);

- it is also felt that, in the context of a single market, an open society and the abolition of the Union's internal frontiers in accordance with the Treaty, the State, acting in isolation, cannot fully guarantee the internal security of its citizens since such phenomena clearly have an international dimension. There is an obvious contradiction between the effective international organization of such crime and the national character of the main instruments used to combat it, which explains their limited effectiveness;

- citizens are also calling for better handling of the challenge posed to the Union by the growing **migratory pressures** to which it is subject, and whose size and diversity demands common management. The exploitation of illegal immigrants is a problem which should be countered by action on a European scale;

- finally, the prospect of forthcoming enlargement implies a qualitative change in the need to guarantee the internal security of citizens of the Union more effectively.

Critical analysis of cooperation in the fields of justice and home affairs

46. In view of the above, the Group has analysed the provisions and operation of **Title VI of the Treaty** and, whilst recognizing that JHA cooperation has been in force for a very short time and has been a step forward compared with the previous situation, it has concluded unanimously that the magnitude of the challenges is not matched by the **results** achieved so far in response to them.

47. A broad majority, while admitting the influence of a lack of running-in of this new Title and of the largely inter-governmental component of the matters regulated by it, consider that neither these nor the alleged lack of political will alone explain the scant results in this area. The problem is rather that some provisions of this Title are inadequate and clearly deficient in operation, as stated in the reports by the Commission and the European Parliament on the operation of the Treaty.

    However, some members referring to political difficulties in giving up national sovereignty in this area have pointed out that the lack of progress is not necessarily attributable to the intergovernmental nature of cooperation and that improvements in the present complex structure could solve many of the present problems.

48. For the great majority there is a threefold explanation for this state of affairs:

    - Lack of **objectives** and of a timetable for achieving them. Instead of placing emphasis on consolidation of an area of freedom and security in which there are no internal frontiers and where persons can move freely – the goal at which all action should be targeted – Article K.1 merely lists areas of common interest.

      Definition of the objectives pursued would allow the specification of needed means and actions with greater accuracy. This would clarify for citizens any doubt which might currently exist on action contemplated or on the final goal sought. Furthermore, the limits of the various common interest areas are not clearly differentiated from Community powers aimed at the same objective (e.g. free movement of persons). This entails an overlapping of actions and a risk of "contamination" between "pillars". The possibilities for improvement ("passerelle") have proved ineffective. In fact, the unanimity rule and the need for national ratification make the "passerelle" very difficult to use.

    - Neither are the **instruments** of this Title, which are similar to those of Title V except that the nature of the subject matter is very different, regarded as appropriate: external policy is rarely normative and requires flexibility of action, whereas matters relating to the security of citizens require legal protection and, therefore, a legislative framework. Still, some members consider that joint action may prove a specially useful instrument in certain cases. Others state that directives could adapt well to the JHA sector. It is also pointed out that Conventions are put through an extremely slow approval procedure and that it would be helpful if they could enter into force between Member States that have ratified them once a certain number of ratifications has occurred.

    - Finally, the same majority considers that a true institutional driving **mechanism** is lacking. Complex working structures, spread out over five different negotiating levels – one sometimes being superimposed on the other, thereby contributing towards the blocking of decisions – are not – and here the view coincides with that of the minority group – the most appropriate instruments for making progress in this area.

Ways of achieving greater efficiency

49. For the large majority, the Conference should improve the objectives and the instruments in this area of the Treaty. Many members favour a pragmatic approach in order to identify where there is need of further use of common institutions and criteria (Commission's non-exclusive right of initiative, control by the European Parliament and the Court of Justice, use of the majority rule in some instances, without prejudice to the appropriate use of unanimity in particularly sensitive areas) and where the full use of Community competence is required:

    - These members consider that the field of police and judicial cooperation, both civil and criminal, must be developed by means of closer intergovernmental cooperation, at least for a certain period. In the meantime, within the Union serious consideration should be given as to whether it should henceforth be considered admissible to exempt "political" crime from extradition between Member States and it might be useful to lighten the procedure provided for in Article K.9 ("crossover"). There has also been a suggestion that a specific legal basis be incorporated in the Treaty to enable actions to combat drug trafficking. It has further been pointed out that it would be desirable for Member States' penal codes to include a harmonized rule classifying **fraud** against the Community budget as an offence punishable by comparable penalties.

      Better cooperation on those lines requires improvements to legal instruments (conventions can be too unwieldy; in some cases, they should be replaced or allowed to enter into force once ratified by a majority) or to the role of the Institutions (generalized – but shared – initiative for the Commission, consultation of the European Parliament and judicial control by the Court of Justice).

    - Also, within this tendency, many members agree in identifying, as an area which ought to be brought under Community competence, everything to do with the crossing of external frontiers: **arrangements for aliens, immigration policy, asylum** (ruling out asylum among citizens of the Union) and **common rules for external border controls**. Moreover, since other aspects of the crossing of external frontiers, such as the format for visas and the common visa list, are already addressed under the first "pillar", it is thought that introduction of Community control would give greater coherence of the Union's external action in this area, an essential requisite for effectiveness in these matters.

50. Others believe that the current separation of "pillars" is essential in order to respect intergovernmental management of these matters that are so closely linked with national sovereignty. For them, consequently, the principle way of improving the operation of Title VI is to find practical improvements which reinforce cooperation.

51. The entire Group agrees on the need to reduce the number of preparatory levels, and many also urge the need to strengthen the General Secretariat of the Council in these areas.

52. The idea has been put forward that the European Union should explore ways of cooperating on more structured basis with Council of Europe in the fight against drugs.

53. The Group agrees that the national parliaments and the European Institutions should intensify their relations on justice and home affairs. It has been suggested in this connection that COSAC or an ad hoc interparliamentary commission could facilitate the exchange of parliamentary information on the subject. The idea of a High Consultative Council made up of two representatives of each of the national parliaments was also presented as having a special value for this area.

54. Various members of the Group propose the incorporation of **Schengen** into the European Union by means flexible arrangements (see above, chapter I.B). Others consider this to be examined in view of the Conference progress on Justice and Home Affairs.

55. As regards the arrangements for aliens, some members, as indicated in the previous section, would like to see the Union introduce a common status for legally resident third-country nationals, whilst others point out that this would require the precondition of an overall common immigration policy.

C EMPLOYMENT

56. The Group stresses the urgent need to meet the challenge of **job creation**, in response to a pressing demand from Europe's citizens.

57. Increased **competitiveness** - which is encouraged by Europe's integration - is the key to job creation. However it must be acknowledged that, on the one hand, this takes place above all through enterprises located at local level; on the other hand, States continue to be the bodies mainly responsible for ensuring economic and social cohesion and helping people living on the fringe of society. This being so, the Union cannot ignore the economic and social effects of national policies. Although the Union sees no miraculous cure for unemployment, it can coordinate and mobilize efforts in a common direction. The Group therefore considers that it must continue to follow the course set out in the White Paper on Competitiveness and in the process for examining the employment problems which was initiated after the Essen European Council and which has already been the main item on the agenda of the latest European Council meetings.

    It is also agreed that employment is not nowadays a sectoral policy but an objective which must be strengthened and also the global result of the Community's policies. In this context, Article 2 of the TEC states that the task of the single market, EMU and all policies is to promote a high level of employment and of social protection. There are currently several policies which may make a particular contribution to that endeavour, in particular policy on competition, the environment, structural funds, education and research.

    It is therefore considered appropriate that the Commission, ECOFIN and the Social Affairs Council should continue to follow the recommendation that they devote special attention to this subject. Their monitoring, coordinating and commonly reporting work should result in a framework for common strategies and strengthening of the Union's economic and social features, reflected in the broad guidelines of economic policies as referred to in Article 103 of the TEC.

    Some members suggest that competitiveness should be mentioned in Article B of the Treaty.

58. A large majority of the Group propose that the objective of job creation be strengthened in the legal bases for the above mentioned policies. In any case, many members consider that the Community should carry out an efficiency audit of its proposals and of the implementation of its policies to determine their job-creating capacity in accordance with Article 2.

    For some members, job creation should be included among the tasks refered to in Article 3 of the Treaty.

59. Several members go further and support inclusion in the TEU of a chapter on employment policy. In this view, according to some a Committee on Employment with the same rank as the Monetary Committee should be created to monitor the effect of Union policies and funds with regard to the impact on employment. This would imply the development of the Union's economic and social integration in full respect to the EMU provisions.

60. From an opposite view, some members do not consider that introducing new employment policy provisions into the Treaty is either necessary or that it would help to improve competitiveness or job creation; they underline that job creation is the result of greater competitiveness, flexibility of the economy and reducing bureaucratic burdens. They further believe that employment policy is a matter for Member States to decide in the light of their individual circumstances. In this view, at the Union's level, job creation should be a matter for practical improvements of the ways and means to coordinate national policies.

D THE ENVIRONMENT

61. With regard to the **environment**, the Group stresses the pressure being brought by public opinion for greater respect for the limits imposed by the environment and sustainable development.

62. Some members have pointed to the need to state more clearly that environment and sustainable development are priority objectives of the Union. Hence, environmental considerations should be integrated with other sectoral policies, e.g. agriculture in terms of environmental conservation. The Group thinks priority should be given in the Conference to taking account of the environmental dimension in Community policies.

63. A number of possible proposals have been made within the Group in this context: incorporation in the Treaty of the agreements reached at the Rio Conference so that Community policies are geared to a sustainable development; possible inclusion of the environment in Article 36 of the Treaty (restrictions on imports), Article 39 (objectives of the common agricultural policy), Article 74 (transport), Article 129b and the following Articles (trans-European networks), and consideration of extending the possibilities offered to the Member States by Article 100a(4) for laying down higher national standards; more involvement of the EP through co-decisions on these matters; inclusion in each proposal of an environmental impact assessment.

64. From another point of view, it has been pointed out that a large part of environmental legislation in each Member State is of Community origin and that in the first place the considerable body of legislation already in force should be properly implemented. Means to strengthen implementation and enforcement should be considered, without necessarily reforming the Treaty. In particular, the Conference should examine how to improve the capacity of the Union to act more efficiently and to identify whenever that action should remain within the Member States.

65. A majority of members is prepared to consider extensions of qualified majority voting system in this area. However, some members pointed to the limits which application of the principle of sufficient means should impose if the exceptions to qualified majority voting in this area were to be abandoned. Stress was also laid on the quasi-constitutional nature of such exceptions in that they affect areas highly sensitive for the sovereignty of the Member States or have major financial implications at national level.

66. In connection with the environmental concern, one member suggested the idea of strengthening the nuclear safety provisions of the Euratom Treaty. One member suggested the inclusion in the Treaty of a reference to the gradual phasing out of the use of nuclear energy. However, It was noted by others that nuclear energy actually provided up to 75% of some member States' energy supply and that it is seen by many of their citizens as the cleanest way of producing energy.

E A MORE TRANSPARENT UNION

67. The Group agrees on the need to make Union affairs more accessible and comprehensible to the general public. The concept of "transparency" serves that purpose and covers different aspects (many of which do not require any amendment to the Treaties):

- The Group has examined the possible **simplification and clarification** of the workings of the Institutions and recommends that institutions make better use of **publicity, information and consultation** methods, paying special attention to facilitating the work of national parliaments. There should be more advanced notice of **Commission proposals.** The Group favours the practice of issuing "Green Papers". It is further thought that the increasingly frequent use of **Interinstitutional Agreements,** which are recognized by all to be useful, should be accompanied by appropriate general dissemination and public notification of their contents.

- Application of the principle of subsidiarity contributes to increase transparency. (see below).

- Changes in the **Council's** organization and working methods will have to take into account, inter alia, the aim of greater transparency. Here, in addition to the question concerning the **publicizing** of the Council's activity, it is recommended that individuals be allowed more **information** and the **clarity and quality of legislative texts** be improved. Various members have referred to recommendations on this point in the Koopmans Report which they feel to be relevant.

- Some representatives are in favour of inclusion in the TEU of the general principle of **access to documents** of the Union. They think that guaranteeing this principle by secondary legislation or political undertakings would not be sufficient and that there is a need for a legal basis in the Treaty so that citizens and national parliaments are assured of more direct access to such documents. Others prefer to maintain and develop this principle through a Commission and Council Code of Conduct.

68. The Group also feels in general that it is necessary to **simplify** as far as possible the actual text of the **Treaty** so that its contents are clearer, easier to understand and therefore accessible to citizens interested in examining and studying it. To this end, the Secretary General of the Council has upon request of the Group presented a paper on possible ways of simplifying and clarifying the text of the Treaty without altering its contents.

An initial examination of this interesting report has led the Group to the following two conclusions:

- On the scope of the operation to be carried out, all representatives could agree, on a minimal simplification process involving deletion of all obsolete provisions and the renumbering of Articles. Some members do not think it advisable or appropriate to go beyond such simplification, as it seems unlikely that this could be achieved without altering the substance or balance of the Treaty. However, the majority favours more sweeping options which deliver as a result a simpler Treaty. Those options mean a reform of the structure of the Treaty that only the Conference can decide.

- Therefore, the discussion on simplification of the Treaty is not a technical matter which can be separated from a decision on its contents. However, a working party answerable to the Conference could examine the issue of formal simplification, and its conclusions together with those on the substance could be the subject of final agreement at the Conference.
  Some members insist that if there is to be that working party, its mandate should be decided as soon as possible.

F SUBSIDIARITY

69. The Group stresses the importance of correct application of the principle of subsidiarity and proportionality enshrined in Article 3b of the Treaty and confirmed by an Interinstitutional Agreement on its implementation.

Subsidiarity imposes not only a legal but also a behavioural obligation.

Correct application of this principle must avoid two misuses: that of subsidiarity remaining an abstract principle without practical effect and that of it becoming in practice an instrument for systematically limiting the powers of the Union. It is felt that the principle of subsidiarity should serve as a guide to the proper exercise of the powers shared between the Community and the Member States and avoid their misuse either to excess or the contrary. Subsidiarity cannot be used as an excuse for lack of solidarity or for the renationalization of common policies. Nor can it be an alibi for systematically increasing the Community's tasks. For these reasons, most members of the Group do not feel it advisable to amend Article 3b of the Treaty but think it necessary to ensure that it is properly exercised in practice.

70. It is also thought by some members that there is a need for more effective control over application of this principle by those **Institutions** responsible for watching over the Treaties: the Commission by "ex-ante" control and the Court of Justice by "ex-post" control.

In this sense various representatives have insisted that on the basis of the **Edinburgh Declaration** a Protocol on subsidiarity should be incorporated to the Treaty.

Also, one member proposes stepping up control on subsidiarity through a new legal procedure for the national parliaments before the Court. Others favour further political supervision. In this context, it has been suggested to increase the "ex-ante" control through the consultation of a **High-Level Advisory Committee** consisting of two members of each national parliament, which would report on whether subsidiarity is being correctly applied. Furthermore, the idea was recalled that when the **Council** receives Commission proposals and before it examines the substance, it should first decide whether the proposal correctly applies subsidiarity, but, the majority of members consider that the Council's decision-taking mechanism should not differ from that applied to the substance of the proposal.

One member has suggested introducing into the Treaty a provision **limiting** any regulatory excesses and providing for more systematic use of clauses which expressly limit Community powers, as is at present the case with education, health and cultural affairs.

71. A very large majority within the Group is opposed to the request made by the **Committee of the Regions** in its report that it be authorized to bring proceedings before the Court of Justice for incorrect application of the principle of subsidiarity. They believe that it is not a task for the Committee of Regions to interpret the application of the principle of subsidiarity to the powers shared between the Union and the States.

72. Various members have put forward the need to strengthen the **principle of sufficient means** in the Treaty as a way of moderating the exercise of the Community's powers. This principle does not pursue Community financing for every Community decision which creates costs for one of its Members but should imply "ex-ante" control of proposals so as to prevent the Union from deciding intolerable financial obligations against the will of those States which would be obliged to fund them from their national budgets. The principle of sufficient means looks for consistency between the ambitions of the Union's proposal and the constraints on the Member State provider of funds.

73. Some members have stressed that correct application of subsidiarity and appropriate recognition of the principle of sufficient means could facilitate the transition from unanimity to qualified majority in areas such as education, environment or social policy.

III. AN EFFICIENT AND DEMOCRATIC UNION

74. The objective of the 1996 reform, as defined in the terms of reference and given the challenge of enlargement, is to ensure that the Union functions efficiently and with legitimacy; in short, the purpose is to **improve the quality** of the way the Union works. To this end it will be necessary to clarify its objectives and refine the instruments that serve those objectives, bearing in mind that in future the intention is not that the Union should necessarily have more powers but that it should perform its tasks better.

75. The instruments of the Union, that is to say its institutions, rules, resources and policies, are not ends in themselves but are there to serve the objectives and tasks of the Union. The aim of the reform must be to ensure that the adjustments decided at the Conference will enable the instruments of the Union to operate according to the criteria of **efficiency, democracy, solidarity, transparency** and **subsidiarity.**

76. The richness of the Union's natural diversity, transparency and greater participation by national parliaments, and the legal security of a Community on the rule of law require strict observance of equal treatment of the Union's official languages on the part of the institutions. This behaviour obligation should be reinforced without amendment of the treaties.

77. The 1996 reform must adjust the instruments of the Union so as to guarantee the improvement in their operation in the Union as it is now and in the Union that emerges from **next enlargement.** The reform is already necessary now, but the prospect of enlargement makes it imperative. The results of the Conference will have to be judged in this light.

A. THE INSTITUTIONS

General considerations

78. The Group considers it necessary that the institutional reform should consolidate the **single institutional framework** throughout the Union Treaty, whatever its structure may be. It is also the common view of the Group that the Union does not need to create new Institutions.

79. The Group also considers that the reform of the institutions must observe the overall **institutional balance,** in accordance with the specific character of the European Union. This is consistent with the adaptation of the institutions to new circumstances and needs – especially to the increase in the number of Member States – after enlargement, with their strengthening and with a better definition of their respective functions.

80. The prospect of the forthcoming **enlargement** makes it a matter of urgency that institutions designed for the six founding States of the Community be adapted, so that they can emerge from the Conference with renewed legitimacy: the more efficient and transparent the institutions of the Union are, the more support they receive from our citizens, the greater the benefits of all kinds that will flow from the Union to Europe and its citizens. An inappropriate or inadequate reform, on the other hand, would imperil the very nature of European integration. For this reason the negotiations for the accession of the applicant countries should not commence until the Conference has been concluded, as the European Council has pointed out.

The European Parliament

81. **Composition:** It seems appropriate to fix a maximum number of seats. A majority accept a maximum of 700 in an enlarged Union, as the European Parliament itself proposes in its report. It has also been suggested by some members that there should be at least enough members to ensure that major political forces of each Member State have the possibility to be represented.

82. **Uniform electoral procedure:** It has been recalled by the Group that Article 138(3) provides for the establishment of such a procedure in all Member States. Some members propose that this legal basis should be changed to help achieve this objective and that a final date be established for its application. Others do not consider such amendments necessary.

Legislation:

83. The EP's legislative initiative: The Group considers that the right of request established in Article 138b is broadly sufficient. Some members nevertheless point out that this Article should require the Commission to reply to the European Parliament's request.

84. **Legislative procedures:** The Group is in favour of reducing the variety of procedures currently in force under the Treaty, and a large majority proposes its reduction to three: **co-decision, assent and consultation**. Some members note that this should not imply a change of the present institutional balance.

85. Some members propose that **assent** should be applied where the Council decides with unanimity, specially in Treaty changes (article N), own resources, article 235 and Third Countries' agreements.

86. The Group feels it is appropriate to improve and simplify the **codecision** procedure without changing its nature. A large majority is in favour of extending it. Most would extend it to all legislation adopted by the Council by qualified majority. Another view focus extension to the matters currently dealt with by the cooperation procedure, whereas others suggest a case by case approach.

    One member, in principle, opposes any extension.

87. **Budgetary function:** (see below under **Resources**)

88. **Political control:** As regards the role of the EP in the appointment of the Commission, several members see that the current approval procedure of Article 158, applied for the first time to the present Commission, represents a satisfactory balance that should not be changed. Others would prefer the EP to elect the President of the Commission from a list proposed by the European Council. (As regards political control of the Commission, see below **Commission**).

89. **Executive control:** A distinction should be made here between executive powers exercised by the Commission and those exercised by the Member States in implementation of Community law. Most members consider it appropriate to increase the EP's and the Ombudsman's powers in **combating fraud** and, in general, in monitoring the executive powers of the institutions.

90. **Role of the EP under Titles V and VI:** (see under "Freedom and Internal Security" and "Common Foreign Policy").

National parliaments

91. The Group considers that the national parliaments' principal role in relation to EU decision-making lies in the monitoring and **control** that each parliament exercises over its government's action in the Council. The procedures for exercising these powers are not a matter for the Union but are for each State to organize.

92. The Group also recommends that the role of national parliaments be fully respected. Therefore, national parliaments should be provided with all the necessary information of the Union and its institutions. The Group feels that the Community and the Union must not act "by surprise". Rather, an improved process of prior consultation and transparency is required, the central pivot of which must be respect for the role played by each national parliament in shaping the will of each Member State in regard to Union matters. In consequence, the institutions, specially the Commission and the Council, should conduct their work so as to facilitate the task of national parliaments. This could be reinforced by amending the Treaty and/or adopting an appropriate code of conduct, so that each national parliament receives **clear and complete** documentation in its official **language** adequately **in advance** (four weeks has been mentioned) on every substantial Commission legislative proposal enabling each parliament to examine and discuss it before it is discussed and decided on by the Council.

93. As for relations between the European Parliament and the national parliaments, the points contained in **Declaration No 13** of the Treaty are especially apt. Some members referred to the possibility of giving Treaty force to some elements of Declaration No. 13.

The experience of the last few years favours a formula which has been operating adequately, namely COSAC, a conference composed of representatives of the European Affairs Committees of the national parliaments together with a delegation from the European Parliament.

The Group nevertheless has doubts about the wisdom of making this conference more institutionalized as its success is perhaps due to its informal nature. At all events, it is a body for the exchange of information and should not take decisions or replace the expression of the will of the people in each of the parliaments for which this conference is a coordinating body. Another formula is that of the growing number of contacts between specialist committees of national parliaments and of the European Parliament, especially for matters such as Foreign Affairs or Justice and Home Affairs.

In this context, the idea of the creation of a **High Consultative Council** made up of two representatives of each of the national parliaments has been put forward by one member. Such a body could, be consulted on Union matters outside Community competence. It could also advice the Commission on the proper application of the subsidiarity principle when preparing a proposal.

The Group shares the view that closer association of national parliaments should not result in the creation of a new institution or a permanent organ with its own staff and premises.

The majority in the Group does not recommend as a general rule the convening of Conferences of the Parliaments as referred to in **Declaration No 14** on the Treaty, in the light of the experience of using this arrangement, which is not very practical.

94. Among the practical improvements that might facilitate the role of the national parliaments, some members feel it would be worthwhile for **Commissioners to appear** before national parliaments whenever circumstances warrant this. An idea was advanced by some representatives that the members of the Court of Auditors could also appear before national parliaments.

95. The creation of a second chamber comprising members of national parliaments has been rejected by the Group.

The European Council and the Council

96. The Group considers that the Conference must clarify and improve the role of the Council as an institution with legislative and executive functions, without detracting from other institutions and without prejudice to the institutional balance. The increase in the number of States affects the operation of this institution very directly.

The European Council

97. The Group considers that the European Council's central role is essential to the Union, as the ultimate political impulse and highest expression of the Union's political will and of its strategic policy formulation. The European Council assumed greater importance with the entry into force of the Maastricht Treaty when the Union acquired external policy and internal security responsibilities. The European Council is also the highest decision-making authority in the development of Economic and Monetary Union. The Group considers the leadership role of the European Council will be even more important in future in view of Europe's agenda.

The Council

98. **Powers**: The Group is in favour of maintaining its present functions and strengthening its capacity for action both by means of **Treaty reforms** and **by practical improvements** in the operation.

Decision-making mechanisms

*** Unanimity and qualified-majority voting:**

99. There is broad agreement in the Group that unanimity should remain the rule for decisions on **primary law**: Article N and Article O, as well as for establishing the system of the Union's own resources and their amount. All such decisions need to be ratified by national parliaments.

However, a few members have expressed concern about retaining unanimity on primary legislation in a Community enlarged to 30 members since such a procedure would render decision-making extremely difficult, and could in the future leave the Union in a state of paralysis. To resolve that problem, they point to the possibility of having some provisions of the Treaty either stipulate unanimity for a while, giving way thereafter to a more flexible decision-making mechanism, or stipulate that such a subsequent change would not take place automatically but could be adopted under a simplified procedure. The latter possibility is already envisaged in ECSC Treaty and for EMU.

100. In the case of **Community legislation**, a large majority in the Group is prepared to consider making qualified-majority voting the general rule, on grounds of efficiency, since it will facilitate decision-making and, according to some reduce discrepancies between the state of development attained by the internal market (qualified majority) and the policies in the social, fiscal and environmental spheres (in which unanimity is often the rule).

Some members consider exceptions warranted to safeguard sensitive interest; and one member sees no case for extending qualified-majority voting on the grounds that it would not mean more effective decision-making in comparison with unanimity.

It has been stressed by some members that the extension of qualified-majority voting would increase the efficiency of the Union only if its decisions are supported by a significant majority of the Union's citizens. In this context, those members point out to the need of adequately taking into account of population in the decision-making by the re-weighting of votes within the Council, and/or the adoption of a double significant majority of votes and citizens. Strengthening the principles of subsidiarity and adequacy of means have also been mentioned to help extension of qualified-majority voting in this context.

101. Novel arrangements steering a middle course between unanimity and qualified-majority voting have been mentioned in the Group **for Council decisions on Title V and VI** matters (a super-qualified majority, positive abstention, a qualified majority with a minority dispensation or consensus minus one). None of these have been explored in depth. However, it would be possible to have different decision-making procedures for the Council in such matters if they are established in the Treaty, irrespectively of its structure.

*** Threshold for a qualified majority and weighting of votes:**

102. The European Council has decided that the 1996 Conference is to consider the question of the present qualified-majority and vote-weighting system, which currently operates in accordance with the current Treaty provisions as interpreted by the Ioannina compromise with regard to their practical implementation. The Group has been instructed to look into the matter.

103. There is a majority in the Group in favour of the 1996 Conference establishing a qualified-majority voting system through which the Union will strengthen its effectiveness and legitimacy. The Union must be able to take decisions but some members insist that it is not simply a matter of assisting the ability to decide. Its effectiveness will depend on such decisions having the backing of as many European citizens as possible. For this to be the case, the revision should keep the qualified-majority threshold at an effective level and such decisions should not leave a significant proportion of the people of Europe in a minority. However, there is no specific option enjoying broad support in the Group when it comes to putting this into practice.

104. Several members point to a gradual deterioration in popular representation in the weighting of qualified-majority voting as a result of the under-representation of the people of the more populous States and the growing number of less populous States in the Union. These members underline that this gradual deterioration feeds into decisions on policies which directly affect citizens in an integrated area. According to these members this problem seems even more serious in the view of next enlargement.

In the view of some, the answer is a new weighting of votes that takes greater account of population. On the other hand, a system of double majority of votes and population has been suggested. In this view, for some, decisions should be taken by a simple majority of States and population behind them. This implies the suppression of different weight in votes for Member States, and of the qualified majority voting system. For others, counting on population should not substitute but reinforce the qualified majority voting. For these members, besides reweighting of votes, the Conference should establish the significant proportion of Union's population that should allow decisions by qualified majority system.

105. In any event, several members have voiced objections to the arguments in support of greater account being taken of the population criteria in qualified majority voting. Some have pointed out that the entire integration process rests on the fundamental principle of sovereign equality of States, with the present voting system already representing a concession under that principle. Others have taken the view that the present voting takes due account of population, arguing that in any case the institution which represents the people is the European Parliament.

These members also emphasize that the smaller and medium sized Member States do not act as a block and that there is little if any prospect of Governments representing a majority of the Union's citizens being outvoted.

One member has stated that the present balance is satisfactory and should be maintained; but, since the enlargement will bring into the Union mainly small countries, keeping the present formula would weaken the position of the larger Member States, and, consequently, the number of votes granted to the last ones should accordingly be increased but without retaining a precise proportion between votes and population.

Organization and working methods

106. Aside from the growing imbalance pointed to by some in the voting mechanism, which they believe impairs the legitimacy of Council decisions, a broad majority in the Group sees a gradual deterioration both in the organization of the Council and in its working methods, devised for a smaller number of Member States. Both can be improved without revising the Treaties, although certain aspects of them, such as the role of the Council Presidency, are dealt with by the Treaty and this is therefore discussed as a separate issue.

The Group points to the need for the General Affairs Council to regain its role of general coordination of the Union's affairs, ensuring overall consistency in Council actions in all areas of the Treaty. With that end in view, some members of the Group have suggested practical improvements, such as the possibility of the General Affairs Council meetings being held at two levels: a preparatory level, composed of Ministers for European Affairs, and full-member level, which would concentrate on the most important issues. The Group also advocates greater consistency in the committees paving the way for Council meetings. In this context, several members were concerned to maintain the specific roles of these committees. A large majority recommends strengthening Coreper in its key role of coordinating and preparing for Council meetings in order to ensure their overall consistency.

In addition, the Group recommends that consideration be given to fresh approaches to preparatory work for the Council with the next enlargement in prospect. The possibility should here be looked into of replacing some stages of discussions in working parties by a written procedure. These ideas should be given further consideration.

Publicity

107. The Group notes that substantial progress has been made in making the workings of the Council more open. Following the 1993 Council rules of procedure, many Council votes are now published, and there has been a number of public Council debates. Most recently, the Council decision in October establishes much greater access to Council minutes (when the Council is acting as legislator) and minutes statements.

However, the Group agrees that further progress could be made. Several members maintain that the Council should meet in public whenever it is acting as a legislative authority. Several members in the Group favour extending the Council rules of procedure, to provide that Council votes on legislation be made public in all cases and not, as at present, unless the Council decides against; and that the initial debates on significant legislative questions should all in principle be made public.

Others, while sharing a will for transparency, point out that it is not easy in practice to separate the Council's discussions acting as legislator from its deliberations as a political institution with executive powers. They emphasize that what is involved in practice is a continual, intensive task of negotiation, which should not be performed in public if it is to remain genuine.

Presidency

108. The Group highlights the important role of the Presidency and its fundamental responsibilities for the conduct of the Council's affairs. The majority in the Group takes a positive view of the six-monthly rotating Presidency system under the Treaty (Article 146 EC, Article 27 ECSC and Article 116 EURATOM) since it fosters a sense of belonging and the urge to excel on the part of those holding office.

However, the present system applied to a 30-member Union would mean that each member serves as President only every 15 years. For some there could also be problems concerned with the accession of very small States. The Group has therefore considered different possible arrangements. One proposal has been the idea of a team-Presidency consisting for instance of four member States acting for a period of at least 12 months. Within the limits of the present Treaty there are practical improvements which must be given more careful study.

The Commission

Powers

109. **Exclusive right of legislative initiative:** The Group considers that maintenance of the Commission's monopoly of initiative is a fundamental aspect of the institutional balance of the Community. It will be exercised without prejudice to the right of request under the Treaty and the possible inclusion of an obligation to reply.

It is broadly accepted that legislative proposals should lapse at the end of the term of the European Parliament if they are not expressely confirmed by the Commission.

Moreover, some members have suggested that the Commission set a time limit to some proposals on a case-by-case basis ("sunset clause"): those Commission proposals should include the period of validity of the provisions proposed, with a date laid down for expire or review, and/or should lapse after a fixed space of time, if not adopted by then.

110. **Guardian of the Treaties:** The Group is in favour of retaining this role.

111. **Executive powers:** The large majority of the Group is in favour of retaining the present system of responsibilities, in which the Commission shares executive powers with the Council. One member has put forward the idea of transferring executive powers of the Commission to special agencies. The broad majority of the Group considers that it is for the Commission as a college to exert its powers in full responsibility.

The Group also agrees that more needs to be done to ensure full and even implementation of EC law and obligations.

112. **Powers of the Commission under Titles V and VI:** These are dealt with in commenting on those Titles of the Treaty.

Composition of the college

113. The Group considers that a suitably constituted college of Commissioners is a fundamental aspect of the credibility and legitimacy of the Commission as an institution able to lend its proposals overall consistency and able to identify the different sensibilities and interests affected by each of its proposals.

114. In considering the various options for the composition of the college, the Group has attempted to identify proposals avoiding a confrontation between States with larger and smaller populations, while endeavouring to achieve a result providing greater democracy, greater effectiveness and a higher profile for this important institution. In the light of these considerations, it identifies basically two possible approaches set out hereunder.

115. One option would be to retain the present system under the Treaty. This arrangement has the advantage of ensuring at least a Commissioner per Member State, thus fostering their citizens' sense of belonging. Some members of the Group have pointed out, that they would have difficulty in supporting any revision as a result of which they did not have a Commissioner of their own nationality.

The drawback of this arrangement, in the view of some, is that an institution originally designed for a nine-member college now has 20 members and in a 30-member Union would have at least 36. The problem posed by such a large number of Commissioners is the difficulty of warranting portfolios of any real substance in a Commission which is not going to increase proportionally the number of its powers. This will give less importance to the members of a college which will be not only greater in number but also much more heterogeneous and thus likely to be less consistent in its decisions.

Its advocates, on the other hand, believe that these problems are surmountable. An enlarged College can strengthen its internal consistency and collegiality by adapting its working methods and, if necessary, its decision-making procedures. Its efficiency could be also increased by allowing greater authority for its President, and through an increased parliamentary monitoring. In support of their arguments, they point out that some Member States' Governments are composed of over 36 Ministers. Lastly, they maintain that the Community should not opt out of its complexity in as much as it ensures the safeguarding of its diversity. The presence of Commissioners of all nationalities is not the simplest course but it allows such diversity to be preserved.

116. An alternative option is to ascertain the appropriate number of Commissioners to perform the Commission's duties consistently and effectively. They would then be fewer than the number of Member States. This option has the advantage of visibility and consistency, it restores to the Commission its collegiate nature and independence, it avoids proliferation, bringing savings in human and financial resources, and it would give the Commission a higher profile, as the Institution that safeguards the general interests of the Community.

Its drawbacks have been pointed out in describing the advantages of the previous option: it fails to ensure the presence of Commissioners of all of the Union's nationalities at all times.

In its supporters' view, this option should not involve any discrimination since the Commissioners should be chosen by the President of the Commission (who would be chosen by the Parliament, acting on a proposal from the European Council, and subsequently invested, together with the entire college, by the Parliament) on their merits, from a list of three candidates put forward by each of the Member States. This system would make for a higher-quality membership of the college.

117. Set against these two approaches other possible arrangements have been mentioned:

* Some members have put forward as a middle way the option of a Commission composed of just one national Commissioner from each of the Member States, thus removing the second Commissioner which the five most populous States currently have. This would result in a maximum of 30 Commissioners instead of 36 for a Union of 30 Member States. Other members of the Group regard this option as unbalanced and tantamount to renationalizing the college, converting it into a kind of Council deciding by a simple majority, with a negative effect on popular representation in decision-making. This option would only be considered by those members if it were accompanied by amendment of the voting system in the college to introduce qualified-majority voting for its decisions. For the majority of members such a system of voting would strip the Commission of its originality and independence. For some members, the option of a Commissioner per Member State will not make it possible to maintain the present voting system in the Commission.

* Others propose a reduced college in which each Commissioner would represent a minimum number of inhabitants, which would result in the permanent presence of nationals of the more populous States and rotation for nationals of the rest of the Union. Seen in those terms, this arrangement is rejected by various members.

118. Another idea that has been put forward is the possibility of the college in future being composed of two kinds of Commissioners, seniors members and voting or non-voting juniors commissioners. This proposal is, in principle, favourably considered by some members as a possible way of enriching or approaching the afore mentioned options, and should be given further examination in the Conference.

Accountability of the Commission

119. A majority in the Group favours making the Commission more accountable to the European Parliament. Some members propose the possibility of individual motions of censure of Commission members by the Parliament, but others object to this on the grounds that such a possibility would undermine the collegiate nature of the Commission. Some members advocate establishing procedures to improve the accountability of the Commission to the Council.

Other institutions and bodies

Court of Justice

120. The Group agrees on the need to strengthen the Court's **role**, highlighting the part played by the Court in watching over a Community based on the rule of law, in ensuring legal uniformity in the interpretation of Community law and in guaranteeing the protection of individual citizens' rights.

A majority of representatives are in favour of stepping up its role in the fields of justice and home affairs on grounds of legal certainty, in order to ensure the protection of individual rights which might be affected in those fields. A few have suggested the possibility of enabling the Court to enforce more swiftly the penalties it may impose.

One member argues, however, that ECJ judgments can lead to consequences that are considered disproportionate in their effect. This member suggests that the Conference should examine possible limits to member States economic liability when a member State has genuinely attempted to comply with Community law and the application of national time limits in such cases. This representative also suggests that the Conference should consider limits on the retrospective effect of judgements and the establishment of a right of appeal.

A proposal that the Court should speed up its procedures and improve its translation facilities was favourably received by the Group.

The Group has not been able to deepen the valuable ideas put forward by the Court in its report. A broad majority in the Group is prepared to recommend consideration of the amendment of Article 188 proposed by the Court in order to be able to adopt rules of procedure, which other institutions and bodies are already able to do.

121. As regards the Court's **composition and number of members**, a majority of representatives think the term of office of Judges should be extended to nine years, with no possibility of reappointment. With a view to future enlargement of the Union some take the view that the number of Judges, should be fewer than the Member States in order to ensure efficiency and consistency. Others take the line that all States should have a Judge at the Court so that all legal systems of Member States are represented. A middle course put forward is that, for the purposes of national participation, not only Judges should count but Advocates-General as well.

Court of Auditors

122. The Group note the key role of the Court in taking effective action against fraud and financial mismanagement of the Community budget.

Proposals have been put forward to make explicit the duty of States' internal official bodies and of national audit boards to cooperate with the Court of Auditors and also to make clear its ability to audit the Union's accounts for foreign policy and for justice and home affairs. The possibility has been expressed of the European Parliament being more directly involved in the appointment of the Court's members. Some members have also suggested that it should be granted a right of access to the Court of Justice for the protection of its prerogatives.

The Group makes the point that more effective action against fraud is also and primarily a matter for the Member States.

Committee of the Regions

123. The majority of the Group underlines the importance of the role played by this body representing the regions and local authorities and fostering throughout the whole territory of the European Union a further sense of belonging. It is also, however, argued by some that, as an innovative acquisition of the Union, it needs to be given time to fullfledge its effectiveness before consideration is given to developing it further.

The majority view is that it could be provided with administrative machinery of its own, that its consultative functions could be better used and possibly extended and that the European Parliament should have the right to consult it. Some members argue for it to be given active legal capacity before the Court of Justice in order to safeguard its prerogatives and one representative would like such capacity to be extended to the bringing of proceedings for infringement of the principle of subsidiarity.

Economic and Social Committee

124. A broad majority points to its role in social dialogue and appreciates its contribution as a consultative committee in economic and social matters, the abilities of which should be better exploited at the consultative stage in preparation for legislative action. One member, however, questions the future role of the Committee given the increased use of white and green papers and other possibilities for direct consultation.

B. ACTS, RESOURCES, AND POLICIES

Acts

Article 235

125. The Group is not in favour of incorporating a catalogue of the Union's powers in the Treaty and would prefer to maintain the present system, which establishes the legal basis for the Union's actions and policies in each individual case. It is therefore in favour of maintaining Article 235 as the instrument for dealing with the changing nature of interpretation of the Union's objectives. Some members have suggested

incorporating the EP assent requirement in Article 235.

Hierarchy of acts

126. The Group has analyzed this question in accordance with the brief contained in Declaration No 16 annexed to the Treaty and identified two positions:

* Those who favour establishing a hierarchy of Community acts based on the level of their origin source (constitutional acts, legislative acts and implementing acts) point out that this classification would render simpler and more transparent the application of subsidiarity. The functions of each institution would be clarified by such a system of Community law hierarchy: Treaties would be adopted by unanimous decision of the Council followed by ratification by national parliaments, laws would be adopted on a Commission proposal by co-decision of the Council and the Parliament and the Commission or the Member States would be responsible for implementing provisions, the former under Council and Parliament supervision.

* Those who are opposed to this system do not deny its clarity, but refute its logic, which is based on the idea of separation of powers within a State, since this approach would transform the Council into a second legislative chamber and the Commission into the European executive. Their view is that the Union has its own particular nature which is suited to a characteristic classification of acts: Regulations, Directives, Decisions and Recommendations. They feel, however, that within this characteristic system it is possible to clarify the functions of each of the institutions while maintaining the balance between them. In this context, they recommend a return to the original spirit of the Treaty through greater attention to the quality of each act and a use of the Directive which is more in line with its genuine purpose. It was also pointed out that the introduction of the co-decision procedure has meant that the debate on the hierarchy of acts has lost its previous importance.

  Among those in favour of a hierarchy of acts, some stress that directives should be retained as best suited means to abide with the principle of subsidiarity.

Powers of execution (committee procedure)

127. On this subject, which the interinstitutional "modus vivendi" of 20 December 1994 identified as one to be dealt with by the Conference, there are the following positions:

* Those in favour of a hierarchy of acts resolve this issue by assigning full power to the Commission, subject to control by the Council and the European Parliament.

* Those opposed to granting executive power to the Commission because they believe it would disturb the balance between the institutions are willing to consider simplified procedures which would not undermine the Council's executive functions.

* There is a compromise proposal for a single procedure under which it would be up to the Commission, in consultation with national experts, to decide on implementing measures under the supervision of the Council and the EP, which could cancel the measures and request the application of normal legislative procedures. At least one member pointed out that opposition by a minority of States should be sufficient to reject any implementing measure.

128. In any case, a large majority in the Group is in favour of simplifying the present committee procedure, which is already complicated and confused and will not survive beyond the next enlargement. The need to improve the quality of the rules adopted under these procedures was also emphasized.

In any event, revision of the 1987 Decision on committee procedure **does not require reform of the Treaty** and therefore consideration must be given to the improvements which can be introduced before the Conference. In this context, one member has suggested the idea of introducing a standard set of internal rules of procedure to apply to all committees.

Monitoring the implementation of acts

129. The Group considers that the Commission should make full use of the powers conferred upon it by **Article 171** regarding penalties for failure to comply with Community law. Some propose that Article 171 be amended to enable the Court of Justice, at the Commission's request, to impose penalties on Member States in default, without the need for the second court case currently required.

130. Some members suggest that the EP's powers in this area should be strengthened by means of **Investigative Committees** empowered to convene and request explanations from Community, and even national, authorities. It was also pointed out that the Commission should make periodical reports on procedures of infractions.

131. On the other hand, a majority suggests making it obligatory for the **Commission** to produce **annual reports** on the effectiveness of policies implemented.

132. Some members also propose allowing **private individuals** more effective means of action to appeal against failure to comply with Community legislation.

Combating fraud

133. The Group wants the Community institutions to be more effective in combating fraud, improving financial control of the Community budget, ensuring value for money and full compliance with Community law.

A large majority believes that the European Parliament and the Court of Auditors should make full use of their responsibilities in combating fraud which, according to some, could be reinforced. All institutions and bodies must be subject to proper control.

It also must be recalled that often fraud cases appear within the Member States at regional and local level. As pointed out in the chapter on Justice and Internal Security several members of the Group suggested a harmonized rule in the national penal codes punishing fraud against the Community budget.

Resources

134. The 1993 Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure provides for examination of these questions on the occasion of 1996 Conference.

Own resources

135. Most members of the Group do not want the IGC 96 to deal with these questions. They point out that there is already another session planned for 1999, the year in which the present Financial Agreement expires. All aspects of the system of **resources** should be examined at that time. Any other course of action would unnecessarily complicate the agenda for the 1996 Conference and run the risk of delaying the European agenda scheduled to follow the Conference. The Community has always adopted a stage-by-stage approach and accumulating tasks for the IGC 96 would lead to a general debate about the future of Europe which would prove unmanageable.

136. Some members note, however, that the system of own resources is one matter and the amounts involved another, and that the Conference is the proper time to lay down in the Treaty, if so desired, the legal bases for a new system of the Community's own resources and the participation of the Community Institutions in these decisions.

As for possible revision of the system of contributions to the Community budget, some members advocate introducing a **new revenue system** which takes account of the relative prosperity of the various Member States, with several of them wanting the Conference to reduce the lack of consistency between the EP's powers with regard to expenditure and its present very limited role in revenue arrangements. Others defend the present system as reasonable.

137. At least one member is in favour of incorporating **multiannual financial programming** in the Treaty. A clear majority would prefer to keep it outside the main framework in the more flexible domain of interinstitutional agreements.

Budgetary procedure

138. In addition to the fairly general wish to **simplify the procedure** (abolition of one of the readings), the proposal made by some members to reduce the lack of consistency between the EP's budget powers with regard to expenditure and those with regard to revenue has already been mentioned. In the case of expenditure, some members propose simplifying the procedure by removing the distinction between **compulsory and non-compulsory expenditure**. Most members, are, however, against removing the CE/NCE distinction. Some suggest an intermediate approach for improving the balance of budget powers between the Council and the Parliament which would involve giving the latter some latitude to intervene in CE, perhaps in the form of a percentage.

Monitoring expenditure

139. As we saw earlier, a broad majority is in favour of strengthening the role of the Court of Auditors in the fight against fraud and establishing closer cooperation with national audit bodies. According to some members Ecofin and Budget Council should have more control over spending activities when dealt with in the Council.

Policies

140. The general feeling within the Group is that the Community should try **to do not more but better.**

141. In accordance with Declaration No 1 annexed to the TEU, the Group has analyzed the possibility of including the spheres of **energy, tourism and civil protection** in common policies and, although several members consider that specific Community action in one or another of those subjects is of great interest, a majority has reached the conclusion that it would probably be more appropriate in these spheres simply to envisage greater cooperation between the Member States. One member holds the opinion that article 3t should be deleted.

142. Several members think it necessary to incorporate a provision in the Treaty dealing specifically with support for the **outermost and island regions** of Member States of the Union. Some members point out that the Treaty should highlight the importance of **local development.**

143. Some members have suggested extending **Article 113 to cover commercial policy as a whole and therefore including services** and intellectual property. Other members recall the importance that they attach to the Opinion 1/94 of the European Court of Justice.

144. Finally, some members have noted that maintaining Article 235 will make it possible, when appropriate, to embark on new spheres of Community action while complying with the limits of the Treaty.

145. Some members consider that the requirement of a high level of consumer protection should be taken into account also in other Community policies and that Article 129a should be revised accordingly.

IV. EXTERNAL UNION ACTION

146. The profound changes which occurred in Europe at the end of the cold war have radically altered the scenario of international relations hitherto operating in the world. The threat posed by rival blocks facing each other has receded and has given way to new roles of the main actors on the international political scene and to an overall more secure, but also more unstable situation. The European Union must assume increased responsibilities in this new context and thus has to face new challenges confronting it. This requires the Union to give itself the means appropriate to more effective and coordinated external action.

147. The next enlargement is clearly a response to the new responsibilities but it in turn poses a challenge to the Union. Enlargement will undoubtedly make for political stability and security for the people of Europe but it will bring a qualitative change to the internal and external dimension of the Union. Preparations must be accomplished inter alia by clarifying the objectives and strengthening the instruments of the Union's external action.

148. In evaluating the experience from a complete new Title (V) on Common Foreign and Security Policy (CFSP), introduced by Maastricht into the TEU, the Group has drawn the following two conclusions. First, despite the short period of time which has elapsed, some positive results, such as the Stability Pact, have been achieved. Second, shortcomings in the operation of Title V and problems of a lack of overall consistency in coping with the new challenges have been detected.

The Group does not share, however, a common view of the causes of these shortcomings and problems. For some this is partly due to the lack of running-in time of a novel part of the Treaty yet to be developed or to the creation of excessively high and as yet unfulfillable expectations; for others there is a lack of political will and inertia of attitudes; for the majority there is also a structural problem of a mismatch between fairly ambitious, albeit somewhat vague, objectives and inadequate instruments for achieving them. Still others blame the shortcomings mainly on the current functioning of the Institutions and on the inadequate structural cohesion of a Treaty organized into "pillars".

Some members have pointed here to a readily discernible distinction between two kinds of Union external action: one working satisfactorily and the other with a long way to go. The first is the external dimension of Community policies and the second the CFSP. Many members see the real problem with the CFSP as lying in the disjunction between the external political and external economic dimensions of the Union. They have emphasized the lack of synergy and coordination between the first and second "pillars" and the paradox whereby matters of great moment with far-reaching economic implications, both for the Member States and for their citizens, are decided successfully by a qualified majority under the first "pillar", whereas others of less substance and consequence require a consensus under the CFSP. According to some, recent practice shows that the current functioning of the "pillars" does not make for increased consistency between actions undertaken under them but that, on the contrary, there is a risk of spill-over from the second "pillar" to the first, which reduces the efficiency of the Union and which could weaken the "acquis". Some are equally concerned by the opposite effect.

A. GLOBALITY AND CONSISTENCY

149. In view of the interdependent and global nature of today's world, many members call for a **global approach** to overcome inconsistencies between the external dimension of the Community and foreign policy proper. According to them, the weakness of Title V lies in the current separation between political, economic and military aspects. They highlight a need for greater **consistency** in all aspects of external action so that the Union's political weight matches its economic strength.

In order that the Union can ensure the member States the influence which it must exercise, bearing in mind their collective importance in economic and political fields, it is necessary both to make the most of the potential synergies between the different strands of external relations, and to ensure the effectiveness of each of the elements and of the Union as a whole.

150. To correct these problems and to facilitate the synergies required, the following ideas have been put forward:

- A majority considers that the Treaty already sets adequate, though somewhat general, **objectives** and that the problem lies in the structural difficulties which prevent them from being achieved. This being so, some members seek a more specific statement of the Union's **fundamental interests**, as referred to in Article J.1(2). Their definition in relation to geographical areas has been suggested by some. Other members see the need for definition of common interest not through a geographical approach, but through common priorities such as reinforced diplomatic solidarity between Member States, guaranteeing of external frontiers and the upholding and defence of human rights and democracy.

- A majority of members points to the advantage of **international legal personality** for the Union so that it can conclude international agreements on the subject-matter of Titles V and VI concerning the CFSP and the external dimension of justice and home affairs. For them, the fact that the Union does not legally exist is a source of confusion outside and diminishes its external role. Others consider that the creation of international legal personality for the Union could risk confusion with the legal prerogatives of Member States.

- The smooth operation of the whole institutional system requires better definition of the various instruments. Here, some representatives state that the differences between **common positions** and **joint actions** should be clarified as this would help to strengthen the consistency of the Union's external action.

- Lastly, in order to ensure optimum consistency in Union action, many members call for the introduction of a **comprehensive** set of rules. Some consider that a logical solution would be to dispense with the "pillar" structure, but retain specific proposal, decision-making and implementation procedures within the Community (following the EMU example). Others see a solution in greater cooperation and consistency between "pillars", and in structural coordination between the Presidency and the Commission.

151. In any event, it has been pointed out that decisions with political impact are taken in both CFSP and Community matters and that the Council is always involved; and that, once a decision has been taken, the Commission is required to take account of it in carrying out its executive role, regardless of whether the decision was taken under the first or second "pillar". The purpose of the reform is to ensure that Union external actions are clearly perceived as forming a harmonious whole.

For some representatives that idea should be expressly enshrined in the TEU by spelling out in Articles J.2 and J.3 that common positions and joint actions are binding on the Commission.

For other members, it should rather be emphasized that decisions under all "pillars" are taken within a single institutional framework in which all institutions participate and where the European Council provides guidelines. The day-to-day coordination of external action in order to ensure consistency between the Community and CFSP frameworks is, pursuant to article C, a matter for the Commission and the Council. To reinforce this, Article J.8, paragraph 2 might name not only the Council, but also the Commission, as having responsibility for ensuring consistency of external action decided in both the Community and CFSP frameworks. The necessary coordination between the two institutions, to this effect, must be ensured.

The need for greater consistency should also inform **preparations for Council proceedings**, clarifying the relationship between Coreper and the Political Committee. In that sense some members consider that Coreper's coordinating and central role as the preparatory committee for the whole of the areas within the Council's competence should be reinforced in the Treaty.

B. COMMON FOREIGN POLICY

152. With a view to rectifying shortcomings in the operation of Title V, the Group considered the various stages of the realization of the CFSP, i.e. **formulation, decision-making and implementation.** Unlike the Community decision-making process, in the CFSP area it is not easy to distinguish clearly between the various stages, so that it would not be realistic to use a rigid structure based on a successive distribution of tasks, since they intertwine. From a methodological viewpoint, it would nonetheless seem desirable to look at each one of them separately.

<u>The formulation stage: setting up of an analysis unit</u>

153. Regarding the **preparatory** stage of common foreign policy, the majority of the Group agrees that an **analysis, forecasting, early warning system and planning unit** should be set up. Thus, the necessary follow-up to crisis situations could be ensured from the outset; possible response and decision options could be considered and prepared. Such a unit could, moreover, encourage a common vision and greater cooperation among the Member States. The latter and the Commission should in the unit share the information they possess so that correct analyses of the situations may be done. In principle, setting up such a body does not necessarily require reform of the Treaties.

As regards the unit's **composition and location**, most representatives advocate locating it in the General Secretariat of the Council, with a strengthening of its structures. Those in favour of this option point to the merit of abiding by the present institutional framework by not creating any new bodies, and highlight the advantage of situating the unit at the Council on account of the central role played by the States within the CFSP. As stated above, a broad majority of members point at the same time to the need to involve the Commission in forecasting and analysis, by establishing a close link with the General Secretariat of the Council in order to avoid inconsistency between the political dimension and the external economic dimension of the Union. For a large majority, it is understood that the unit should include Commission staff as well as staff from the national foreign ministries.

Regardless of the location chosen, certain members see a case for some form of link or coordination between the unit and the WEU.

It is widely considered that, far from developing into a new institution, the analysis and forecasting unit ought to be a preparatory body and therefore have no formal right of initiative, which could be a source of conflict or confusion of powers between Member States, the Council and the Commission.

Decisions

154. With regard to decision-making procedures, some state that the failure to use **qualified majority** voting is one of the reasons for the ineffectiveness of the CFSP, which is why more general use should be made of such a procedure in this sphere, particularly given the prospect of enlargement. Others take the view that consensus and the right of veto are essential in matters which lie so close to the heart of national sovereignty and that unanimity does not prevent important decisions from being taken.

As intermediate options, the Group explored **ad hoc arrangements** such as unanimity with "positive or constructive abstention", "unanimity minus one", "super-qualified majority", qualified majority with dispensation of the minority, general platforms of decisions taken by unanimity to be followed in their specifics by qualified-majority voting, in order to overcome the risk of deadlock in a field in which the Union needs decision-making capability. It is understood that constructive or positive abstention would involve political solidarity and, according to some, also financial solidarity with the decision taken. Those ideas should be examined further by the Conference. There is widespread agreement on the need to have more frequent recourse to the possibilities for majority voting laid down in the TEU.

It should be commonly agreed whether, and if so, how to provide for the possibility of flexible formulae which will not prevent those who feel it necessary to take for the Union a joint action from doing so.

155. The efficiency imperative will succeed only if the legitimacy of decisions in this area is assured. Given that in some cases it might not be acceptable for a State to be put into a minority, many of those in favour of the adoption of decisions by qualified majority favour as a further arrangement the recognition that a **fundamental** or vital national **interest** may prevent a common position or action. According to some members, this approach should be tempered by the need for prior definition of the concept of vital interest and the circumstances in which it applies.

Implementation: management and administration

156. Because of the specific nature of the CFSP, instead of implementation, (which is a matter for the Member States and/or the Council and – within areas falling within its jurisdiction – for the Commission), we should really use the terms **management** or **administration**, depending on whether we want to highlight internal or external aspects respectively. To achieve this, the Group identifies various possible approaches: either the CFSP might be personified in the guise of a "Mr or Ms CFSP", or through arrangements which keep the central role of the Presidency in the external representation and implementation of the CFSP; another possibility would be to reinforce the Commission's role and responsibilities in this area.

Personification of CFSP

157. In order to find an answer to the problem of stability and continuity in the Union's external representation, the Group examined the possibility of embodying the CFSP behind the figurehead of a **"Mr or Ms CFSP"**. Three main options were identified:

158. Some members consider that this function would devolve, at least in time, upon **the Commission**. The advantage would be that it would be better able to ensure consistency with external economic measures and to call directly on Commission resources and means to implement foreign policy. While situating such a person in the Commission, possibly with a special status given by the European Council the advocates of this option recognize that CFSP management would, in any case, require a method for the Institutions to work in common and an ad hoc system of voting within the Council in line with the arrangements outlined above.

159. For the majority, this would be someone in **the Council**. They consider that this approach is more in keeping with the central role which States have within the framework of the Council in relation to the CFSP. Two variants, which are not respectively incompatible, have been identified:

- Some members advocate creating a new figure, a **High Representative for the CFSP**, appointed and dismissable by the European Council, and receiving instructions directly from it, and from the General Affairs Council.

  Within this variant the High Representative must be clearly subordinate not only to the European Council but also to the General Affairs Council and to the Presidency.

- Others advocate nomination by General Affairs Council and placing this function within the **General Secretariat of the Council**, with its structures strengthened and the duties of Secretary-General raised to high ranking level. Those in favour of this option emphasize that it would not require any change in the current framework and that it would avoid any danger of conflict with the Council Presidency to which it would in any event remain subordinate.

Some propose that this "Mr CFSP" attends the Commission when it discusses matters relating to external action.

160. A synthesis option would be that the President of the Council together with the Commission, takes direct charge of CFSP affairs assisted by a Secretary-General of the Council who would head the analysis and planning unit and have increased functions. This option would be even more effective if the Secretary of the WEU and the Secretary-General of the Council were one and the same person.

161. There is no consensus on the personification of CFSP. Many members stress that the formula decided upon must allow for a higher profile for the Union without introducing additional confusion over functions or creating a conflict between the powers of this new personality and those of the Council Presidency, nor fragmenting the unity of the existing institutional framework. Lastly, they do not want this "Mr or Ms CFSP" to contribute to increased inconsistency between the "pillars".

162. Various representatives insist that, over and above the alternatives described, the central role of the **Presidency** must be maintained in the external representation and implementation of CFSP and should not be impaired through any external representation figure. Such is the current approach of the Treaty, although the Union's enlargement and growing external responsibilities make it advisable to consider ways of bolstering the Presidency by means of better utilization of the Troika or, as some representatives see it, by means of some innovative Presidency formula, either in the form of teams or by other arrangements ensuring participation, democratic legitimacy and continuity in the exercise of the Presidency. It was also underlined that coordination between the Presidency and the Commission must in any case be strengthened and that this should also be done structurally.

Other questions

163. As regards the **financing** of the CFSP, there is consensus in the Group on the need to establish specific procedures ensuring the availability of the funds necessary for rapid action when required. In any event, solidarity in general and, according to many members, financial solidarity in particular should underlie financial arrangements and therefore be applicable to possible cases of "positive abstention" or "opting out". The view is taken by a broad majority that the CFSP should be financed from the Community budget. For some members, this would imply the approval by the European Parliament of the broad outline of outlays related CFSP.

164. The majority consider that the role of the **European Parliament** cannot be the same in this area as in Community legislation, since national parliaments do not use the same mechanisms of participation in framing and monitoring foreign policy as in their legislative work or in domestic control. However, some members think the present Treaty provisions should be better developed in practice, centring on the European Parliament's right to be informed in this respect. Others think it necessary to go further and involve Parliament more closely in determining the broad lines of the CFSP and in controlling the Union's external political affairs by means of arrangements in the Treaty ensuring confidentiality.

Several members point out that the EP should not under any circumstances be given powers in this area in which governments conduct their foreign policy without prior authorization from Parliament, except in cases of extreme gravity. At least one member is against any increase in Parliament's role in this sphere.

165. It is not easy to distinguish which of the above options can be achieved by means of simple, practical improvements in operation and which of them require amendment of the Treaties. In fact it will depend upon the degree of political will achieved at the Conference. The creation of an analysis unit does not in principle require amendment of the Treaty. According to some, neither does the creation of a personality symbolizing the management of CFSP appear to require any institutional change. The question is whether the creation of such a personality does or does not in practice require the strengthening in the Treaty of consistency between Title V and the other functions of the Union. Furthermore, the best practical organization of the Presidency has its limits in Article 146 of the Treaty. If it is not amended and special arrangements made for CFSP, the single institutional framework will necessarily have to be retained for all aspects of the Union.

The Group recommends a global approach to assess the impact of each of these arrangements on the functions of the Union as a whole.

C. SECURITY AND DEFENCE POLICY

Elements for reflection

166. The new international situation and prospects for enlargement lead to a more just and secure European order but also pose **new challenges** to the security of the Union. These challenges require a **collective response** to the new risks and crises which can affect Member States' security. Their multifaceted nature calls also for a **global approach** ensuring consistency between the various aspects of the Union's external action, based on a comprehensive concept of security.

The Group therefore believes that the Conference could examine ways to further develop the European identity, including in the security and defence policy field. This development should proceed in conformity with the objectives agreed at Maastricht, taking into consideration the Treaty provisions that the CFSP shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

167. Provisions of the TEU to be revised in 1996 also include those dealing with **links with WEU**, which is an integral part of the development of the Union. On 14.11.95 WEU Ministers approved and transmitted to the EU a **WEU contribution to the IGC** on the experience acquired since Maastricht (regarding both WEU's relations with the EU and with NATO and its operational development) and on the possible future development of the European Security and Defence Identity. In its reflection, the Group has been fully aware of this WEU work.

168. Apart from the classic **collective defence** of territorial integrity, the cooperation on security and defence matters which the new challenges require is also directed at preventing conflicts and **managing regional crises** which stem from a large variety of political, economic, ecological, social or humanitarian factors. While both types of task may become intertwined in practice, it must also be pointed out that, as we shall see below, some Member States of the Union, which are not members of military alliances, wish to contribute to European security by participating in humanitarian, peacekeeping and other crisis management operations (the so-called Petersberg tasks), but without entering into collective defence commitments such as those defined in Art. 5 of the Brussels and Washington Treaties. These two facts will have to be taken into account when considering future arrangements for European security and defence cooperation.

169. In the view of many members of the Group, the gradual development of a **European Security and Defence Identity** agreed by the members of WEU at Maastricht must be given fresh impetus in order to establish the **mechanisms** permitting a European response to such crises, including through **military operations** to supplement the political, economic or humanitarian action decided on within the CFSP framework.

170. The **means** needed for such European operations must be to hand:

* Insofar as crises require a response including the use of armed force, fresh impetus must be given, according to WEU members, to developing further WEU's **operational capabilities**, which are still inadequate in many areas. This would also require that the procedures for making NATO assets and capabilities (including CJTF Headquarters) available for operations conducted by WEU be developed further.

  The EU **"peace corps"** suggested by some members of the Group (see above) could, were the idea to be accepted, play a role in this regard. Its relationship with existing or planned humanitarian capabilities, including those of WEU, would need to be considered.

* The question also arises here of the need for greater **European armaments cooperation**. The Group was aware that thought is being given to this question within the Union, WEU and the WEAG. The Group discussed possible responses - including the proposed European Armaments Agency, the possible revision or even deletion of Article 223, and the need for a common arms export policy..

171. The **Atlantic Alliance** and the transatlantic link continue to play a fundamental role in European security. The Alliance guarantees the collective defence of its members and also contributes through other tasks to the security of the continent. For this reason, the Conference will have to take account of the fact that, in the view of NATO members, the development of a European Security and Defence Identity should strengthen the European pillar of the Atlantic Alliance and include a development of **Euro-Atlantic relations**.

  The prospect of an eastward **enlargement** implies qualitative as well as quantitative changes for the security and defence of the Union. The enlargement of the EU, WEU and NATO will proceed autonomously according to their respective internal dynamics and processes. Each organization should ensure that their respective processes are transparent and mutually supportive of the goal of enhancing European stability and security.

172. Participation in military operations in the framework of the Petersberg tasks will remain a matter for national decision. The majority of members strongly feel that the **principle of national sovereignty** should continue to govern relations between European countries on defence matters and that the intergovernmental nature of decision-making on these issues should be preserved and be conducted on the basis of consensus. Some representatives consider that the consensus rule should not exclude the possibility of European supranational bodies playing a certain role in defence matters in the future. Others wish the IGC to consider all possible options in this respect, including majority-voting.

  In case present decision-making procedures are preserved, it would seem appropriate in the view of some members to introduce some element of flexibility in this sphere. To that end, the possibility has been suggested of applying a non-binding principle to the effect that, while no one can be obliged to take part in military action by the Union, neither should anyone prevent such action by a majority group of Member States, and this without prejudice to the required political solidarity and adequate financial burden sharing.

173. Some members, while indicating that the range of institutional options identified for future EU-WEU relations would be of assistance to the IGC negotiators, saw a need to identify at this stage the purposes and principles that should govern developments in this regard. In particular, in response to Europe's new security challenges, developing the Union's capabilities in such areas as conflict prevention, peacekeeping and humanitarian operations was identified as a priority. These members attached importance to the concern that all the Member States of the Union, whether or not they are members of a military alliance, should be in a position to contribute to the European security through the Petersberg tasks. Some members of the Group also welcomed the fact that, in all of the options identified below, consideration was given to how to accommodate those partners not in a position to enter into Article V type commitments, and that the Group had examined ways to address this situation.

Options for future EU-WEU relations

174. Working from these general premises and taking note of Declaration 30 of Maastricht, the Group agrees on the need to continue **improving the relationship between the EU and WEU**, while fully respecting all Member States' **national defence policies**. In this context, the WEU Contribution to the IGC reaffirms the agreement of all WEU Member States to strengthen the EU-WEU institutional and operational links, together with WEU's operational capabilities.

Nevertheless, **different views** have emerged within the Group (as in WEU) on how this relationship should be developed in the future. In this respect, a number of options and modalities have been put forward in the Group's discussion, although most representatives were open to consider several interrelated options.

175. One view advocates **maintaining full autonomy of WEU** in the foreseeable future. According to this view, such autonomy allows maximum flexibility for participation by all Member States in developing the European Security and Defence Identity and avoids weakening the defence commitments within NATO and WEU, taking into account the differing memberships of these organizations and the Union.

In this context, the option of an **EU-WEU "reinforced partnership"** has been proposed, aimed both at establishing closer political (EU/WEU back-to-back Summits) and administrative relations (coordination of Presidencies and Secretariats) between the two organizations and at developing WEU operational capabilities for crisis management tasks to complement NATO, while allowing for participation in such tasks of the widest possible range of European States.

176. Another view advocates a **greater role of the Union in the Petersberg tasks** while at the same time preserving WEU as a separate defence organization. The development of operational capabilities necessary for the implementation of these tasks would proceed as a matter of urgency in view of Europe's new challenges. Two options have been mentioned in this context:

* An option which would provide for a closer and more formal link between both organizations by means of either political or legally binding directives. **WEU would be subordinate in the Petersberg area to the Union**, so as to act as its executive arm.

* An alternative option would be to fully **transfer the Petersberg tasks from WEU to the EU.** WEU would remain as an organization responsible for territorial defence together with NATO.

177. The majority of representatives see the way to the establishment of a genuine European Security and Defence Identity as lying in the **gradual integration of WEU into the EU**, in parallel with the development of European operational capabilities. In this way, the European defence function (both for crisis management tasks and for the collective defence guarantee embodied at present in the Brussels Treaty) would in time be incorporated into the single institutional framework of the Union. According to this view, EU-WEU integration responds to the logic of Maastricht, would reflect the solidarity amongst Europeans (which cannot be solely confined to the economic sphere) and would be the best way to achieve coherence between the CFSP and the defence policy, thereby allowing for better coordination between the various instruments of crisis management (political, economic, humanitarian, as well as military) available for effective action by the Union in crisis situations such as that of the former Yugoslavia. In this context, the idea has also been put forward within the Group that the IGC examines the possibility of including in the revised Treaty a provision on mutual assistance for the defence of the external borders of the Union.

This view admits **various approaches on the timetable and stages for WEU-EU integration:**

* Some regard integration as feasible only in the medium term. They therefore consider that the IGC should pursue an **"intermediate" option** which, while preserving the autonomous existence of WEU, would establish measures to promote a **EU-WEU institutional convergence**, with full integration as the final goal. This would be achieved by means of some political or legal commitment whereby WEU would be subordinated to the EU in matters concerning the operational-military elaboration and implementation of EU decisions and actions (Petersberg tasks), so as to act as implementing body of the Union in this area, while maintaining the possibility of WEU deciding autonomously its own actions.

  Three possible ways of establishing this commitment have been suggested: A new Article J.4 (and a new WEU Declaration) could state that the European Council will address **general guidelines** to WEU, as the organization requested to implement through the appropriate military actions the follow-up decisions adopted by the EU at ministerial level. Or it could state that the EU will address concrete **instructions** to WEU, thereby expressing its political and operational subordination to the Union. Finally, it could also be envisaged that a **legally binding EU/WEU agreement** be established whereby WEU would be committed to implementing decisions of the Union with defence implications.

* Others consider that the IGC should clearly establish the goal and timetable for a **WEU-EU merger in the short term** (bearing in mind the possibility of denouncing the Brussels Treaty after 1998). **WEU would thus disappear** and the present duplication of structures for security (CFSP) and defence in the broad sense (WEU) would be eliminated.

The modalities for this integration could be decided on by the IGC or at a later moment. One possibility would be to transfer all WEU functions and capabilities from WEU to the Second Pillar (**defence function within the CFSP**); Member States not willing or able to enter into a collective defence commitment could opt out of such commitment. Another, initially more feasible, modality of integration, would be for the **CFSP to take on the crisis management functions** (Petersberg tasks) but leave the collective defence guarantee to a **Defence Protocol** to which those Member States so desiring would opt in on conditions to be agreed.

Those who advocate the gradual integration of WEU into the EU consider, furthermore, that all these modalities could be seen as complementary measures and that the IGC could therefore envisage their being carried out either separately or as successive phases of a **sequential approach**, within the framework of an agreed timetable.

Carlos **Westendorp** :

Joseph **Weyland**:

Michel **Barnier**:

Elmar **Brok**:

David **Davis**:

Franklin **Dehousse**:

Niels **Ersbøll**:

Silvio **Fagiolo**:

André **Gonçalves Pereira**:

Elisabeth **Guigou**:

Werner **Hoyer**:

Gunnar **Lund**:

Ingvar **Melin**:

Gay **Mitchell**:

Marcelino **Oreja**:

Michiel **Patijn**:

Manfred **Scheich**:

Stephanos **Stathatos**:

2.

EUROPEAN PARLIAMENT

RESOLUTION OF 17 MAY 1995

ON THE OPERATION

OF THE TREATY ON EUROPEAN UNION

WITH A VIEW TO

THE 1996 INTERGOVERNMENTAL CONFERENCE

EU Treaty and Intergovernmental Conference

A4-0102/95

Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union

The European Parliament,

- having regard to the Corfu European Council's request to each of the EU institutions to produce a report on the functioning of the Treaty on European Union (TEU),

- having regard to the establishment of a Reflection Group which will help to prepare the 1996 Intergovernmental Conference (IGC) expressly provided for in Article N of the Treaty on European Union, and which is to begin its work in June 1995,

- whereas, in accordance with the procedure referred to in Article N, the Union is to 'maintain in full the *acquis communautaire* and build on it', in accordance with Article B of the Treaty on European Union,

- whereas the Council and the European Parliament agreed in the context of the interinstitutional agreements that certain provisions of the Treaties (budgetary procedures, commitology) would be reconsidered at the 1996 IGC,

- having regard to Rule 148 of its Rules of Procedure,

- having regard to the report of the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs, Security and Defence Policy, the Committee on Agriculture and Rural Development, the Committee on Budgets, the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Research, Technological Development and Energy, the Committee on External Economic Relations, the Committee on Legal Affairs and Citizens' Rights, the Committee on Social Affairs and Employment, the Committee on Regional Policy, the Committee on Transport and Tourism, the Committee on the Environment, Public Health and Consumer Protection, the Committee on Culture, Youth, Education and the Media, the Committee on Development and Cooperation, the Committee on Civil Liberties and Internal Affairs, the Committee on Fisheries, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, the Committee on Women's Rights, the Committee on Petitions and the Temporary Committee on Employment (A4-0102/95),

A. whereas European integration which, since its very beginnings, has been synonymous with peace, political stability and harmonious economic and social development for the benefit of all citizens, now faces new challenges, which have emerged at the end of the Cold War, as a result of the globalization of the economy, damage to the environment, the IT revolution and its repercussions on employment and the growing relevance of equality between women and men; whereas these challenges call for initiatives by the European Union enabling it:

   (a) fully to assume its responsibilities in promoting peace, respect for human rights and the democratic stability of the European continent and neighbouring regions, especially with respect to everything relating to the countries of Central and Eastern Europe and the Mediterranean Basin,

   (b) to become a hub of economically sustainable, socially balanced and job-creating economic development, in the context of a world economy founded upon the same principles,

(c) to define the fight against unemployment and marginalization as a priority objective of the policies of the European Union, and, especially, of Economic and Monetary Union,

(d) to ensure that its citizens can exercise their rights and freedoms, and to contribute to maintaining the security of the individual, while safeguarding national and regional cultural identities,

whereas the Union therefore needs to forge itself an international identity based upon a coherent external policy and the instruments necessary for its internal policies,

B. whereas at the 1996 Intergovernmental Conference the European Union will have to face up to a three-fold institutional challenge:

- the need to tackle a democratic deficit that a growing number of European Union citizens find unacceptable,

- the need to redefine the current decision-making processes, which have become excessively complex and cumbersome and often inefficient,

- the need to prepare the European Union for future enlargement without slowing down the integration process or watering down the progress already achieved,

C. whereas the major deficiencies under the Treaty on European Union are:

- the lack of openness and full democratic accountability of the Council, notably when deciding in legislative matters,

- the lack of and failure to implement cohesive and effective common foreign and security and justice and home affairs policies, shortcomings that are so much the more evident since it is clear that many new Community provisions under the first pillar have worked well,

- institutional mechanisms designed for a Europe of 6 members which have not been properly adapted since, and which could not simply be transposed to a European Union with more than 20 members without a risk of paralysis and dilution of the European Union,

D. whereas the European Union should thus endeavour to achieve general improvement in its executive, legislative, budgetary and control functions within a single institutional framework, in order for it to become more efficient, more responsive to its citizens, and better able to develop the necessary policies for the future,

E. whereas it would not be wise to enlarge the Union without making a number of fundamental changes to the Union and to the European Treaties,

F. whereas the reform of the Treaties requires institutionalization of the principle of the 'necessary means',

Adopts the following guidelines:

I. OBJECTIVES AND POLICIES OF THE UNION

1. The European Union will have to reinforce its existing framework of policies if it is to respond to economic and political change and to enhance its credibility in the eyes of its citizens. To do this it will have to develop new policies for the future and to strengthen its existing policies. Consolidation of this kind is conceivable only in the perspective of a merger of the three pillars and within a single institutional framework.

A treaty for the citizens of the Union

2. Unification of the Treaty would make its structure much clearer and more logical. In addition, however, the Treaty should be further simplified and made more inspiring for its citizens:

   (i) The existing preamble of the Treaty should be rewritten in more inspiring language, and the provisions concerning citizens' rights should be placed at the beginning of the Treaty.

   (ii) The Treaty should provide for a separation between the provisions covering the Institutions and those covering the content of policies.

   (iii) Out-of-date Treaty articles should be deleted.

The Union must fully implement its new responsibilities

A. Organizing a Common Foreign and Security Policy (CFSP) which works

3. There should be a more effective EU foreign policy within the framework of the Community pillar, integrating the common commercial policy, development cooperation policy, humanitarian aid and CFSP matters, and achieving better defined security and defence policies at EU level, with a permanent common strategy within the international organizations which have responsibilities in this field. In this context, common defence policy should guarantee that the borders of the Union and its Member States are safeguarded and enable the Union to carry its responsibilities for maintaining and restoring the rule of law internationally, ensuring that the Union absorbs the WEU's power.

   (i) It should be possible for a qualified majority of Member States to undertake humanitarian, diplomatic or military action which would qualify as a 'joint action', with guarantees that no Member State should be forced to take part if it does not wish to do so, nor should it be able to prevent the majority from taking such action.

   (ii) The Commission should be fully integrated in the definition and elaboration of the CFSP, with a right of initiative. It should be given implementing power. In order to rectify difficulties that have emerged in the field of policy design and formulation, a joint Commission-Council planning and analysis unit should be established.

(iii) Democratic accountability for matters which do not form part of the first pillar must be shared between both the European Parliament and the national parliaments. Consultation of the European Parliament should be obligatory if the Council adopts a common position or decision on 'joint action'. The Council should be obliged to provide information on such matters and arrangements should be made for such subjects to be treated confidentially.

(iv) Article 223 of the Treaty, which prevents any control of sales of arms to third countries and the establishment of a genuine common arms policy for the Member States, should be deleted.

(v) A first step towards a contribution to conflict prevention could be the establishment of a European Civil Peace Corps (including conscientious objectors) with training of monitors, mediators and specialists in conflict resolution.

B. Effective action in the field of justice and home affairs

4. Decisive progress should now be made in the field of justice and home affairs, which should no longer be artificially distinguished from closely-related policies within the full Community domain. Decisions on asylum policy, the crossing of the Member States' external frontiers and checks on such crossing, immigration policy and policy on non-Community nationals, and action against drug abuse must be progressively brought within the Community domain. In order to facilitate the fight against serious cross-border crime, EUROPOL should be given the operational power it needs. A more broadly based, flexible approach should be brought to bear as soon as possible as regards applying the 'passerelle' procedure provided for in Article K.9 of the Treaty, extending it, in particular, to cover all the areas listed in Article K.1 and providing for the Council to act by a qualified majority. Existing restrictions on the Commission's right of initiative and implementation should be removed. The roles of the Court of Justice, Court of Auditors and European Parliament should be strengthened, and the legislator should be able to adopt directives without unanimity being required. In view of the gradual integration of the third pillar, the Schengen Agreements should be progressively integrated into Union policy.

C. A more balanced EMU

5. As regards Economic and Monetary Union, the timetable should be maintained and the convergence criteria should not be modified but the monetary policy provisions should have their counterweight in reinforced economic policy coordination (i.e. in the field of multilateral surveillance and in establishing broad economic policy guidelines at EU level) and a clear link to Article 2 of the Treaty which implies that all the Union's institutions must work to promote'... a high level of employment and of social protection, the raising of the standard of living and the quality of life, and economic and social cohesion and solidarity among Member States'. Democratic accountability on EMU matters should be greatly strengthened, with a more extensive role for the European Parliament (notably where the Treaty provides for the adoption of recommendations or economic guidelines by the Council). In the case of Member States which, while not fulfilling the convergence criteria, have nevertheless pursued economic policies in line with those criteria and have shown genuine willingness to move towards the third stage of EMU, the Union shall give its political backing to their efforts and provide all the necessary aid to enable them to achieve those objectives;

6. Working towards full employment should be an explicit goal of the Member States and the Union, and an Employment Committee, endowed with the same powers as the Monetary Committee, should be set up.

D. More rights for EU citizens and improved protection of the fundamental rights of all EU residents

7. Greater substance should be provided for the concept of EU citizenship through development of the special rights linked to EU citizenship, notably by means of:

   - accession of the Union to the Council of Europe's Convention on Human Rights and Fundamental Freedoms;

   - a new right of all EU citizens to information on EU matters;

   - inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion (including mentioning the fundamental social rights of workers set out in the Charter, enlarging upon them and extending them to all citizens of the Union); also incorporation of an article specifically referring to a ban on capital punishment;

   - bringing together within a single article the economic rights that are scattered throughout the Treaty (such as the right to free movement and establishment of labour and of the professions), and reinforcing these rights;

   - the development of political citizenship, inter alia through measures that facilitate participation in political life in a Member State of Union citizens residing in that State;

   - the strengthening of provisions needed to achieve fully the free movement of persons;

   - the preservation of Europe's diversity through special safeguards for traditional national minorities in terms of human rights, democracy and the rule of law;

   - the application of the provisions in the Treaty on equal rights not only to economic rights but to all aspects of equality for women.

   In addition, the Treaty should contain a clear rejection of racism, xenophobia, sexism, discrimination on grounds of a person's sexual orientation, anti-semitism, revisionism and all forms of discrimination and guarantee adequate legal protection against discrimination for all individuals resident within the EU.

8. In order to develop the means of expression for citizens at European level, Article 138a of the Treaty on European political parties must be applied and developed.

E. An area for cooperation among European peoples

9. In addition to being a key factor in economic, social, and cultural development, cross-border and interregional cooperation helps to forge bonds and foster pacific cooperation among the different European countries. The Union should therefore establish a Community-wide legal framework to promote cross-border and interregional cooperation based on a Community regional planning discipline, since this will stimulate European integration and ensure that Community policies are implemented more effectively. Cross-border agreements with third countries, and in particular the Nordic free movement agreement, should not be jeopardized.

The Union must strengthen its existing policies

10. There should be more effective policy-making in a number of other key fields:

(i) The principle of economic and social cohesion should be reinforced in the Treaty.

(ii) Social policy should be a core area of EU competence (with incorporation of the Social Charter, and an ending of the United Kingdom opt-out) and should be better integrated with economic policy as a whole.

(iii) Equal opportunities policy should be improved through a redrafting of Article 119 of the Treaty broadening its scope to cover all aspects of employment and social security.

(iv) The energy policy aspects of the ECSC and EURATOM Treaties and other energy policy considerations should be integrated within a common energy policy framework, helping to ensure overall cooperation with regard to security of supply and environmental protection.

(v) Agricultural policy, as a decisive area of Union policy, should have as its objectives ecologically and socially compatible farming together with sustainable regional development.

Agricultural policy should be better integrated with food policy, rural development and environmental considerations and be better incorporated within the normal budgetary process.

The Union's powers in the agricultural sector largely evade the direct scrutiny of national parliaments and must be subject to greater democratic control by the European Parliament; in fact, responsibility for agricultural markets and prices policy, and thus for farm incomes policy, has long been outside the control of national parliaments.

The objectives of the CAP set out in Article 39 of the Treaty should be adjusted to include in particular the concept of 'rural development'.

(vi) Powers in the field of fisheries need to be dealt with independently of those in the field of agriculture. The common fisheries policy should be re-examined in accordance with the founding principles underlying the institution of the common policy, i.e. conservation and relative stability.

(vii) The existing Treaty articles on environmental policy should be strengthened and simplified, so that environmental protection and concern for animal welfare and conservation become fundamental principles of the European Union and are effectively and fully integrated with other EU policies; environmental protection should be included in Article 3 of the Treaty as a Union objective.

(viii) Consumer rights and interests must also be protected to a greater extent by laying the foundations for a genuine consumer policy.

(ix) In the transport sector the Treaty should provide for an integrated common transport policy including powers in air traffic control.

(x) Tourism, in its European aspects, should form a separate and distinctive common policy with a separate legal basis and chapter in the revised Treaty.

(xi) The place of the public service within European Union policy measures should be affirmed by introducing new articles defining the concept and scope of the 'universal service', guaranteeing each citizen the right to equal access to services of general interest, and ad hoc provisions taking account of the specific nature of public service undertakings.

(xii) The chapter on education, vocational training and youth should be strengthened in order to focus attention on the rights and interests of children and young people and to provide for account to be taken of the consequences that current policies can have on children and young people and their families.

(xiii) External economic policy should be the exclusive competence of the Union.

11. Europe's cultural identity and diversity should be preserved and the value of national and regional cultural and linguistic diversity within the European Union should be explicitly recognized.

There should be no restrictions on the number of official or working languages of the European Union.

In view of the multicultural nature of European society, explicit reference should be made to the need to promote intercultural dialogue aimed at improving mutual understanding and tolerance.

Clarifying competencies

12. (i) The principles of subsidiarity and proportionality, as currently laid down in Article 3b of the Treaty, should be maintained and correctly applied.

(ii) Establishment of a fixed list of EU and Member State competencies would be too rigid and too hard to achieve. Article 235 should be retained, but only used as a last resort and after assent of the EP.

II. THE INSTITUTIONS OF THE UNION

Ensuring the unity of the institutional system

13. It is of central importance that the single institutional framework be maintained and reinforced.

A. Ending dismemberment of the institutional system

14. (i) The existing Treaties should be unified by means of:

- relevant features of the ECSC and EURATOM Treaties being directly incorporated within the unified Treaty;

- foreign and security policy (including defence) and justice and home affairs being brought within the Community system, but with specific features of the former 'pillars' being retained for certain items for a predetermined transitional period; this will mean grouping all

the articles of the Treaty concerning foreign policy under a single title.

(ii) The European Union should be given legal personality in its own right.

B. Flexibility within unity

15. In view of the increasing diversity of the EU, further flexible arrangements may well be required in the future, but these:

- should not undermine the single institutional framework, the '*acquis communautaire*' or the principles of solidarity and economic and social cohesion throughout the European Union;

- should not undermine the principle of equality of all States and citizens of the Union before the Treaty;

- should not lead to a 'Europe à la carte'.

16. The European Parliament as a whole will be responsible for exercising control over those Union policies which are pursued by a limited number of Member States on a temporary basis.

17. If at the 1996 Conference, despite broad agreement among a majority of Member States and peoples of the European Union, it proves impossible to reach a positive conclusion owing to failure to reach a unanimous decision, consideration will need to be given to proceeding without the minority and, possibly, providing for instruments to enable a Member State to leave the EU, subject to meeting certain criteria.

<u>Stronger and more democratic Union Institutions</u>

18. The 1996 Conference should primarily concentrate not on transferring new powers to the EU Institutions, but on clarifying their respective roles, and on achieving an appropriate balance between them.

19. The composition of the EU Institutions will have to be reviewed at the 1996 Conference if the EU is to be further enlarged, and if the EU institutions are to function properly. For each institution, however, the criterion of efficiency will have to be balanced against the need to take account of the interests of both large and small Member States. The concept of equal status for each state guaranteeing that all the Member States can participate and be involved in the Union's decision-making process on an equal footing must be applied.

20. The representation and participation of women at all levels in the Union institutions should be gradually increased;

A. The Commission

21. (i) The Commission's role and independence should be reasserted, in particular by maintaining its right of initiative, accompanied by the changes already provided for in the Treaty.

(ii) There should continue to be at least one Commissioner per Member State; however, the Commission's structure and composition must be adapted to its new tasks and to the needs of enlargement if its collegiate responsibility and effectiveness are to be maintained. This could be done by:

- a greater presidentialization of working methods;

- an internal restructuring of the Commission.

(iii) The President of the Commission should be directly elected by the European Parliament from among a list of names put forward by the European Council. The rest of the Commission should then be put together by agreement between the President and the national governments before coming to Parliament for a final vote of investiture as a college.

(iv) The European Parliament (like the Council) should be able to request compulsory retirement of individual Commissioners, pursuant to Articles 157 and 160 of the Treaty.

B. Council

22. (i) The principle of openness should be explicitly stated in the Treaty, and detailed implementing mechanisms should be established (where the Council is acting in its legislative capacity, its proceedings should be public and its agenda binding). Public access to EU documents should be greatly improved.

Drafts and proposals should be accessible to the public as soon as they are adopted or handed over to other bodies, interest organizations or individuals, or published wholly or partly by others.

All meetings on proposed legal acts are to be held in public unless a specific and duly justified exception is decided by a two-thirds majority. Such exceptions shall be notified together with the reasons for them to the European Parliament.

All documents should be accessible to the public unless exceptions are decided by a two-thirds majority in the responsible body.

(ii) The present system of six-month Presidencies of the Council and the European Council should be maintained, but there should be greater flexibility in their operation.

(iii) Further extension of qualified majority voting is required if the European Union is to function effectively. For certain areas of particular sensitivity, unanimity will remain necessary, i.e. Treaty amendment, 'constitutional decisions' (enlargement, own resources, uniform electoral system) and Article 235.

The system of voting within the Council may need to be adjusted. However, this should not be done on the basis of a 'double majority' of States and population, as it is in the Parliament that population is represented. Council represents States. A weighted vote reflecting the general size of the States should not be strictly proportioned to population.

In any case, the threshold for obtaining a qualified majority should be lowered from the very high level of 71% that it is at present.

C. The European Parliament

23. (i) The number of Members of the European Parliament cannot be indefinitely increased and should not exceed 700; a common Statute for European MPs should be established.

(ii) The European Parliament should give its assent to all nominations to the European Court of Justice, to the Court of First Instance, to the European Court of Auditors and to the Members of the Executive Board of the European System of Central Banks.

(iii) The European Parliament should have equal status with the Council in all fields of EU legislative and budgetary competence.

(iv) The European Parliament's role should be reinforced in those areas where there is currently inadequate scrutiny at European level, and notably in matters relating to the common foreign and security policy and to justice and home affairs, as well as in the field of EMU.

(v) The current anomalies in the EP's standing before the Court of Justice should be corrected by giving the EP, like the other institutions, the right to request the opinion of the Court on the compatibility with the Treaty of international agreements, the right to bring cases (not only in order to preserve its own prerogatives) and the right to be informed of requests for preliminary rulings that have been referred to the Court and to submit observations on them.

(vi) The European Parliament must participate in the decision regarding its own seat.

(vii) The Commission should be required to respond to Parliament initiatives made pursuant to Article 138b, second paragraph.

24. Democratic control of EU matters would be best achieved by partnership between the European Parliament and the national parliaments. The role of national parliaments should be reinforced in a number of ways, such as through strengthened cooperation between equivalent parliamentary committees of national parliaments and the European Parliament, and providing opportunities for specialist organs of national parliaments to discuss major European proposals with their ministers prior to Council meetings.

D. European Court of Justice

25. (i) The European Court of Justice should have the full means to ensure respect for EU laws and of the EU institutional balance; its competence should also be extended to areas relating to the common foreign and security policy, justice and internal affairs and those covered by the Schengen Agreement.

(ii) More flexible internal operating arrangements should be introduced to permit the Court of Justice and the Court of First Instance to face up to the increase in their workload and the prospect of enlargement. In this context use should be made of the opportunities offered by the increase in the number of judges as a result of the accession of new countries in order to create a larger number of specialized courtrooms.

(iii) Judges and Advocates-General at the ECJ, and Judges at the Court of First Instance, should serve only one, non-renewable term of office of 9 years.

(iv) Finally, the conditions for referring matters to the ECJ should be enlarged so that each institution of the Union should have the possibility (in addition to the means of redress in Article 173) of bringing an action in the Court where it considers that its rights have been infringed by the failure on the part of another institution or a Member State to fulfil a Treaty obligation.

E. Others

26. No further increase should be permitted in the existing number of Members at the European Court of Auditors, who should serve only one, non-renewable term of office of 9 years. The Court should also play its proper role in all areas of European Union activity.

27. The members of the Committee of the Regions to whom Article 198a of the Treaty refers must be the elected members of a local or regional assembly. Parliament should be able to consult the Committee (as well as the Economic and Social Committee) on the same footing as can the Council and Commission.

28. In order to improve the economic and social cohesion of the European Union and to respect the principle of subsidiarity, the role of the Committee of the Regions in drawing up policies within its remit should be strengthened.

III. <u>THE DECISION-MAKING MECHANISMS OF THE UNION</u>

<u>The legislative function (legislative acts, international agreements)</u>

29. (i) There should only be three decision-making procedures, the codecision, assent, and consultation procedures. The existing cooperation procedure should be abolished.

(ii) The assent procedure should be restricted to Treaty revision, international agreements, enlargement and adjustments to own resource.

(iii) The consultation procedure should be restricted to decisions in the field of common foreign policy and security.

(iv) In all other areas, the codecision procedure should apply.

30. The codecision procedure should also be simplified. The following changes could be envisaged:

(i) End the procedure when there is agreement between Council and Parliament at first reading stage.

(ii) Drop the phase of intention to reject.

(iii) Introduce at the end of the first reading a simplified conciliation procedure.

(iv) Give the Commission the power to propose and put to the vote in the two conciliation committee delegations a compromise between the conflicting positions.

(v) Harmonize the majorities required for rejecting the final text (regardless of the results of conciliation).

(vi) Eliminate the possibility for the Council to act unilaterally (by reconfirming its common position) in the event of conciliation failing to reach agreement.

31. Serious consideration should be given to the idea of introducing the principle of equivalent deadlines for Parliament and Council in their first readings on draft legislation.

32. (i) The volume of draft legislation submitted to the European Parliament and the Council should be limited by introducing a certain hierarchy of acts. This could be achieved by introducing a new category of implementing acts, responsibility for which would lie with the Commission where so empowered by the legislative authority. Under no circumstances would this new category of acts limit the legislative and political control functions exercised by the European Parliament.

(ii) Existing 'commitology' procedures should be simplified. General responsibility for implementing measures should be devolved to the Commission (which may use an Advisory Committee to help in the formulation of the measure, but not type 2 and type 3 Committees, which would be abolished). The Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission's decision and to call either for new implementing measures or for full legislative procedures.

33. The articles of the Treaty dealing with international agreements should be consolidated, and the respective roles of the Commission and Council should be clarified (notably as regards the arrangements for participation by the Union in international economic organizations), and the democratic role of the European Parliament before, during and after the negotiating process should be reinforced, with the assent of Parliament being required for all international agreements entered into by the Union (without prejudice to the powers of national parliaments).

The budgetary function

34. The budgetary function should be changed so as to respect the following principles:

(i) Budgetary legislation should be rationalized so as to distinguish between own resources decisions on the one hand and the Financial Regulation and budgetary discipline on the other. The Union's budget should be the sole budgetary instrument for the realization of the Union's objectives and should allow a prompt response to exceptional or unforeseen circumstances.

(ii) The unity of the budget should be established: the European Union's budget should incorporate the European Development Fund, Community borrowing and lending, and expenditure under the second and third pillars.

(iii) Multiannual financial programming should be incorporated in the Treaty while maintaining the annual nature of the budget.

(iv) The budgetary authority should be given responsibility for revenue; the European Parliament should be associated with the revenue side of the budget by giving it the right of assent.

(v) The income of the ECB (seniorage income) shall be deemed an own resource of the Community;

(vi) The system of revenue, belonging exclusively to the Union, should make it possible for citizens to identify clearly what resources are allocated to the Union; it should reflect the financial capacity of the Member States, and it should permit the fixing of an overall financial ceiling.

(vii) The procedural distinction between compulsory and non-compulsory expenditure should be abolished; i.e. the European Parliament should be able to act as an equal partner for all expenditure.

(viii) The budgetary procedure should be simplified, made more transparent and effective; the Commission's preliminary draft budget proposals should be the basis for the European Parliament's first reading; the democratic principle of the final adoption of the budget by the European Parliament must maintained.

The function of control

35. Political control within the Union should be reinforced by means of the measures proposed in the above paragraphs.

36. The Treaty should be revised to permit tougher measures to be taken to combat fraud and other infringements of EU law, to permit wider-ranging investigations within the Member States (by means, for example, of a reinforced Article 138c) and to enable dissuasive penal and administrative sanctions to be imposed at EU level (with an article to permit harmonization directives in the area of relevant penal law, and specifically obliging Member States to apply effective, proportionate, harmonized and deterrent penalties for breach of Community law).

37. Where independent agencies and other organizations are entrusted with EU tasks they should carry out these tasks, within a framework which ensures proper coordination and control at EU level.

38. There should be increased accountability of the European Investment Bank (judicial review by the Court of Justice, monitoring by the Court of Auditors, reporting requirement to Parliament and Council).

IV. THE PROSPECTS FOR ENLARGEMENT

39. Parliament reserves the right to put forward any proposals which may prove necessary in order to take better account of the implications of the enlargement including the financial prospects of enlargement and not to undermine the principles of competition, cooperation and solidarity which have always been fundamental to European integration.

40. Parliament awaits with great interest the Commission report on the impact of common policies in the applicant countries, a report which should give rise to practical proposals concerning the adjustments required or even the practical scope for applying the policies concerned to those countries.

V. **FOLLOW-UP MEASURES**

41. There should be as open a debate as possible during the Reflection Group phase, including regular public report-back from the Group and the holding of a large hearing on the issues at stake in 1996.

42. The negotiating phase of the 1996 Conference should involve more open debate than at previous IGCs, and the role of both national parliaments and of the European Parliament should be reinforced:

    (i) A consultative conference of parliaments could meet at the beginning and at the end of the revision conference.

    (ii) In order to ensure that the process of revision in 1996 is more transparent and democratic, the representatives of Parliament in the Reflection Group should stress the need of a decisive change in the method of the Treaty revision and of a full involvement of Parliament both in the negotiating phase as well as in the ratification process; the role of the national parliaments should be also reinforced.

    (iii) The interinstitutional conference should lay down the guidelines for European Parliament participation in the negotiations.

43. Parliament should have to give its assent to the outcome of the negotiations.

44. Consideration should be given to holding a Union-wide referendum to ratify any Treaty provisions, on the grounds that a collective decision affecting the whole of Europe is at stake. As an alternative, Member States could agree to hold any national referenda (or their respective parliamentary votes) at the same time or within a few days of each other.

45. The current Article N of the Treaty should be reformed to ensure that the European Parliament is put on the same footing as the Commission in being able to submit proposals for the amendment of the Treaty. The Treaty should be amended to provide for future revisions to be approved jointly by Parliament and the Council before being submitted to national parliaments for ratification. In addition to forwarding all proposed Treaty changes to the parliaments of the Member States and the European Parliament for final ratification, the Council must communicate a single, consolidated text of the founding treaties at the same time.

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Instructs its President to forward this resolution to the Council, the Commission, the members of the Reflection Group and to the governments and parliaments of the Member States.

EUROPEAN PARLIAMENT

RESOLUTION OF 14 DECEMBER 1995

ON THE AGENDA FOR

THE 1996 INTERGOVERNMENTAL CONFERENCE

WITH A VIEW TO THE MADRID EUROPEAN COUNCIL

Resolution on the agenda for the 1996 Intergovernmental Conference with a view to the Madrid European Council

The European Parliament,

- having regard to its resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union[1],

- having regard to the Treaty on European Union and, in particular, Article N which provides that the European Parliament must be consulted before the convening of an intergovernmental conference,

- having regard to the report of the Reflection Group[2],

A. whereas the objectives of the process of European integration are peace, political stability and guaranteed harmonious economic and social development for the benefit of all citizens of the Community,

B. whereas the European Union must in future secure greater support from the general public, make its action more effective and clearly define its objectives,

C. whereas the Treaties, which were initially designed for six countries, already no longer function satisfactorily for fifteen Member States, much less for an even greater number,

D. having regard to the new major challenges now facing the European Union, as outlined in its resolution of 17 May 1995,

E. whereas the necessary strengthening of existing policies is conceivable only with the prospect of the merger of the three pillars and within a single institutional framework,

F. whereas the Member States will have a heavy responsibility to bear if they fail to respond to these challenges and whereas were the conference to be a failure or the revision of the Treaties lacking in ambition, the whole process of European integration could suffer a serious setback,

Reflection Group report

1. Shares the view of the members of the Reflection Group that, to meet the challenge of enlargement, substantial reforms are required as well as proper implementation of existing European policies, to respond to the growing disenchantment and disaffection of European citizens;

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[1] OJ C 151, 19.6.1995, p. 56.
[2] SN 520/95, 5.12.1995.

2. Considers that the Reflection Group's report highlights the main changes required for the future enlarged European Union and welcomes the positive role played by Parliament's representatives and by the chairman of the Reflection Group in securing the support of a large majority of members for the European Union to be deepened as far as possible during the IGC;

3. Regrets that there is no consensus on the main reforms necessary in the Union but welcomes the fact that a large majority supports the main options put forward by Parliament, in particular with regard to democracy in the Union and the effectiveness of the institutions (extending use of the codecision procedure and qualified majority voting), citizenship and fundamental rights and with regard to freedom, internal security and transparency;

4. Regrets that the report has a number of major shortcomings and fails to give a full and clear answer to vital questions such as the abolition of the pillars, particularly in the area of the common foreign and security policy and defence policy, the effectiveness of the Union institutions, the coordination of the economic policies of the Union and budgetary procedures; also regrets the lack of any reference to the cultural impact of the Union's policies;

5. Considers it vital that, on the basis of the 'acquis communautaire' which must remain intact, the Union should define clear and precise aims and objectives shared by all the Member States which can in no circumstances be called into question;

Appeal to Madrid European Council

6. Urges the European Council to define a mandate for the IGC which takes account of the priorities established by Parliament in its resolution referred to above, namely:

   - to give political substance to citizenship of the European Union, to ensure that citizens and social operators have genuine rights to be informed and consulted and real powers of control and to guarantee respect for both fundamental rights and human rights;

   - to make the institutions of the European Union more effective and more democratic (in particular by making greater use of qualified majority voting, by simplifying and democratizing Community decision-making procedures, which should therefore be reduced to three, i.e. codecision, assent and consultation, and by conferring greater responsibilities on the European Parliament, in particular by making the codecision procedure involving Parliament and the Council the general rule on legislative matters);

   - to permit the adoption of policies leading towards improved European competitiveness, full employment, reinforced economic and social cohesion, and enhanced environmental protection;

   - to develop a social policy by incorporating into the Treaty the Charter on Fundamental Social Rights and the Protocol on Social Policy;

- to equip itself with the institutional and political resources required for the implementation of a proper common foreign and security policy for peace-keeping and to ensure a more effective Union presence on the international scene;

- to ensure real progress in the fields of justice and home affairs, by bringing them within the Community sphere and by using Community procedures and institutions, in order to promote, in particular, a European asylum policy and to strengthen internal security in the European Union by combating crime in the Union and drug trafficking effectively;

- to strengthen Community and national instruments for combating fraud and maladministration at European Union and Member State level;

- to guarantee real openness and transparency and, to this end, to open up the legislative process by providing for Council meetings and votes to be held in public where the Council is acting in its capacity as legislator;

- to unify and simplify the Treaty and all Community legislation by making them easier for the citizens of the European Union to understand;

- to establish in the Treaties a role for public services of general economic and social interest, and to develop a universal right of access to these services of general interest;

- to clarify the sources of law by establishing a hierarchy of acts;

7. Proposes that in the period between the Madrid European Council and the start of the Intergovernmental Conference technical work on the simplification and codification of the Treaties should continue so that the conference can begin its substantive work on the basis of a text which has already been simplified and codified;

Treaty revision procedures

8. Reminds the European Council that the difficulties in securing public acceptance at the time of ratification of the EU Treaty prove the need to adopt a more open and democratic procedure for the revision of the Treaty;

9. Undertakes to stimulate public debate so that citizens are involved in the process of revision of the Treaty, as it did, for example, by holding a public hearing on 17 and 18 October 1995;

10. Reaffirms its desire for close cooperation with the national parliaments, particularly within the framework of revision of the Treaty;

11. Considers that it should be informed on a regular basis of developments in the IGC and involved to the greatest possible extent during both the negotiating phase and the ratification process;

12. Considers it essential to review the operation of the interinstitutional conference to make it a forum for genuine cooperation between Parliament, the Commission, and the governments of the Member States;

13. Considers that the Madrid European Council must adopt the requisite arrangements in terms of transparency and access to information and appropriate arrangements to ensure the fullest possible involvement of and cooperation with Parliament at the Intergovernmental Conference and suggests that the best way of achieving this is for Parliament observers to take part in the conference;

14. Considers that if it were invited to send observers to the IGC, their role and the arrangements for their participation would have to be clearly defined in advance;

15. Considers that the governments of the Member States must undertake not to submit the new Treaty for ratification without having obtained its approval and that Article N will have to be amended accordingly at the Intergovernmental Conference;

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16. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the parliaments of the Member States.

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COMMISSION

REPORT OF 10 MAY 1995 ON THE OPERATION OF THE TREATY ON EUROPEAN UNION

PREFACE

PREPARING EUROPE FOR THE 21ST CENTURY

This report by the Commission is its response to the mandate of the Corfu European Council: that the Community institutions review the operation of the Treaty on European Union. It is the first stage in a long and delicate process. It takes stock of the operation of an instrument that has been in force for only eighteen months. The fact that in the period before the 1996 Intergovernmental Conference the institutions are each reviewing their collective *modus operandi* is welcome. Practical proposals on amendments to the Treaty will follow in due course.

The 1996 deadline was set in 1991. At that time the Treaty was a bold response to a novel situation. Objective analysis shows that it is better than its reputation would suggest. It has the merit of setting out a comprehensive approach to European integration, rather than a purely economic one. It has enhanced the European Parliament's powers, consolidated the Commission's legitimacy, launched economic and monetary union, and generally reinforced the Union's capacities. It has mapped out the path to a stronger Union presence on the world political scene.

Acknowledging the Treaty's strengths, however, also permits us to identify its weak points and the shortcomings in its implementation. This analysis will allow the Commission to outline the path it believes should be followed during the Intergovernmental Conference, in terms of both form and content: institutional questions, however important in a Community governed by the rule of law, should not blind us to the fundamental issues at state.

Two major challenges for Europe

The 1996 Intergovernmental Conference will be a key encounter, for Europe and its future. The outcome will determine the shape of matters European as the 21st century dawns. Two factors make this deadline particularly important:

First, the Union's **internal context** has changed. The Maastricht Treaty ratification debate revealed that there was still a degree of scepticism about European integration. Europe is not easy for people to understand; many do not see what it is about. The same problem can also arise within an individual country where the citizen may not always realize what policies are being followed in his or her name, or why. The distance between the citizen and the place where decisions are made, however, means that the problem is more acute in the Union.

So the first challenge is obvious -- **to make Europe the business of every citizen**. The emergence of open debate, covering all points of view on Europe, is in fact a real opportunity : Europe is no longer deciding its future behind closed doors.

That is why the Commission does not regard the Treaty's objective of a Community closer to the citizen as a mere empty formula, but as an overriding principle which guides its actions.

The Commission will be listening to the views of ordinary men and women, and focussing on ways in which Europe can combat unemployment, safeguard the environment and promote solidarity.

Here, as elsewhere, the Commission will try to speak for the general interest.

The Commission is convinced that the solution to today's problems needs firm action at European level. None of our Member States can really tackle the problems of unemployment and pollution on its own. Organized crime cannot be resisted by forces which are scattered and fragmented; above all, there can be no effective foreign policy without joint action at the Union level.

This does not mean that everything should be centralized. Subsidiarity involves working out the right level for the most effective action, whatever the question concerned. That level may be local, regional, national, European, or in some cases even world-wide.

The context has altered not only within the Union. The **international context** has changed even more radically. The historic shock waves of 1989 -- on the Union's very doorstep -- are still reverberating. The upheavals which followed the fall of the Berlin Wall have borne fruit. At tremendous cost, the new democracies in Central and Eastern Europe have confirmed their attachment to the values that are at the very basis of the Union. The Union, for its part, has committed itself to accepting these countries.

Herein lies the second challenge. **How are these countries to be welcomed into the Union without striking at the foundations of all that has been achieved in forty years of European integration?** How, in other words, can we ensure that enlargement will not multiply our weaknesses but unite our strengths? How can we enhance our capacity to take decisions and to act, when our diversity becomes more pronounced? Enlargement must represent a new arrangement worked out with our eyes open. We have to be aware of its implications for the institutions and policies of the Union. The Commission is convinced that there is an answer to these questions. There is no compelling reason why an endeavour based on openness and solidarity should mean weakness and dilution : enlargement and deepening are perfectly compatible.

If these two challenges -- **making Europe the business of the citizen and making a success of future enlargement** -- are to be taken up, we must begin by reminding ourselves of the values and successes of European integration in the past.

The achievements of four decades of European integration

In the 1950s, as the principles which were to lead present to the Treaty of Rome were starting to take shape, the war was still in everyone's mind. The deep psychological scars it left behind helped create a consensus as to the fundamental objectives of European integration: the future would have to be different from the past.

The future has indeed turned out to be very different from the past. Europe has been at peace. Despite the tragedy of unemployment, and the social exclusion which tears at the fabric of our societies today, Europe has since the 1950s been through a wholly- unprecedented period of development; this should never be overlooked.

In setting up a Community designed to last indefinitely, equipped with its own institutions, enjoying legal personality, and internationally-represented in its own name, the Member States have given their allegiance to an "organization of states" which is governed by legal provisions particular to the treaties under which it was set up; this makes it fundamentally different from the organizations established by traditional international treaties. They have pooled their sovereign rights and created a new legal order, involving not just the Member States themselves but also their citizens, in the specific fields concerned.

Thus there has sprung up a **Community based on law**. The states of which it is composed, whether big or small, enjoy equal rights and dignity. The Union which brings them together **respects their different identities** and cultures. Those differences do not however stand in the way of their ability to take decisions and to act together. That is the fruit of an **institutional system with many strengths**: thanks to the principle of subsidiarity, it strikes the proper balance between the Union, the Member States and the regions; it adds a new source of legitimacy common to the peoples of Europe; and, lastly, it guarantees the effective application of Community law under the review of the Court of Justice. Within this system the Commission plays an indispensable role, acting as the driving force through its right of initiative and its position as guardian of the Treaty. This right of initiative has to be preserved, if the inevitable confusion and lack of overall direction which would result from multiple competing sources of initiative is to be avoided.

This Community is also a **Community based on solidarity**: solidarity between Member States, solidarity between regions, solidarity between different parts of society, and solidarity with future generations. The European model forges a fundamental link between the social dimension, human rights and civic rights.

This process of integration and the particular approach which it has followed have been keenly watched all over the world. Often, they have served as models for the regional groupings now coming into being in every corner of the globe. It can be said that Europe, the stage for the two greatest conflicts of the century, has -- in creating the Community -invented a new form of government in the service of peace.

That is the Community's real achievement. Safeguarding it is vital for the states which form the European Union today and those which aspire to join it. However, the progress we have seen since the 1950s has been made only by dint of constant effort; and the lesson of history is that it takes less energy to demolish than to construct, and that no achievement is ever final. Merely pointing to past achievements, then, is not enough.

As always in the successive stages of building Europe, what will be needed is determination from the Member States and -- more and more -- determination on the part of Europe's citizens: they must make their voices heard in the ongoing task of European integration which concerns them so directly.

A twofold objective: democracy and effectiveness

As we look at the analysis in the Commission's report, two main elements emerge which will have to serve as guiding principles for the work of the forthcoming Intergovernmental Conference:

- the Union must act **democratically, transparently and in a way people can understand**;

- the Union must act **effectively, consistently and in solidarity**. This is obvious when we are talking about its internal workings, but it must also be true in its external dealings, where it will have to bring a genuine European identity to bear.

These, of course, were objectives of the original drafters of the Treaty on European Union, but a look at the way the Treaty works in practice shows that a great deal remains to be done. The prospect of a Union expanded to include 20 or more Member States further underlines that necessity.

Democracy comprises the very essence of the Union, while effectiveness is the precondition for its future. That is why those are the two criteria for assessing how the Treaty is working at the moment : and that assessment, in its turn, will produce the major guidelines the Commission will follow at the forthcoming Intergovernmental Conference.

One of the Treaty's basic innovations in terms of democracy is the concept of **European citizenship**. The object of this is not to replace national citizenship, but to give Europe's citizens an added benefit and strengthen their sense of belonging to the Union. The Treaty makes citizenship an evolving concept, and the Commission recommends developing it to the full. Moreover, although the task of building Europe is centred on democracy and human rights, citizens of the Union have at this stage no fundamental text which they can invoke as a summary of their rights and duties. The Commission thinks this gap should be filled, more especially since such an instrument would constitute a powerful means of promoting equal opportunities and combatting racism and xenophobia.

The Commission is delighted that the Union's democratic legitimacy has been strengthened. Making the Commission's appointment subject to Parliament's approval has been an important step in the right direction. The increase in Parliament's legislative powers is another welcome development.

But as decision-making has become more democratic, it has also become complex to an almost unacceptable degree. The twenty or so procedures in use at present should be reduced to three -- the assent procedure, a simplified codecision procedure, and consultation. We must put an end to the inconsistencies and ambiguities which have so often sparked conflicts over procedural matters.

In addition to democratic control at the level of the Union, we need to find a way to involve national parliaments more directly and visibly in controlling and guiding the national choices that apply to the Union.

More generally, we need to dispel the obscurity which has descended on the Treaties as a result of successive additions being superimposed one on another. The time has come to **simplify** matters, drafting the whole text anew to make it **more comprehensible**. This need for transparency is both a practical and a political necessity.

In the same spirit of openness, the principle of **subsidiarity**, which took pride of place in the Union Treaty, has begun to change the attitudes of the institutions. Debate on the distribution of powers and the grounds for introducing each new proposal is becoming more regular. But we must go even further. All too often the concept of subsidiarity is put forward for specific or short-term ends as a way of diluting the Union. Yet subsidiarity can also be applied positively, to justify measures which are better taken collectively than in isolation. The full political significance of subsidiarity, as a commitment by the Member States and the institutions to find the best way of serving the citizens of the Union, needs to be underlined.

The legitimacy of the institutions also needs to be strengthened. In this context, the Commission believes that Parliament should have the right to give its assent to any amendment to the Treaties.

Lastly, a particular effort should be focused on making our **institutional machinery more effective**. In the Commission's view, this means paying special attention to the common foreign and security policy and to justice and home affairs. Security at home and abroad are indeed legitimate priorities for every citizen.

The very fact that two different working methods -- the Community approach and the intergovernmental approach -- coexist in the same Treaty is a source of incoherence. Experience has confirmed the fears previously expressed on this subject. The single institutional framework which was supposed to ensure harmony between the various "pillars" of the Treaty has not functioned satisfactorily. The proper lessons have to be drawn.

The experience of the **common foreign and security policy** has been disappointing so far, although we should be wary of making final judgments after only 18 months of its existence. However, the fact is that the possibilities have not been used to best effect, owing to the weaknesses of the Treaty as well as over-restrictive interpretation of its provisions.

The Treaty sought to establish greater consistency between political and economic objectives of the Union, but this has not been fully achieved. Adjustments will have to be made so that overlap between different instruments does not lead to paralysis.

The Union must develop a genuine common foreign policy commensurate with its economic influence and equipped with effective decision-making machinery; this cannot be achieved through systematic recourse to unanimity.

The Treaty laid the foundation for such a policy, and the forthcoming conference should be used to erect an adequate framework for a genuine common security and defence policy, by building up the capabilities of the Western European Union and linking it to the existing common institutions.

Cooperation in **justice and home affairs** has been ineffectual, and not only because of the lack of coherence in the institutional framework. The instruments available are inappropriate, and the problem is compounded by the cumbersome decision-making process and a complete

lack of openness. The Intergovernmental Conference will offer an opportunity to undertake a radical overhaul of these arrangements.

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The reflections set out above show that **the main issue during the conference will not be an increase in the Union's powers**. The Treaty of Maastricht added a number of powers which make the Union a much more ambitious undertaking than it was in the past. One example is economic and monetary union: here the path has been mapped out and there should be no renewed discussion on the provisions agreed. The recent turbulence on the currency markets merely serves to underline how vital this is.

The main focus will have to be on ways of improving decision-making mechanisms. The increase in the number of states and practical considerations ought naturally to lead to wider use of the **majority rule**; this will be even more necessary for future enlargements. However, it is absolutely vital that we preserve the nature of the Union as a true community of states and peoples where there is no unbuilt majority or minority.

Further enlargement will not only require the Union to strengthen its decision-making capacity, but will also force us to look more closely at the possibility of **different speeds of integration**. This concept already exists both in the context of economic and monetary union and in the system set up under the Schengen Agreement -- although the latter regrettably remains outside the Community framework. There is nothing unusual in allowing some Member States a longer period to adjust to certain policies. In the Commission's view, however, this must be done within a single institutional framework and must centre on a common objective. Those states concerned must play their part by not blocking any of their partners who wish to move ahead more quickly.

Permanent exemptions such as that now applying to social policy, which in the last analysis have had the regrettable effect of excluding the Social Charter from the Treaty, create a problem, as they raise the prospect of an *à la carte* Europe, to which the Commission is utterly opposed. Allowing each country the freedom to pick and choose the policies it takes part in would inevitably lead to a negation of Europe.

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These, then, are the Commission's first thoughts on the forthcoming Intergovernmental Conference.

The Commission is proposing a Europe in which the different tiers of authority cooperate democratically and effectively to help solve the problems affecting ordinary Europeans.

We want to see a strong and independent Europe, taking up its rightful place in the world. Strength requires internal cohesion. Europe must be much more than the sum of its parts.

In the new international situation Europe's role as a pole of stability is more important than ever. That is what is expected of us, but for the moment -- as war continues to claim more

victims on our continent -- we are unable to provide it. Europe must speak with one voice, if major challenges are to be tackled effectively.

We want to see a Europe whose people recognise themselves and each other, precisely because of their conviction that an active community with shared values is the key to a peaceful and prosperous future, and to a more just society for all.

The Commission will make every effort to fulfil this ambition. It has set itself the task of demonstrating the importance and the potential of this goal for ordinary Europeans and ensuring that the Member States and the institutions are guided by a common interest. In doing so, it will be fulfilling its duty as "guardian of the Treaty".

REPORT ON THE OPERATION OF THE TREATY ON EUROPEAN UNION

CONTENTS

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INTRODUCTION

1. "Recalling ... the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe, confirming ... the principles of liberty, democracy and respect for human rights and fundamental freedoms and of rule of law, desiring to deepen the solidarity between their peoples while respecting ... their culture ..., desiring to enhance further the democratic and efficient functioning of the institutions": these were the aspirations of the signatory States expressed in the Preamble to the Treaty on European Union.

   In the preparations for the 1996 Intergovernmental Conference they will serve as yardsticks to measure the progress made since the Treaty came into force on 1 November 1993.

2. The Treaty is an important stage in the process of European integration. It incorporates a political dimension which transcends the earlier, essentially economic, approach :

   - the European Economic Community established by the Treaty of Rome becomes the European Community, and the introduction of Union citizenship symbolizes the desire to extend the scope of the Treaty to other aspects of people's lives; this is also borne out by the strengthening of the principle of economic and social cohesion. The Community is given new powers in areas such as education, culture and health. Its powers in the fields of environment, research and social policy are clarified or enhanced. At the same time the Treaty enshrines the principle of subsidiarity, which limits Community action to matters where it is more effective than action by national, regional or local authorities.

   - the Treaty marks a major step forward with the gradual introduction of a genuine economic and monetary union, an essential complement to the single market, which already constitutes the world's biggest economic unit.

   - perhaps the most striking manifestation of the advance beyond a purely economic vision is the addition of two new forms of cooperation - alongside the European Community - so as to form the Union. The first of these is the common foreign and security policy, which, although still essentially intergovernmental in nature, is intended to go much further than traditional political cooperation. For the first time the Treaty mentions the possibility of eventually formulating a common defence policy. And then there is more ambitious cooperation in the fields of justice and home affairs, in order to enhance domestic security.

   The logical corollary of this progress towards political union is a distinct reinforcement of democracy at Community level. The European Parliament's powers are increased by its involvement in the approval of the Commission and the greater say it enjoys in the legislative process.

   To ensure that the Union's actions in these various areas are coherent, the Treaty provides a single institutional framework. Although different arrangements apply in the common foreign and security policy and in the fields of justice and home affairs, the

traditional Community institutions are involved: Council, Committee and European Parliament.

3. Article A states that the Treaty "marks a new stage in the process of creating an ever closer union among the peoples of Europe". The 1996 conference is evidence of the intention to make further progress and the Treaty itself specifies a number of areas which will have to be reviewed:

   - Article B calls for a general review of policies and forms of cooperation "with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community". This amounts to a review of the Treaty's structure.

   - the following four specific areas are mentioned in the Treaty:

     . the scope of the codecision procedure;
     . security and defence;
     . energy, tourism and civil protection;
     . the hierarchy of Community acts.

   - at meetings held since the Treaty was signed, the European Council has agreed to add other items to the list of topics to be considered by the 1996 Intergovernmental Conference:

     . the number of Commission members, the weighting of Member States' votes in the Council, and the measures required to facilitate the work of the institutions and ensure that they operate efficiently;
     . appropriate institutional arrangements to ensure that the Union will operate smoothly in the event of enlargement to include Cyprus, Malta and the countries of central and eastern Europe.

   - the European Parliament, the Council and the Commission have also agreed that two other matters should be put before the Conference:

     . the operation of budgetary procedures, notably as regards the classification of expenditure;
     . the arrangements for exercising the executive powers conferred on the Commission to implement legislation adopted under the codecision procedure.

4. The Corfu European Council also addressed the question of how to prepare for the 1996 Intergovernmental Conference.

   A Reflection Group consisting of representatives of Member States' Foreign Ministers and of the Commission President and two representatives of the European Parliament is to be set up on 2 June 1995.

   In the mean time the institutions are to prepare reports on the functioning of the Treaty on European Union as a contribution to the Group's proceedings.

The European Council's intention is that the Reflection Group should examine and elaborate ideas and options for the Intergovernmental Conference "on the basis of the evaluation of the functioning of the Treaty as set out in the reports".

Any such evaluation must bear in mind that the Treaty has only been in force since 1 November 1993.

5. In drawing up its report, the Commission has tried to assess whether the Treaty has lived up to the intentions of its drafters from two points of view: that of democracy and openness in the Union, and that of the effectiveness and coherence of the policies undertaken.

Expectations have been strengthened by the intense public debate which accompanied the national ratification procedures and subsequently the accession of three new Member States. At the forefront of these debates were the same fundamental requirements: democratic operation of the institutions; openness in the Union system; and effectiveness and coherence in practice.

These themes set the main parameters for judging the Treaty. They are in fact mutually connected: democracy withers if it does not operate effectively; and effectiveness is pointless without democracy. Otherwise democracy becomes nothing more than technocracy.

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Part One

Democracy and transparency in the Union

The Community is a "community based on law". As its activities expand into more politically sensitive areas, the democratic foundations of such a Community need to be strengthened if it is to function properly.

This is why the signatories to the Treaty expressed their firm attachment "to the principles of liberty, democracy, ... human rights and ... the rule of law" and their concern to build an "ever closer union among the peoples".

Consequently, the Treaty has to be assessed primarily in terms of the concept of democratic legitimacy. It is this which can consolidate the ordinary citizen's sense of being a part of the process of building Europe and which can be used to gauge whether existing institutions and procedures - for decision-making and control - provide an adequate response to the requirements of a community based on law (I).

In the same sense, transparency is a crucial instrument in bringing the Community closer to its citizens and in increasing their confidence in its operation, such confidence being a key element in any democracy. The Treaty sets out to meet this requirement by introducing, in the form of subsidiarity, a dynamic and evolutionary principle for the exercise of the Community's powers. At the same time and to make the functioning of the Union more transparent, it has spawned mechanisms for giving access to information and engendered a requirement for clearer legislation (II).

I. HEIGHTENING THE SENSE OF BELONGING TO THE UNION AND ENHANCING ITS LEGITIMACY

6. **One of the main "Parts" into which the Treaty is divided is on European citizenship, a new and meaningful concept (A). The Treaty enhances the legitimacy of the institutions, particularly by extending the powers of the European Parliament (B) and bringing in new rules on decision-making (C). It also improves the machinery for judicial and budgetary control (D).**

A. EUROPEAN CITIZENSHIP

7. In the Treaty on European Union, the Member States instituted a form of citizenship for "every person holding the nationality of a Member State" for the purpose of "strengthen[ing] the protection of [their] rights and interests".

The Treaty thus established a direct political link between the individual citizen and the European Union, in a way which brings them closer together. This is a new concept with scope to become a real motivating force within the Union..

Articles 8a to 8e of the Treaty list a number of special rights enjoyed by the citizen - the right to vote and stand as a candidate in European and municipal elections wherever he or she lives, the right to travel and reside wherever he or she wishes, and entitlement to diplomatic and consular protection wherever he or she may be. Any citizen also has the right to petition the European Parliament and to apply to the Ombudsman.

The European citizenship established by these provisions is a developing concept, as the Treaty allows for the possibility of extending citizens' rights via a procedure involving a unanimous vote of the Council and ratification by each Member State. So far no use has been made of this possibility.

Over and above citizens' rights, certain fundamental rights not mentioned in the Part of the Treaty dealing with citizenship but incorporated into the common provisions (Article F(2)) make explicit reference to the European Convention for the Protection of Human Rights and the constitutional traditions common to the Member States. Respect for these fundamental rights is expressed as a binding obligation on the Union. The Commission has asked the Council for authorization to start negotiations for the accession of the Community to the European Convention on Human Rights; however, the Council has asked the Court of Justice for its opinion on whether accession would be compatible with the Treaty.

1. The right to freedom of movement and residence

8. Citizens of the Union have not been given general rights of freedom of movement and residence; the exercise of these rights is subject to the "limits and conditions" laid down by Community law.

9. The Union citizen's right to freedom of movement must therefore be seen in the context of the establishment of the "area without internal frontiers in which the free movement of ... persons ... is ensured in accordance with the provisions of this Treaty" (Article 7a, added by the Single European Act).

It has not yet proved possible, however, to meet the target of setting up an area without frontiers for individuals, as no agreement has been reached on the security measures which are recognized as being necessary, both for abolishing the internal frontiers and for harmonizing the systems of checks at external frontiers.

Similarly, when it comes to the right of residence, the Treaty refers back to a complicated series of directives setting out the often restrictive conditions to which each category of person is subject. The Commission has undertaken to condense these directives into a single, simplified instrument in 1995, a task which will be complicated by the disparities between the legal bases and decision-making procedures laid down in the existing instruments, which vary according to the category of person covered.

10. The weakness of the resulting system is that although the principle of freedom of movement and residence is established, its practical application is in some cases linked to directives which are still not complete and in others depends on the introduction of accompanying measures either in areas governed by the Treaty establishing the European Community or in the fields of justice and home affairs of the Treaty on European Union.

In practice, therefore, the Treaty has made no improvement at all on what went before. As freedom of movement and residence are rights of the individual, ordinary citizens' expectations can only have been disappointed.

2. The right to vote and stand for election

11. All citizens of the Union residing in a Member State of which they are not nationals are now entitled to vote and stand as candidates in municipal elections and elections to the European Parliament. As a result, practical arrangements had to be unanimously adopted by the Council by certain deadlines: the end of December 1993 in the case of elections to the European Parliament and the end of December 1994 for municipal elections.

12. Notwithstanding the shortness of the deadlines, as well as the great difficulty and the sensitivity of the subject, these time limits were respected. The adoption of the directive on European elections and its speedy transposition into national law by the Member States gave Europe's citizens the right to vote and stand for election in their country of residence in time for the elections to the European Parliament in June 1994.

The directive on voting in municipal elections, adopted with certain derogations on 19 December 1994, has to be transposed into national law by the end of 1995.

13. The introduction of these rights is a real step forward, though that assessment needs to be tempered in view of the limited use made of the entitlements at the European elections in June 1994. The attached tables (Annex 1) show that participation by the citizens concerned varied between 2% and 35% depending on the Member State involved. The differences were due, among other things, to voting conditions, variations in the way the elections were publicized, and the fact that the right was a new one.

3. Diplomatic and consular protection

14. A citizen of the Union is now entitled to ask the diplomatic or consular authorities of other Member States for protection when his or her own Member State is not represented in a country outside the Union.

This new right is not one to be overlooked, as there are many cases where Member States are not represented. European citizens can often find themselves in a country where their own country has no embassy. There are only four countries, in fact, where all the Member States are represented - China, the United States, Japan and Russia - and conversely there are seventeen countries where only two Member States are represented.

15. "Rules" governing the practical implementation of this entitlement were to be established by 31 December 1993 between the Member States themselves, and cooperation between diplomatic and consular missions was also to be improved in accordance with Article J.6.

Under these circumstances it is extremely difficult for the Union's institutions to ascertain to what extent this right of the citizen is being put into effect. Apart from *ad hoc* bilateral contacts such as those which took place when European citizens were evacuated from Rwanda in June 1994, only "guidelines" have been adopted through the old political cooperation machinery in place before the Treaty entered into force.

16. There are, however, provisos attached to putting this new right into practice. The "guidelines" which are supposed to bring it about are merely non-binding instructions. They are also incomplete, as they only deal with consular protection, moreover without covering all the fields listed in the Vienna Convention on Consular Relations. In particular, these "guidelines" have received little publicity, so that by and large the citizens of the Union are unaware of them. Lastly, there is no clear indication of how a citizen can avail him- or herself of this right to protection.

4. The right to petition Parliament and apply to the Ombudsman

17. The citizen's right to petition the European Parliament now appears in the Treaty, having hitherto been available under Parliament's Rules of Procedure. There have been no significant changes as regards how often or in what circumstances it can be exercised.

Applying to the Ombudsman gives members of the public another way of reacting to what they consider unfair actions by administrative bodies. This right is confined to

complaints concerning instances of maladministration by Community institutions. In other words, it does not apply to analogous situations in the Member States, and from the outset rules out any overlapping with the functions of national ombudsmen.

The regulations and conditions governing the performance of the Ombudsman's duties were laid down by the European Parliament after consultation of the Commission, and approved by the Council. Although the Ombudsman was supposed to be appointed "after each election of the European Parliament for the duration of its term of office", the regrettable fact is that the appointment has still not been made, for procedural reasons connected with Parliament's Rules of Procedure.

5. Overall assessment

18. Generally speaking, the introduction of the concept of Union citizenship, which does not replace but is in addition to national citizenship, carries immense potential. Its purpose is to deepen European citizens' sense of belonging to the European Union and make that sense more tangible by conferring on them the rights associated with it.

The most noteworthy and visible application of the concept is the right to vote and stand as a candidate in European and municipal elections. However, the ambitious notion written into the Treaty has not yet produced measures conferring really effective rights: the citizen enjoys only fragmented, incomplete rights which are themselves subject to restrictive conditions. In that sense, the concept of citizenship is not yet put into practice in a way that lives up to the individual's expectations.

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B. THE INSTITUTIONAL RESPONSE TO THE DEMAND FOR LEGITIMACY

19. The Union is underpinned by a complex and novel institutional balance. This relies primarily on interaction and cooperation between the European Parliament, the Council and the Commission.

The signatories to the Treaty sought to respond to the greater requirement for legitimacy which resulted from the substantial increase in the responsibilities conferred on the Union. It was therefore natural that the Member States and their peoples be better represented in the institutions.

20. The European Council's role as the setter of guidelines and the Council's sphere of operation have therefore been extended to take in all the Union's new areas of activity.

The legitimacy of the Commission's work as promoter of the general interest of the Community and as guardian of the Treaty has been accentuated, particularly through the approval procedure

As for the European Parliament, it has been given a considerably larger role to play both in the legislative field and in its supervisory functions.

There are, moreover, further provisions of the Treaty intended to give the Union a firmer grounding in democracy, be it through the establishment of the Committee of the Regions, through the consolidation of the role of the Economic and Social Committee or through the involvement of national parliaments.

1. The role of the European Council and the Council

21. In the case of the European Council, the Treaty strengthens and enshrines existing practices. It is given a central position in the Union since it is to "provide the Union with the necessary impetus for its development and ... define the general political guidelines thereof" (Article D). The Treaty also requires the European Council to report to the European Parliament on each of its meetings, and annually on the progress achieved by the Union.

Its role as a provider of impetus has been confirmed in recent practice, and it is the setting in which the internal and external strategies of the Union come together. In the context of economic and monetary union, in particular, its role is to debate the main guidelines for economic policies, and the decision to move on to the third stage will be taken by qualified majority by the Heads of State or Government meeting in Council.

22. The Council, meanwhile, has been given a pivotal decision-making function in the fields of common foreign and security policy and cooperation on justice and home affairs. Its role is essential in the Community decision-making process.

2. The Commission

23. The length of the Commission's term of office has been set at five years, in line with the life of the European Parliament.

The Treaty gives it a right of initiative, shared with the Member States, in the fields of common foreign and security policy and in certain matters covered by justice and home affairs; it is fully associated with the work in all these areas. In the monetary field, this right is shared with the future European Central Bank in several articles.

Together with the Council, the Commission is responsible for making sure there is consistency in all the Union's external activity. Its exclusive right of initiative in Community matters is confirmed on the understanding that, in line with the principle of subsidiarity, it is answerable for how it exercises that right. Its role as guardian of the Treaty in Community matters is also confirmed.

24. The chief Treaty innovation concerning the Commission is the complete overhaul of the procedure for appointing it. The European Parliament has to be consulted on the choice of President, and must then officially approve the Commission before it can take up its duties.

This new procedure was applied for the first time at the beginning of the present Parliament. On 21 July 1994 it gave its assent to the name put forward for President of the Commission.

Parliament then held individual hearings for each of the nominees for the posts of Members. The Treaty makes no express provision for the principle of such hearings, but they were held in Parliament's committees at the beginning of January 1995. Parliament did not vote on the nominees individually, a sign of its respect for the principle that the Commission exercises collective responsibility. Parliament approved the names by a large majority on 18 January.

25. In the Commission's view, the new approval procedure has proved a highly convincing exercise. Not only does it give the Commission a firm grounding of legitimacy; it also serves to encourage greater dialogue between the two institutions. It also generates public interest. However, the process clearly takes too long, having lasted nearly seven months in all.

3. The European Parliament

26. The tasks of the European Parliament have been very substantially increased, both through its power to approve the Commission (see above) and through the greater part it now plays in the legislative process (see below).

In the context of economic and monetary union Parliament is consulted on the appointment of the President of the European Monetary Institute and of the President and Executive Board members of the European Central Bank.

Parliament has also been given new supervisory powers, a part to play in the fields of common foreign and security policy and justice and home affairs, and the right to ask the Commission to make proposals.

A greater role for the European Parliament

1. A direct political role
   - *appointment of the Commission*
     . gives an opinion on the choice of President;
     . approves the Commission as a body.
   - *powers of supervision over the Union's activity*
     . temporary committees of inquiry;
     . consideration of petitions;
     . appointment of an Ombudsman;
     . increased powers of budgetary control.
   - *role in relation to common foreign and security policy and justice and home affairs*:
     . right to be informed and consulted;
     . power of recommendation.
   - *right to ask Commission to make proposals*

2. Role in the decision-making process
   - *as regards legislation*:
     . codecision with the Council (in fourteen areas);
     . assent (in four areas);
   - *as regards international agreements*:
     . advisory opinions on all agreements except trade agreements;
     . assent to : - association agreements;
     - agreements setting up a special institutional framework;
     - agreements having "appreciable implications for the budget";
     - agreements amending an act adopted by the codecision procedure.

(a) Parliament's new supervisory powers

27. Temporary Committees of Inquiry, a traditional instrument for the exercise of parliamentary control, have been provided for by Article 138c of the Treaty. They may be set up by Parliament at the request of a quarter of its members.

Parliament's powers of inquiry are not confined to the activity of the Community institutions: they may be exercised in relation to the actions of Member States where they are responsible for executing and implementing the Community's policies. A Committee of Inquiry may not, on the other hand, consider matters which are *sub judice*.

On 20 December 1994 Parliament, the Council and the Commission agreed on the practical arrangements for giving effect to these powers.

Parliament has not so far availed itself of these provisions.

28. The Treaty gives the European Parliament greater powers of control over the implementation of the budget, particularly as regards the power to give a discharge. Here, the Commission is, among other things, required to submit all necessary information and take all appropriate steps to act on Parliament's observations. The new provisions have been applied without any significant problems arising.

(b) Parliament's role in common foreign and security policy and in the fields of justice and home affairs

29. Where the common foreign and security policy is concerned, the European Parliament acts in accordance with three procedures laid down by the Treaty: it has to be consulted on the main aspects; it has to be kept regularly informed; and it may ask questions of the Council or make recommendations to it (Article J.7). In other words, Parliament plays a role similar to that of national parliaments in relation to national foreign policy.

Putting these provisions into practice, however, has created difficulties and given rise to discrepancies in interpretation. In particular, Parliament considers that consultation should take place before any important decision is taken, and should be formalized. The Council, on the other hand, takes the view that its President's appearance before the relevant committee of Parliament and the report annexed to the European Council's conclusions constitute the consultation necessary.

30. With regard to justice and home affairs, Article K.6 of the Treaty allows Parliament a role similar to the one it plays in relation to the common foreign and security policy; the same problems of interpretation have arisen.

It is not certain that the situations are the same: since questions in the area of justice and home affairs are likely to have a direct effect on indiviuals' basic rights and public freedoms, they actually warrant a greater degree of parliamentary control especially where binding legal instruments are involved.

(c) The right to request a proposal

31. The Treaty empowers Parliament to request the Commission to submit a proposal for a Community act (Article 138b), a right the Council already enjoys under Article 152. Such requests do not require the Commission to put forward a proposal, but, under the code of conduct recently concluded with Parliament, the Commission will take the greatest possible account of them.

Parliament has twice made use of this provision, in respect of preventing and remedying damage to the environment and of making hotels safe against fire. These requests are being considered by the Commission.

4. The Committee of the Regions

32. The Treaty set up a Committee of the Regions, a body responsible for representing regional and local authorities in the Union (Articles 198a to 198c). This body is a new and important element in the closer relations being established between the Union and regional and local authorities. Most of the Committee's members are local or regional elected representatives.

The Committee of the Regions must be consulted on matters involving education, culture, public health, trans-European networks and economic and social cohesion. Consultation is optional in all other fields. The Committee may also issue opinions on its own initiative "where it considers that specific regional interests are involved".

The Committee held its first session on 9 and 10 March 1994, and has been working steadily since then: 42 opinions have been issued, including 16 in compulsory consultation cases, 15 in optional cases and 11 on its own initiative (see Annex 2).

It has been consulted on an optional basis on a number of important matters, such as the information society, and has itself decided to evaluate the regional consequences of the reform of the common agricultural policy.

33. To date the Committee has been able to give its views without holding up the decision-making process, despite the spread-out timing of its sessions. In their substance, the opinions have always reflected regional or local feelings and have attached great weight to compliance with the subsidiarity principle. However, its own-initiative opinions, such as that relating to clearance of the accounts of the common agricultural policy, suggest that it may be running the risk of casting its net too wide.

5. The Economic and Social Committee

34. The Treaty consolidates the role of the Economic and Social Committee and its advisory function, responding as it does to the growing need for greater involvement of the various categories of economic and social activity. More specifically, it provides that the Committee can now issue opinions on its own initiative.

The Committee can make a real contribution by expressing the views of individual citizens through the intermediary of their economic and social representatives, and making these views available to the other institutions.

6. Relations between the institutions and national parliaments

35. Two declarations on the role of national parliaments are attached to the Treaty.

The first recognizes the importance of encouraging "greater involvement of national parliaments in the activities of the European Union". To this end, it emphasizes the commitment of the governments of the Member States to ensuring that national

parliaments receive Commission proposals for legislation in good time for information or possible examination. It also calls for contacts between national parliaments and the European Parliament to be stepped up.

The second "invites the European Parliament and the national parliaments to meet as necessary as a Conference of the Parliaments (or 'assises'). The Conference ...will be consulted on the main features of the European Union."

36. When the Treaty was being ratified, several Member States changed their internal procedures or practices to enable their national parliaments to play a bigger role.

In any event, the notification to or examination by national parliaments of proposals for Community legislation by national parliaments is basically a matter for national rules or constitutional practices. These vary considerably and, while some parliaments consider that they should focus attention on the broad outlines of European policy, others put the stress on monitoring legislative activity.

37. In practice, the number of meetings between different bodies belonging to the national and European parliaments has risen from 20 or so in 1992 to 44 in 1993. Regular meetings also take place between presidents or speakers of parliaments. A conference of bodies specializing in European affairs in the Assemblies of the Community (COSAC) meets regularly. The last such meeting, held in February, rejected proposals to set up a new chamber consisting of representatives of the national parliaments.

On the other hand, the possibility of convening a Conference (or 'assises') of parliaments has not been used since the one sitting held in Rome in December 1990.

38. The difficulties experienced in ratifying the Treaty in certain countries showed how important it is to involve the national parliaments in the work of European integration.

Under the Treaty, national parliaments are already called upon to act in the cases set out in the following table:

Role of national parliaments under the Treaty	
1. Constitutional ratification	
. Amendments to the Treaty	Article N
. Accession of new Member States	Article O
2. Approval of acts	
In the Union framework:	
. Ratification of conventions in the fields of justice and home affairs	Article K.3(2)(c)
. "Communitarization" of action in certain areas of justice and home affairs (as specified in Article K.1(1) to (6))	Article K.9
In the Community framework:	
. Additions to citizens' rights	Article 8e
. Uniform procedure for election of Members of the European Parliament	Article 138(3)
. Decision on own resources	Article 201
. Ratification of conventions	Article 220
3. Implementation of Community law	
. Transposal of directives	Article 189

The national parliaments are thus implicated in some of the most important decisions in the life of the Union. They wish to become more involved, however.

The Commission considers that such developments should be sought in the part national parliaments can play, in accordance with the internal rules of each Member State, both in shaping the position of each Member State in the Council and in monitoring the implementation of Union decisions at national level.

7. Overall assessment

39. The Treaty set out to confer greater legitimacy on the institutional framework of the Union.

To this end it has strengthened Parliament's powers, both in the legislative process and with regard to monitoring the implementation of Community policies. Similarly, the establishment of the Committee of the Regions and the growing involvement of national parliaments go some way to answering the calls for greater participation by citizens' representatives, these representatives coming from various political levels in the Member States.

Nor has legitimacy been strengthened at the expense of Member States' interests, since the Council and the European Council have been given the dominant role in developing the new, most politically sensitive areas of activity, such as economic and monetary union, common foreign and security policy and cooperation in justice and home affairs.

Last be not least, the equilibrium of the institutional triangle has been preserved: with the strengthening of the Commission's legitimacy through the new procedure for appointing it; the fact that its power of initiative is maintained; and that that power has been extended to cover some of the Union's new fields of activity.

Any assessment of the institutional response to the requirement for legitimacy has therefore to be positive. However, there has also to be a reservation concerning the weakness, not to say the absence, of democratic control at Union level in the fields of activity where the intergovernmental process still holds sway.

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C. THE NEW RULES OF THE DECISION-MAKING PROCESS

40. The Union's decision-making rules and procedures should also serve to make the institutions more democratic and help them operate more effectively. The Commission remains the starting point of the decision-making process; the powers of the European Parliament were increased, however, in particular by introducing the codecision procedure and extending the scope of the cooperation and assent procedures; and finally, the use of qualified-majority voting in the Council was extended to new areas.

Implementing measures are the natural corollary of the legislative activity referred to above. The Commission plays an important role in this field, in partnership with national government departments.

1. Legislative and implementing procedures

(a) Codecision procedure

41. Under the codecision procedure, Parliament and the Council adopt legislative instruments by joint agreement. It applies in a number of important fields, such as the internal market.

The main features of this complex procedure are its two readings, the procedure for conciliation in the event of disagreement between the Council and Parliament and the possibility of outright rejection by Parliament (diagram in Annex 3).

Its field of application is outlined in Annex 4.

42. Application of the codecision procedure so far is summarized in the following table:

CODECISION PROCEDURE	
Commission proposals	124
formally adopted:	33
without conciliation	18
after conciliation	15
not accepted by Parliament:	2
rejected at third reading (proposal for a Directive on voice telephony)	1
rejected after agreement in the Conciliation Committee (proposal for a Directive on biotechnology)	1
Procedures completed:	35
. instruments adopted	33
. instruments rejected	2

43. Contrary to certain fears resulting from its complexity and its length, the codecision procedure has worked well so far. Decisions have been taken fairly quickly as a result of a good working relationship between the institutions. This has included an interinstitutional agreement on the operation of the Conciliation Committee, signed on 21 October 1993.

A study of the proposals presented by the Commission since the Treaty came into force shows that the average length of the procedure has been less than 300 days. This assessment will, however, need to be refined by examining results over a longer period.

In two cases the procedure failed to produce a decision:

- in the first, relating to voice telephony, no agreement was reached after the conciliation procedure and Parliament rejected the draft Council Directive because of its provisions on implementing (committee) procedures;

- in the second, relating to biotechnology, agreement was reached in the Conciliation Committee, but Parliament rejected the agreement and the proposal in plenary session

(b) Cooperation procedure

44. The cooperation procedure was established by the Single European Act. The Council has the final say, but Parliament is involved in the legislative process - it holds two readings and may propose amendments to the Council's common position. The scope of the cooperation procedure was extended by the Treaty to important fields such as the common transport policy and certain aspects of economic and monetary union (Annex 5).

(c) Consultation procedure

45. The consultation procedure, whereby Parliament gives its opinion on Commission proposals, has existed since the Communities were founded. Its scope has gradually been reduced with the introduction of the cooperation and the codecision procedures. Nevertheless, it still covers important fields such as the common agricultural policy, taxation and certain aspects of economic and monetary union.

(d) Assent procedure

46. Under this procedure Parliament may give or withhold its agreement on the instrument laid before it but may not amend it. It is applied to a wide variety of instruments (table at Annex 6):

International agreements
Under the Single European Act, association agreements require Parliament's assent. Article 228 of the Treaty, as amended at Maastricht, extended its use to agreements:

- establishing a specific institutional framework and organizing cooperation procedures;
- having important budgetary implications for the Community;
- entailing amendment of an instrument adopted under the codecision procedure.

Legislation
The Treaty extended the assent procedure to certain areas of legislation - citizenship, specific tasks of the European Central Bank and amendments to its Statutes, the Structural Funds and the Cohesion Fund.

Other fields
The Single Act introduced the assent procedure for Treaties of Accession. Under Article 138 of the Treaty, as amended at Maastricht, Parliament's assent is also required in a field which concerns it directly - the establishment of a uniform electoral procedure.

Application of the assent procedure up to the present is summarized in the following table:

ASSENT OF THE EUROPEAN PARLIAMENT	
Proposals (of which 20 were launched before 1.11.1993)	32
Procedures completed:	7
. international agreements	5
. accession	1
. legislation (Cohesion Fund)	1

47. The extension of the assent procedure strengthened Parliament's powers. It should, however, be remembered that:

- differences of interpretation remain concerning its application to international agreements, particularly as regards the concept of "important budgetary implications" (e.g. the fisheries agreement with Greenland);
- the procedure is ill-adapted to the legislative field, since Parliament may only accept or reject the instrument laid before it;
- finally, the Commission considers that Parliament's assent should be required for amendments to the Treaty.

(e) ***The budget procedure***

48. Parliament, the Council and the Commission have signed two political agreements aimed at improving the application of certain aspects of the budget procedure, which was not amended by the Treaty:

- the interinstitutional agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedure, which lays down the financial perspective for 1993-99 and establishes, among other things, an *ad hoc* consultation procedure for compulsory expenditure (the amount of which is fixed by the Council) as opposed to non-compulsory expenditure (over which Parliament has the final say);
- the interinstitutional declaration of 6 March 1995 on the inclusion of financial provisions in legislative instruments, which applies to legislation concerning multiannual programmes. The declaration makes a distinction between instruments adopted under the codecision procedure, in which the overall budget allocation is a "privileged" target for the budgetary authority, and those which are not subject to the codecision procedure, in which the overall budget allocation merely acts as a guide.

(f) Voting procedure in the Council

49. The Single European Act extended the scope of qualified majority voting in the Council, and it is undoubtedly an effective tool in the decision-making process. This trend was continued with the Maastricht Treaty and qualified majority voting now applies to most new fields of activity - e.g. visas (from 1996), education, vocational training, public health, consumer protection, trans-European networks and development cooperation. It also applies to some areas of economic and monetary union and to the environment and social policy.

Nevertheless, many articles of the Treaty still provide for decisions to be adopted by unanimity (list at Annex 7).

(g) Implementing measures

50. Legislative activity requires a large number of implementing measures, most of which are adopted by the authorities in the Member States. Responsibility for implementing measures is sometimes conferred by the Council on the Commission, however.

At present the detailed rules for the adoption of these implementing measures are governed by a Council Decision dating from 1987 which provides for seven different procedures in which committees of experts from the Member States are assigned an advisory role. In some cases, where there is disagreement between a committee and the Commission, the final decision is taken by the Council.

51. Since the codecision procedure was written into the Treaty, Parliament has felt that the Council should no longer have sole power to delegate or intervene in the task of implementing measures adopted under the codecision procedure, but that Parliament should also be involved. It was because of this disagreement with the Council that, for the first time, Parliament rejected a proposal at third reading - the proposal for a directive on voice telephony.

To avoid further cases of stalemate, on 20 December 1994 the institutions agreed a *modus vivendi* which will apply until the matter is reviewed at the 1996 Intergovernmental Conference.

52. The Commission has consistently refused to propose one of the seven types of committee procedure (the "IIIb" procedure) which it considers illogical since it can lead to a situation where no decision is taken. With this reservation, the Commission believes that the implementing procedures operate satisfactorily and present no major obstacles to actual implementation, as the following figures suggest:

Total number of committees in existence	about 200
. of which, committees able to block decisions	30
Of several thousand opinions adopted over the last three years	
. decisions referred back to the Council	6
cases where no decision was taken	0

Furthermore, these procedures have the definite advantage of more closely involving national government departments; these bear most of the responsibility for applying Community measures in practice.

2. Overall assessment

Although the system of legislative and implementing procedures has functioned relatively well on the whole, it does have three major weaknesses:

- the continuing divergence between legislative procedures and the budget procedure;
- the complexity of the decision-making system;
- the lack of logic in the choice of the various procedures and the different fields of activity where they apply.

53. The divergence between legislative procedures and the budget procedure comes out in a variety of ways:

- parliament has a tendency to use the budget as a means of pushing through measures which should come under the legislative procedure; conversely, the Council tends to use legislative channels to adopt financial commitments which should be dealt with under the budget procedure.
  Such conflicts could be defused by bringing the powers of the budgetary authority and the legislative authority closer together.

- in common foreign and security policy and in cooperation on justice and home affairs, the Treaty introduces a new source of tension as it provides for operational expenditure to be financed either by the Member States or from the Community budget. If the Council decides that the Community budget is to be used, the budget procedure must be observed. This is a potential source of conflict if Parliament and the Council do not agree on the measure to be financed.

- the classic example of this divergence concerns the common agricultural policy: Parliament adopts the general budget, of which roughly half is devoted to this policy, on whose substance Parliament is, however, only "consulted".

54. The Union's decision-making system, which was relatively simple at the outset, has become much more complex over the last twenty years with the introduction of a complicated budget procedure, the cooperation, codecision and assent procedures and special provisions for economic and monetary union, common foreign and security policy and justice and home affairs. The system has been developed by adding a succession of new layers, without taking a clear overall approach. The Union now has more than twenty different decision-making procedures (Annex 8).

This situation, coupled with the complexity of some of the procedures (e.g. the cooperation, codecision and budget procedures), renders the Union's *modus operandi* extremely obscure. The codecision procedure is imprecise on a number of points, notably on the purpose of the conciliation procedure when Parliament has indicated its intention to reject a measure and on whether conciliation is confined to the amendments

rejected by the Council. Moreover, the very complexity of the procedure would warrant a simplification, in particular at the second and third reading stages.

The proliferation of procedures also harms the internal operation of the Union, because it encourages conflict over legal bases. Institutions may tend to choose a particular legal base not because of the substance of the measure in question but because of the decision-making procedure which applies. Such conflicts slow down the whole process and can lead to actions in the Court of Justice, which should be avoided if at all possible.

Finally, two observations should be made on the way in which implementing measures (committee procedures) operate at present:

- first, the wide variety of procedures available leads all too often to protracted and sometimes theoretical discussion on which procedure to use in each case; this slows down the legislative process;
- second, these measures do not operate with a particularly high degree of openness.

55. There is no apparent logic in the correlation between the various procedures and different fields of activity:

- three different procedures apply in the three equally important sectors of agricultural policy, transport and the internal market (the consultation, cooperation and codecision procedures respectively);
- fields which are closely linked, such as transport and certain aspects of trans-European networks, are subject to different procedures (cooperation and codecision respectively);
- several different procedures may apply within a single policy area; the most obvious examples are the environment, research, and economic and social cohesion.

One common source of difficulties is that, under the Treaty, the unanimity rule has been maintained in many cases without any consistent underlying principle. Thus, in the fields of both research and culture, there is a combination of codecision between Parliament and Council, together with unanimity in Council, even though this disproportionately increases the risk of stalemate.

56. The legislative processes need to be radically simplified, with reference to the concept of a hierarchy of acts, a matter which the Treaty has placed on the agenda of the Intergovernmental Conference. Simplification of decision-making in budgetary matters is also needed to ensure genuine interinstitutional cooperation.

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D. THE REVIEW FUNCTION

1. Judicial review

57. From the outset, the Court of Justice has had the essential task of seeing that the rule of law is observed in the interpretation and application of the Treaties.

In particular it must ensure that the effect given to Community law does not engender any discrimination or jeopardize the attainment of the Treaties' objectives. It must also secure uniformity in the interpretation of Community law by the national courts which have to apply it.

It is thanks to the decisions of the Court of Justice, and its dialogue with national courts, that the internal market has been consolidated, that the common policies have been encouraged, that the Community's identity has been affirmed, and that discriminatory and nationalistic temptations have been resisted.

(a) Reinforcement in the Community context

58. The main changes wrought by the Treaty are as follows:

- the existence of the Court of First Instance is formally confirmed and the Council's power to confer new jurisdiction on it is now excluded only as regards preliminary rulings;
- at the Commission's request the Court of Justice has the power to impose lump sum or penalty payments on a Member State which has had judgment given against it for failure to discharge its obligations but has still not complied with the judgment;
- under economic and monetary union, the Governing Council of the European Central Bank exercises the review powers normally conferred on the Commission if the infringements are committed by a central bank.

59. The new possibilities offered by the Treaty for transfer of jurisdiction to the Court of First Instance have not been used so far.

Nor have the new provisions for fining Member States. In July 1994 the Commission informed the Member States that it planned to make use of these provisions, and to say so in Article 171 letters and reasoned opinions, sent out in cases of failure to comply with Court decisions finding that infringements had been committed.

(b) Judicial review in the context of the common foreign and security policy

60. The interpretation and application of Treaty provisions in this area are beyond the jurisdiction of the Court of Justice (Article L). The Court enjoys jurisdiction only in those exceptional cases where a decision taken by the common foreign and security policy procedures might run counter to a provision of a Community Treaty.

61. However, as joint actions under the common foreign and security policy begin to proliferate, this absence of judicial review procedures could pose a problem, should individual rights be affected.

(c) Judicial review in the context of justice and home affairs and judicial cooperation

62. The interpretation and application of Treaty provisions in this area are also beyond the jurisdiction of the Court of Justice (Article L).

This means that neither the European Parliament nor the Commission can enforce their rights to be consulted, informed or fully associated, as the case may be. Moreover, neither the Member States nor the institutions can act to secure compliance with obligations imposed by decisions that have been taken.

In addition, as regards the legal instruments used in justice and home affairs cooperation:

- jurisdiction can be conferred on the Court in relation to conventions, but only for interpretation and dispute settlement; it is not possible to confer jurisdiction to review an instrument's conformity with the Treaty, with general principles of law or with the higher norms of, say, the European Convention on Human Rights or the Geneva Convention on the Status of Refugees, even though the Treaty articles on justice and home affairs refer explicitly to them;

- no jurisdiction can be conferred on the Court in respect of common positions and joint actions, although they can affect individuals' rights and duties (as in the case of the joint action adopted on 30 November 1994 on travel facilities for schoolchildren with non-Union nationalities residing in a Member State).

2. Budgetary and financial review

63. The Treaty raises budgetary discipline (Article 201a) and sound financial management (Article 205) to the status of principles; hence its first reference to the Financial Controller. The Commission must be sure that resources are available in the budget to pay for whatever measures it proposes or carries out.

The Commission accordingly tests all its activities and procedures against the main parameters of sound financial management - objectives, cost-effectiveness and *ex ante* and *ex post* evaluation.

The Treaty likewise strengthens the role of the Court of Auditors and emphasizes the fight against fraud (Article 209a).

(a) The Court of Auditors

64. The Treaty removes the Court of Auditors from the category of "other bodies", where it was placed at the time of its establishment in 1975, and raises it to full institution status (Article 4). This underlines the Union's desire to give the Court of Auditors greater authority and to strengthen the role of financial management in Community life.

The Treaty also requires the Court to provide Parliament and the Council with a `statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions'. This it did for the first time in relation to the accounts and balance sheet for 1994, which were sent to the budgetary authority and the Court of Auditors on 28 April last.

65. The special reports of the Court of Auditors are now acknowledged to be valuable input for Parliament's debates on the discharge to be given to the Commission for its execution of the budget. The Essen European Council recognized the value of these reports and urged the Council, the other institutions and the Member States to act resolutely on them.

By and large, cooperation between the Commission and the Court of Auditors has been intensified and streamlined since the Court's role was strengthened.

(b) The fight against fraud

66. In the fight against fraud against the Community's financial interests, the changes wrought by the Treaty are designed to meet the legitimate concern of taxpayers, Member States and the Community institutions that fraud be combatted more vigorously.

The Treaty expressly assimilates the Community's financial interests to national interests, requiring the Member States to take the same protective measures - at criminal law and in other contexts - as they take for their own interests. The Commission is to report to the Council by the end of 1995 with an evaluation of what the Member States have done to discharge this duty.

The Commission has also established an Advisory Committee for the Coordination of Fraud Prevention which provides a forum for dialogue with the Member States on protecting the Community's financial interests.

67. The efficient protection of the Community's financial interests requires an appropriate system of administrative and criminal controls and penalties in the Member States. Two proposals have been put forward - one for a regulation on administrative controls and penalties and the other for a convention on criminal penalties. Neither has yet been adopted.

68. Substantial interests are at stake, but the new legal weapons supplied by the Treaty hardly measure up to them. There are two paradoxes.

The first is this: Council measures to control expenditure and combat fraud require a unanimous vote, whereas a qualified majority is enough for it to act as the budgetary authority and determine expenditure and revenue levels.

The need for unanimity is the chief explanation for the time taken to enact anti-fraud measures, and it threatens to dilute their impact. There is a further complication in that some aspects of the fight against fraud are matters for cooperation in the fields of justice and home affairs.

The second paradox is that the Commission alone is liable in respect of budget execution whereas the management of appropriations is very often decentralized (e.g. common agricultural policy, Structural Funds). Power and accountability do not go together, therefore; this makes the introduction of effective control measures and greater awareness on the part of Member States all the more necessary.

3. Overall assessment

69. The review function - both judicial and financial - was modified solely in order to seek greater efficiency.

Regarding judicial review, the basis has been laid for a stronger role for the Court of Justice and the Court of First Instance, at least in Community matters proper. The Court of Justice, for instance, can order a Member State to pay a financial penalty where it fails to give effect to a judgment against it for failure to discharge its duties under Community law. However, the Court is really not involved in common foreign and security policy; and in justice and home affairs, where vital personal rights and freedoms can be affected, not only does the Court have a very minor role, but the limited potential offered by the Treaty has not yet been used.

The changes made in matters of financial control are directed towards securing better protection of the Community's financial interests. The responsibilities of the Commission, Parliament and the Court of Auditors in the management and execution of the Community budget have accordingly been spelled out. The benefits are only now beginning to be felt. On the other hand, at least the need to combat fraud has been acknowledged. The main responsibility here lies with the Member States, which must offer the same protection to the Community's financial interests as to their own. The Community as such has but limited legal bases and instruments for fighting against fraud. It urgently needs more.

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II. MORE TRANSPARENCY.

70. A Union that is closer to the people has to be a Union where decisions are easier to comprehend, whose actions are better justified, whose responsibilities are clearer, and whose legislation is more accessible.

The principle of subsidiarity has been explicitly set out in the Treaty, with the aim of reinforcing the legitimacy of acts adopted by the Union as well as clarifying the exercise of powers as between the Union and the Member States (A).

At the same time the Treaty requires the institutions themselves to become more transparent and more accessible (B).

This desire for transparency and accessibility raises the question of the comprehensibility of the Treaty itself (C).

A. CLARIFYING THE EXERCISE OF POWERS: THE SUBSIDIARITY PRINCIPLE

71. The spirit of subsidiarity is older than the Treaty: the concepts of the directive, of mutual recognition and of partnership reflect a previous preoccupation with it. However, its insertion in the general provisions of the Treaty, and the definition given there, add enormously to its significance.

At a time when the Union's powers were being considerably extended, the signatories of the Treaty used the reference to subsidiarity to make clear that these powers must be exercised in a way which respects the different levels of decision-making capacity within the Union, the Member States and the regions. They also emphasized that whatever the Union does must be in proportion to the objectives pursued. The aim was to ensure that tasks are properly distributed and the Union itself more easily understandable.

72. Without waiting for the Treaty to come into force, the Commission demonstrated very early the importance it attached to the principle of subsidiarity. It regards it not only as a legal principle but as a guiding axiom for its conduct.

In October 1992 it accordingly presented Parliament and the Council with its views on the effect to be given to the principle. It set out its view of the scope of the areas in which powers are shared, in accordance with the second paragraph of Article 3b, as distinct from the areas where the Union has exclusive powers. In December 1992 it went on to present the Edinburgh European Council with a list of items of legislation proposed or in force which it considered might be reviewed in the light of the subsidiarity principle. It was asked to report each year to Parliament and the European Council on the application of the principle.

The Edinburgh European Council adopted an overall approach to the application of the subsidiarity principle by the Council.

Parliament made its contribution with a November 1992 resolution seeking an interinstitutional agreement and an April 1994 resolution on adjustments to existing legislation.

On 25 October 1993 Parliament, the Council and the Commission concluded an interinstitutional agreement on the procedures for implementing the subsidiarity principle.

73. At the European Councils in December 1993 and December 1994, the Commission presented its initial reports. They can be summed up as follows:

(a) Regarding the preparation of new or planned legislation:

- every new Commission initiative is now preceded by a review in terms of subsidiarity and proportionality, with the result that there have been fewer but better targeted initiatives in 1993 and 1994 (Annex 9);
- the Commission has withdrawn or reviewed a variety of proposals already before the Council and Parliament; all the commitments given at Edinburgh have been met, with one exception (animals in zoos); it has also reviewed a number of proposals not on the Edinburgh list.

(b) Regarding the revision of existing legislation, the Commission began a review of whole families of instruments identified at Edinburgh and launched a substantial consolidation and simplification programme. It has in some cases gone beyond what was on the programme agreed.

(c) The Commission is open to all suggestions regarding both future legislation and the revision of existing legislation. It is keen to receive such outside opinion, as is clear from the increasing frequency of its Green and White Papers and other forms of public consultation.

It is also open to dialogue with Member States which ask for it. On 10 June 1994, for instance, it replied to a German memorandum on subsidiarity by announcing the withdrawal of two proposals and the amendment of nine others.

In its work programme for 1995 the Commission reiterated its determination to meet the requirements of subsidiarity and announced that the number of new proposals would decline. They would concentrate on what really mattered, having regard to the principle of subsidiarity.

74. In fact, the Union institutions have a set of instruments which equip them to put into practice together the principle of subsidiarity. If they do not apply the principle in a systematic and coherent way, their efforts will not bear fruit.

75. In practice, however, coherence is difficult to achieve, for each Member State will have its own view of what subsidiarity is all about, and the position will be different in different areas of endeavour. The desire to protect individual interests still means that excessively detailed instruments are enacted, flying in the face of the search for clarity and simplicity that subsidiarity implies. The fact that the Member States do not have the same concept of what subsidiarity means should not be an obstacle to further work

together on it; but it does reinforce the notion that subsidiarity is rather a practical obligation for day-to-day behaviour.

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B. ACCESS TO INFORMATION AND CLARITY OF LEGISLATION

76. Openness and transparency are inherent in democracy and citizenship. Declaration No 17 annexed to the Union Treaty sets it out in solemn terms: `The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration ...'. The debates surrounding ratification of the Treaty and the referenda in Denmark, France and Ireland revealed the need for more openness and transparency in Union business.

The Birmingham, Edinburgh and Copenhagen European Councils underlined this need. The referenda, and the accession of new Member States which are particularly attached to transparency and closeness to the citizen, have highlighted the need for a genuine policy to bring the Union nearer the citizen and strengthen his and her involvement and trust in the decision-making process.

1. Transparency in the institutions' business

77. Parliament is by its very nature accessible to the public. The other institutions have made great efforts to meet the requirement for more openness and transparency. Together with Parliament they signed an interinstitutional declaration on democracy, transparency and subsidiarity on 25 October 1993. The main measures are as follows :

(a) The Council

78. The Council changed its Rules of Procedure on 6 December 1993. Its debates are still held behind closed doors but exceptions are now provided for, notably in the form of open debates and publicity and explanations of Member States' votes.

79. With regard to open debates, the Council will hold a six-monthly public debate on the Presidency's programme. Other public debates are possible on major issues of Community interest and major legislative proposals. The decision to proceed in public is taken case by case and by unanimous vote. So far there have been 22 public debates (Annexes 10 and 11).

Open debates have tended to be about subjects on which a consensus existed. Requests for open debates on other subjects have failed to secure the required unanimity. The Council is now reconsidering the unanimity rule in this respect.

80. With regard to publicity and explanations of votes, voting outcomes are made public when the Council is acting as a legislative body, unless it decides otherwise. The exception has never been applied and the question of abolishing it is being considered. Explanations of votes can also be made public.

(b) The Commission

81. The Commission has decided to publish its work programme, its legislative programme and certain of its proposals and to step up its consultation processes.

It publishes its work programme and legislative programme in the *Official Journal*. Its legislative programme indicates what consolidation exercises are planned and what future legislative proposals might give rise to extended consultations (33 of the 105 legislative proposals announced in the 1994 programme).

In late 1992 it decided to publish some of its proposals in the *Official Journal* in the form of summaries with details of where those interested can obtain documents and react to them. This procedure has had limited use so far.

82. The Commission regularly consults interested circles by means of Green and White Papers.[1] This helps it ascertain whether legislation is really needed and, if so, in what form. It published six Green and White Papers in 1993 and nine in 1994 and plans 23 in 1995.

2. Simplifying and streamlining legislation

83. Simplifying Community and national legislation is designed to make the texts more accessible and easier to understand. Measures taken to modernize, simplify and streamline Community legislation fall into four categories:

- recasting legislation - bringing several separate instruments into one while also making amendments on matters of substance;
- simplification - repealing obsolete, superfluous or unduly detailed provisions;
- consolidation - bringing several existing instruments and amendments to them together in a single instrument, without changing the substance;
- drafting improvements.

(a) Recasting

84. In 1993 the Commission, in its subsidiarity review exercise, launched a programme for the recasting of existing legislation. It pinpointed a series of areas for initial treatment, foremost among them the legislation on the right of residence and on pharmaceuticals.

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[1] Green Papers are reflexion documents for discussion; White Papers set out general proposals on an issue.

(b) Simplification

85. As part of the same subsidiarity review exercise, the Commission is working on the simplification of several families of legislation, notably on environmental and food matters. It has also set up a group of independent experts to examine the impact on employment and competitiveness of Community and national legislation, with a view to possible streamlining and simplification.

(c) Consolidation

86. This is a valuable tool for making it easier for those to whom the law applies to ascertain their rights and duties.

Of the 15 consolidation instruments announced in the 1993 and 1994 programmes, eight have so far been proposed, and many other proposals are scheduled for 1995 (Annex 12).

The delays are due to legal and language difficulties and to teething troubles with the computer system set up by the Publications Office. An interinstitutional agreement of 20 December 1994 has established an accelerated *modus operandi* for Parliament, the Council and the Commission.

(d) Drafting improvements

87. In every country in the world legislation is difficult to grasp because it is produced by experts using technical language. In the Community context, the problem is compounded by the fact that legislation is the fruit of negotiations, and ambiguities may be the price to be paid for agreement.

In June 1993 the Council responded to the request made by the Edinburgh European Council by agreeing on guidelines to improve the drafting of Community legislation.

3. Access to documents

88. Access to the institutions' documents is a vital means of increasing transparency and stimulating dialogue. The Council and the Commission have worked hand in hand at two levels.

First, on 6 December 1993, they approved a code of conduct regarding unpublished documents held by the Council and the Commission. It establishes the broad principle of general access to documents, subject to exceptions to protect public or private interests and the smooth operation of the institutions, determines how requests for documents will be processed and within what time-limits, and provides appeal procedures against refusal.

The two institutions subsequently adopted implementing decisions. The Commission, for instance, circulated guidelines to its staff and issued a user guide for the general public.

Of the 260 requests received by the Commission, 53.7% have been accepted, 17.9% have been rejected and 28.4% have been treated as invalid (Annex 13).

89. These measures are still in their infancy and it is too early to analyse in depth their effectiveness. Nevertheless, it is clear that the principle of access to information is now undisputed. The basic instruments are in place, and a review of the code is planned after two years' experience.

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C. THE COMPREHENSIBILITY OF THE TREATY

90. The ratification debates revealed the acuteness of a problem that the Treaty's authors had not perceived: is the Treaty comprehensible at all?

The complexity of European integration, the fruit of layer upon layer of hesitant advances and compromises, is reflected in the complexity of its legal instruments.

The fact that even before the Treaty was signed there were separate legal entities (European Economic Community, European Coal and Steel Community, European Atomic Energy Community) with their separate bases and instruments governed by separate Treaties was already a source of confusion.

The Union Treaty further complicated matters by adding a new structure that modifies and amplifies the earlier ones while at the same time provoking new ambiguities with provisions of the old Treaties being neither taken over nor repealed. The net result is that the Union's basic treaties are very difficult to read and understand, which is hardly likely to mobilize public opinion in their favour.

The Commission considers that, without compromising the *acquis communautaire*, the three Communities and the Union should be merged into a single entity, as should the Treaties, while a number of other instruments should also be consolidated.

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D. OVERALL ASSESSMENT

91. Because of the growing general awareness of the need for more openness in the exercise of powers by the Community institutions, the principle of subsidiarity was written into the Treaty and now guides the institutions' behaviour and action. It determines not only the need for action but also its intensity.

The Commission applies this principle both to direct its initiatives and to evaluate the need for legislation - both future and existing - as well as its proportionality to the aim in view. The results of its application are to be found in the appreciable drop in the

number of new proposals and in the withdrawal or amendment of existing instruments. Despite the tangible results already achieved, the principle nevertheless needs further development in order to overcome the difficulties often caused by differences in Member States' viewpoints, traditions and interests.

92. Openness and transparency are designed to help the public to grasp the decision-making process and require that Community legislation be made more comprehensible.

It is too early to judge the effectiveness of the tools provided. As things stand, the public's expectations are far from satisfied. A great deal remains to be done, especially in the Council, which must be more open in its legislative function. The Community's efforts will be to no avail, however, if the national authorities for their part do not ensure transparency in the transposal and application of Community legislation.

Transparency is particularly wanting in justice and home affairs cooperation, which affects the Union's internal security and closely concerns individual rights.

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Part Two

Effectiveness and consistency of the Union's policies

The European Union was created primarily as a means of progressing beyond the Communities, essentially economic in nature, towards an all-embracing structure capable of "assert[ing] its identity on the international scene" (Article B). The idea behind the Treaty was thus to found the Union by grafting new policies and new forms of cooperation (the common foreign policy and cooperation in the fields of justice and home affairs) onto the existing Communities.

It was not possible to extend the Union in this way without even greater recourse to the two-track approach, which involves both supranational integration and intergovernmental cooperation. The price is greater complexity. In these circumstances, increasing efficiency means ensuring there is a degree of consistency between the different pillars. That is the intention behind the Treaty's "single institutional framework", designed to ensure "the consistency and the continuity of ...activities" (Article C).

The following analysis will therefore examine the effectiveness of each of the Union's new powers in practice, and the degree of consistency between different areas of activity with different types of administrative machinery.

In the case of internal fields of activity (economic and monetary union and cooperation in the field of justice and home affairs), where the most important changes are largely unrelated to each other, the analysis will concentrate on the ability to decide and act (I).

An assessment of consistency is however essential for matters relating to the Union's external activities, because of the interaction between the economic and political arenas. The Union's lack of a legal personality in its own right makes it indispensable to have a measure of consistency between the activities of the Member States and the Community, which are the only subjects of international law (II).

I. INTERNAL POLICIES

93. The most important new internal feature is the introduction of economic and monetary union. The Treaty also reinforces certain Community policies and opens up some areas of action (A).

The other major change is the addition of a new title on cooperation in the fields of justice and home affairs. This brings a form of hitherto rather inconsistent intergovernmental cooperation within the scope of the Treaty and its single decision-making framework, and extends its scope quite considerably (B).

A. AREAS OF COMMUNITY ACTIVITY

1. Economic and monetary union

The irrevocable commitment to a common monetary policy and a single currency can be seen as the last piece needed to complete the single market and is undoubtedly one of the Treaty's most significant advances. The main elements at this stage are as follows:

Multilateral surveillance (Article 103)

94. Before the Treaty, coordination of national economic policies was only a general principle set out in various articles, with the creation of the Monetary Committee as the only institutional provision. All the arrangements for coordinating economic policies were fixed by secondary legislation.

In the light of the experience acquired in the application of this legislation, and in the operation of the European Monetary System, strengthened procedures have been introduced by the Treaty. Multilateral surveillance is undertaken in the context of broad guidelines for economic policies and of the functioning of economic and monetary union. Express provision is made for recommendations to be addressed to Member States.

95. As a result, the new Treaty provisions contribute to addressing the issue of convergence and to securing consensus on appropriate policies for the Community. The Council monitors the broad economic policy guidelines when it adopts the new guidelines for the following year. The surveillance procedure thus has a direct impact on national policies, but it is too early to make a detailed assessment.

Nevertheless, the level at which these issues have been discussed has both focused attention on the question of convergence and underlined the importance of proper surveillance.

Excessive deficit procedure (Article 104c)

96. The excessive deficit procedure puts pressure on Member States to pursue budgetary policies with a view to fulfilling the convergence criterion (Article 109j) during the second stage of economic and monetary union, and to maintain the respect of this criterion in the third stage, when additional measures will be available.

To complete the procedure a regulation has been adopted which lays down detailed definitions and rules for reporting the government deficit and debt figures to the Commission by the Member States.

97. The first application of the procedure, in 1994, went fairly smoothly. Following the opinions of the Commission, the Council considered in September that ten Member States were in excessive deficit; the recommendations to correct these situations were agreed in October and adopted formally in November. For these Council decisions, the Commission fully used its right of initiative, favouring a strict application of the procedure, while the Council broadly supported the Commission's recommendations and decided without unreasonable delay.

The recommendations concerning excessive public deficits can be made public by the Council if it wishes to penalize any failure to act on them. The public is informed when the Council decides, on a recommendation from the Commission, which are the countries with excessive deficits. Some Member States have even wanted to make the recommendations public to explain to public opinion the reasons for the extra efforts they were being required to make.

The European Parliament is informed by the Commission and the Council. The Commission makes a point of letting Parliament know at a very early stage the reasons why it is recommending that the Council declare Member States' deficits excessive.

After two years' operation it can be concluded that the multilateral surveillance procedures have strengthened the coordination of economic policies. They have significantly improved the involvement of national parliaments.

Movements of capital (Articles 73b to 73g)

98. The amendments concerning capital movements came into effect at the start of 1994. Previous liberalization measures adopted as directives, as well as the introduction of further provisions governing capital movements and payments to and from non-member countries have now been raised to Treaty level.

It is too early for a complete assessment of how these provisions have operated in practice. However, an indication of their operation can be found in the first report by the Monetary Committee on capital movements and payments.

Secondary legislation and setting-up of the European Monetary Institute (Articles 109e and 109f)

99. *Secondary legislation.* The Member States have, for the most part, brought their own legislation into line with the rules laid down in the Treaty, e.g. no lending from the central banks to the public authorities and no special access to financial institutions for the public sector. These provisions are enforced jointly by the Commission (in respect of the Member States) and the Institute (in respect of the central banks). Every Member State has had to alter its regulations and practices to comply with the new rules.

Furthermore, a number of Member States have already taken steps towards making their central banks independent as required by the Treaty.

Lastly, the Treaty provides that the Institute must be consulted by the authorities in the Member States on any new regulation they wish to introduce. The details of how this consultation will work in practice have already been worked out and most of the Member States have enacted adequate implementing measures.

100. *Setting-up of the European Monetary Institute.* The Institute was established, as planned, on 1 January 1994 and a President has duly been appointed. The headquarters of the Institute and of the future European Central Bank will be in Frankfurt. Despite a number of teething troubles, the Institute has lost no time in starting work, concentrating on:

- better coordination of monetary policies;
- preparations for stage three; the Institute must decide on the regulatory, organizational and logistical framework by the end of 1996 to enable the European System of Central Banks to carry out its work in stage three.

101. In the eighteen months since implementation began, the provisions regarding the various stages of economic and monetary union have been implemented swiftly and efficiently. While Parliament has voiced some criticism of the role attributed to it in connection with multilateral surveillance, the measures regarding economic and monetary union have complied with the procedures and the timetable set down for it.

The results achieved by measures to put stage two of economic and monetary union into practice have demonstrated not only the flexibility of the mechanism but also the credibility of the various institutions, such as the Council (responsible for improving surveillance and co-responsibility) and the Commission and the European Monetary Institute (whose respective responsibilities have, with practice, become quite clear). The Union can face the future with confidence, particularly with regard to the timing of stage three and the gradual coordination of economic policies. The recent upheavals on the foreign exchanges makes it all the more necessary to keep to the timetable.

2. The areas strengthened

The Treaty has made changes - some of them quite radical - to both content and decision-making procedures in certain policy areas, e.g social policy, economic and social cohesion, research, environment and trans-European networks

(a) Social policy (Articles 117 to 125 and Protocol No 14)

102. The purpose of the Treaty is to promote evenly distributed and lasting economic and social progress. Although no significant changes were made to the social-policy provisions of the Treaty establishing the European Community, eleven Member States (now fourteen) concluded an agreement on social policy that forms an integral part of the Treaty. The agreement provides the Community with the means of making progress on the social front at the same pace as in other areas, particularly the economy.

The agreement is the first case of a Community régime where one Member State does not share the others' objectives.

It extends the Community's powers to new areas (Annex 14) and enhances the importance of social dialogue in the legislative process.

While the Agreement does introduce qualified-majority voting to a significant number of new areas, there are many areas left in which unanimity is required.

103. The Agreement institutionalizes and attaches greater significance to consultation between the two sides of industry. It helps the Commission in assessing whether or not it should go ahead with Community initiatives and enables the two sides of industry to influence the content of proposals. Organizations representing both employers and employees at European level now meet regularly on a flexible basis.

The two sides also play a fundamental role in the implementation of Community social-policy directives - a task which may be entrusted to them with the agreement of the Member State in question.

The Agreement also enables traditional relations to be established within the Community framework. At the joint request of both sides, the Council, acting on a proposal from the Commission, can adopt a decision for the implementation of these agreements. This provision has not yet been used.

104. Social policy is thus now governed by:
- Title II of the Treaty on European Union and
- the Agreement enabling fourteen Member States (all except the United Kingdom) to legislate at European level.

Choosing between the two sets of rules can be problematic: so far, the Commission has assessed case by case whether or not to use the Agreement as the legal basis for proposals. In general, it uses the Agreement only when it is impossible to obtain the support of all fifteen Member States. In the field of health and safety at work, where decisions are taken by qualified majority, the Commission tends to use the Treaty in preference to the Agreement.

Thus far, the Agreement has been used only occasionally, e.g. for a Directive on informing and consulting workers in Community-scale companies and groups of companies and a resolution on the outlook for social policy.

105. While the Agreement on social policy can be seen as another step towards a European social policy for all citizens of the Union, it is regrettable that not all Member States are involved because it rather blurs the Union's image with respect to social policy and creates the potential for disputes over distortions of competition.

(b) <u>Economic and social cohesion</u> (Articles 130a to 130e and Protocol No 15)

106. The Treaty certainly enhanced the importance of economic and social cohesion, by turning it into an essential corollary of an open, border-free European market and economic and monetary union:

- the principle of solidarity with the Union's poorest regions has been strengthened by the fact that economic and social cohesion embraces a number of common policies, which are supposed to contribute to it (e.g. environmental policy, trans-European networks);

- the practical expression of this solidarity has also been bolstered by the establishment of a Cohesion Fund for Greece, Ireland, Portugal and Spain; an additional protocol on cohesion increased the weight attached to the relative prosperity of the Member States in determining the contributions to the system of own resources.

107. The Regulation on the Cohesion Fund, adopted on 16 May 1994, enabled the Union to launch straightaway major new programmes in the four countries concerned. These programmes are concerned with integrating these countries into the trans-European transport networks and improving the quality of the environment (in particular for waste-water disposal and water quality).

The provisions in the Treaty strengthening the instruments of economic and social cohesion over and above the Cohesion Fund have not affected the way in which the Fund is implemented in practice. These other instruments are largely dependent on Structural Fund regulations, revised before the entry into force of the Treaty.

108. The Commission is of the view that the application of the structural policies to promote cohesion could be improved by:

- development of the partnership between the Union, the Member States, the regions and local authorities (in an appropriate way in each Member State), with the involvement of the two sides of industry;

- effective financial control and assessment of projects financed by the Structural Funds. Neither is satisfactory at the moment owing to the confusion over who is responsible for what. This undermines faith in the concept of financial solidarity in the Union and in its openness.

(c) <u>Research and technological development</u> (Articles 130f to 130p)

109 The most significant reform in this field was introduced by the Single Act The changes introduced by the Union Treaty amounted to no more than fine tuning

First, the Treaty legitimizes research in fields such as medicine and the environment not warranted by the objective of increased industrial competitiveness alone.

It highlights the need for policy coordination between Member States and with the Community, though it does not create an institutional framework for this.

In October 1994 the Commission presented a communication entitled "Research and Technological Development - Achieving Coordination through Cooperation". This is currently with the Council.

110. The framework programme is adopted by the codecision procedure. This means that the European Parliament is now closely involved in decisions on the overall thrust of policy and general priorities, rather than simply being consulted on the details of individual programmes. Unanimity is, however, still required for the adoption of the framework programme.

Despite the unwieldiness of a procedure combining codecision with unanimity, adoption of the Fourth Framework programme was completed in only ten months, thanks to an exceptional set of circumstances: all the institutions were aware of the disruption to Community projects that could result from a failure to take all the necessary decisions by the end of 1994. Parliament's eagerness to reach an agreement before the European elections also played an important part.

However, the body of legislation prescribed by the Treaty, covering both the framework programme and the individual programmes, is still too cumbersome. For example, more than twenty legislative decisions had to be taken to implement the framework programme.

(d) The environment (Articles 130r to 130t)

111. The Treaty elevated environmental action to the status of a policy, reflecting the increasing importance of environmental issues. It expanded on the principles and guidelines for environmental measures and gave formal recognition to the principle of prevention, the need for a high level of protection and the idea that other Community policies should take account of environmental considerations.

In addition, four Member States now have access to Community support from the Cohesion Fund for environmental projects.

112. The Treaty has made the decision-making procedure more efficient by replacing unanimity with qualified majority voting in the Council in most cases, and the need merely to consult Parliament with the cooperation procedure. The procedure has not been made more simple, however: in some cases, the codecision procedure is used, while in others the Council must reach a unanimous decision, after consulting Parliament.

Nor did the Treaty clear up the grey area between this procedure and the procedure for the single market. Thus there is still uncertainty as to whether the codecision procedure (Article 100a) or the cooperation procedure (Article 100s) should be used for certain

proposals. These problems have kept on emerging, particularly in relation to successive proposals on waste.

Thus, while the Treaty made some major improvements to an environment policy which is still in need of further development, it also created new complications as far as legal bases and the clarity of the decision-making procedure are concerned.

(e) Trans-European networks (Articles 129b to 129d)

113. The introduction of the concept of trans-European networks is the Treaty's response to a basic realization: with the removal of internal borders and cooperation with the countries of central and eastern Europe, projects to develop transport, energy and telecommunications networks can no longer be viewed purely in national terms; they must also form part of a coherent European strategy.

The Treaty therefore provides for the possibility of coordinating national decisions on the basis of overall European plans, and special funding from the Community budget to promote synergies between national projects.

114. Stepping up the pace of work on trans-European networks is one of the objectives laid down by the White Paper on Growth, Competitiveness and Employment. Both the Commission and Parliament have made a considerable effort to ensure that the overall plans for road, rail and inland-waterway transport networks are adopted as quickly as possible. However, the efforts made in these areas to select European priority projects and to mobilize the funds required to make them viable must be actively pursued. Moreover, Member States have proved unwilling to abandon their national preferences: witness the uneven distribution of the various categories of public funding made available through European instruments.

3. Other new areas of activity

115. In line with the preoccupations of several Member States, the Treaty conferred decision-making powers on the Community in a number of areas, many of them directly related to the everyday lives of its citizens, e.g. visa policy (Articles 100c and 100d), education, training and youth policy (Articles 126 and 127), culture (Article 128), public health (Article 129), consumer protection (Article 129a) and industry (Article 130).

In most cases, the Treaty aims to encourage cooperation between the Member States. Sometimes, it expressly rules out harmonization of national provisions (education, youth and training). Either unanimity or majority support is required, depending on the importance of the measures in question, with no clear link to the decision-making procedure (culture and industry).

116. Since only limited use has so far been made of these new provisions, a detailed assessment is not possible. That in no way reduces the possible future importance of Community measures, adopted by a majority and aimed at encouraging cooperation. European measures look set to play an increasingly significant role in the areas referred to above, as can be seen from the Leonardo and Socrates programmes, adopted using the new legal bases.

B. COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

117. Cooperation on justice and home affairs is one of the forms of action assigned to the Union to "supplement" the European Communities. The very fact that it was included in the Treaty, under Title VI, was a major innovation, making a sharp contrast with earlier intergovernmental cooperation in this area, which was very haphazard, produced little in the way of results and operated largely behind closed doors. Its incorporation within the institutional framework of the Union will, in principle, now make consistency and continuity of action possible.

More effective cooperation is long overdue. The repeated conclusions of European Councils and the sensitivity of public opinion on issues such as immigration or international crime suggest that there is a strong desire for cooperation in these areas.

118. The institutional and legal arrangements for cooperation on justice and home affairs lie somewhere between the classical Community model and simple intergovernmental cooperation, which continues to be the predominant element.

- the Commission and the European Parliament have some part to play, though less so than in the Community field.
- the initiative rests with the Member States, but the Commission also has the right of initiative in some areas.
- new legal instruments (common position, joint action, conventions drawn up by the Council) have been introduced.
- normally disputes in this area cannot be referred to the Court of Justice, but the Council may make provision for this in certain areas.
- a procedure exists to transfer certain kinds of action to the Community.
- recourse to Community financing is possible.

1. Results

119. So far the Council has made very little use of the new instruments of Title VI:

- it has not adopted a single common position;
- it has adopted joint action in two cases, one on travel facilities for school pupils from non-member countries resident in a Member State, the other on extending the field of action of the Europol Drugs Unit;
- it has adopted the text of a Convention on simplified extradition subject to the consent of the persons concerned.

On the other hand it has adopted some fifty recommendations, resolutions or conclusions (Annex 15), in other words using the old instruments available before the Treaty.

Clearly, then, there is a marked preference on the Council's part for the traditional, non-binding instruments of intergovernmental cooperation.

As for the substance, practically all the topics dealt with flow from the impetus given by the Luxembourg European Council (June 1991). In this respect the Treaty has had no significant innovative impact.

2. Operational assessment

120. Considering the results described above, the immediate question that arises is whether the legal instruments and working methods for cooperation in the fields of justice and home affairs are adequate.

Essentially, those instruments and methods are the same as for Title V (common foreign and security policy). Yet the two fields are utterly different. Foreign policy mainly has to deal with fluid situations, whereas justice and home affairs frequently involves legislative action which, because it directly affects individual rights, requires legal certainty.

(a) Problems connected with the legal instruments used

121. The legal instruments of Title VI have tended to be ineffective because of the factors described below :

- there is some disagreement between the Member States over the nature and effect of common positions and joint action. In particular there seems to be no consensus on whether they are mandatory or not, except where they contain explicit obligations.

- the adoption and implementation of conventions is a slow and complicated business. First, they have to be ratified by the Member States, but no binding deadlines apply (the Dublin Convention on asylum, signed on 15 June 1990, has still not entered into force for want of ratification by the required number of States). Second, the chosen formula for the act by which a convention is adopted (an unspecified "act" of the Council) tends to reduce the Council's role to a minimum.

- above all, the fact that unanimity is required for all areas covered by Title VI has, as expected, proved to be a major source of paralysis, either preventing any action or decision at all or reducing the decision taken to the lowest common denominator. Conventions nevertheless may provide for the adoption of implementing measures by a two-thirds majority in the Council (Article K.3), but this option remains unused.

  The unanimity requirement is probably the main reason why Title VI has proved ineffective. On 10 March 1995, for instance, it proved impossible to reach agreement on anything more than a resolution on the question of the minimal procedural guarantees for granting asylum, even though the Brussels European Council in October 1993 had called for a joint action. The same problems arose

with family reunification and admission for the purposes of employment. Here it was more an exercise of reproducing the existing rights in the Member States than of bringing them into line. The only convention adopted so far (on extradition) also represents a minimal compromise, taking over only part of the initial proposal.

- lastly there is in general no monitoring of any action adopted as regards its implementation or interpretation.

That is perhaps normal for non-mandatory acts, but rather more surprisingly also applies in the case of joint action, common positions and conventions. Conventions, it is true, may be made subject to the jurisdiction of the Court of Justice in the event of disputes between the Member States or differences of interpretation. It has so far proved impossible to obtain the unanimous agreement necessary to do this, however. The nine conventions currently under discussion are being held up by this problem in particular.

(b) Problems connected with the methods used

The methods by which Title VI operates also call for certain observations.

122. The initiative for action, which, before the Treaty, rested solely with the Council Presidency, has been extended to all the Member States and, except in criminal, customs and police matters, to the Commission.

However, this option has only been used once by a Member State not holding the Council Presidency and twice by the Commission.[2] In practice, therefore, proposals and initiatives still emanate primarily from the Presidency, as in the past.

To begin with, at least, the Commission has preferred to make its contribution by way of broad communications (on immigration and asylum; on the plan to combat drugs), whose main value is precisely their comprehensive overview of both Community action and cooperation between the Member States.

123. There are also problems regarding the transparency of initiatives and consultation of the European Parliament.

The Commission has regularly published its initiatives in the *Official Journal* and sent them to the European Parliament for information; in those cases the Presidency has also consulted Parliament.

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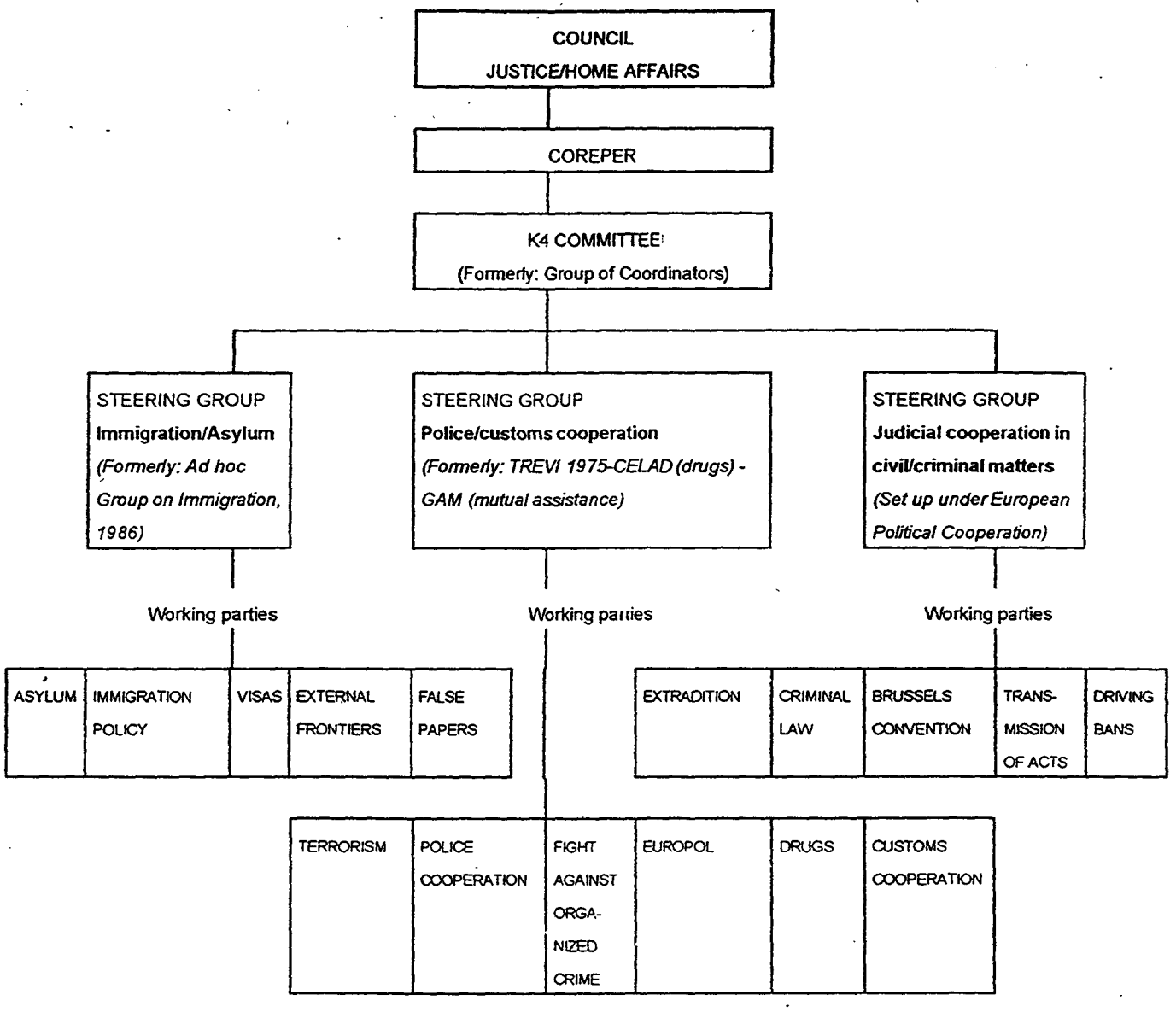
[2] The United Kingdom proposed joint action for the protection of the financial interests of the Communities.
The Commission proposed a convention on controls on persons crossing the external frontiers of the Community and a convention on the protection of the financial interests of the Communities. Thus two proposals concerning the protection of the financial interests of the Communities have been tabled, by the United Kingdom and the Commission. The two proposals were examined in parallel, which was probably an additional factor slowing down progress. So far all that has emerged is a Council resolution.

The Treaty, however, does not impose any blanket obligation to consult the European Parliament on legislative proposals. Successive Presidencies have failed to consult it on initiatives of their own, including major ones such as the Europol Convention. In matters that touch so closely on the lives of Union citizens that would appear to be a serious flaw.

124. Finally, operational structures in the two fields in question extend over five negotiating levels (Council, Coreper, Article K.4 Committee, steering groups, working parties), rather than the usual three found in the Community context.

In implementing the Treaty it was felt unnecessary to modify working methods substantially, with the result that the new structures were simply superimposed on those that already existed: the K.4 Committee is thus descended from the group of "coordinators" set up at Rhodes and the three steering groups are descended from the "Trevi group" of senior officials and the groups on immigration and judicial cooperation. The result is a real duplication of technical work by the working parties and the steering groups, and of arbitration by the K.4 Committee and Coreper.

WORKING STRUCTURES IN THE FIELDS OF JUSTICE AND HOME AFFAIRS



Obviously this multi-tier structure, in which those at some levels are unfamiliar with Community negotiating methods, does not facilitate the necessary search for compromise and makes it too easy to refer matters to the next level above.

125. The Treaty lays down that operational expenditure relating to cooperation on justice and home affairs may continue to be charged direct to the Member States or may be charged to the Community budget, if the Council so decides unanimously.

The appropriations entered in the 1994 budget remained unused and those entered in the 1995 budget have not yet been called on either. So far expenditure has been

charged direct to the Member States (the main item being the Europol Drugs Unit). In complete contrast to foreign policy, where the same arrangements apply, the option of charging expenditure to the Community budget has not been exercised as it has proved impossible to secure unanimous agreement of the very principle of using the Community budget in this area.

3. The interface with the Community sphere

Lastly, there have inevitably been some problems regarding the interface with the Community sphere.

(a) Demarcation between Community matters and the fields of justice and home affairs

126. "The obscure clarity" of the dividing line between Community matters and the areas covered by Title VI has neither made decision-making any easier nor encouraged openness.

The difficulties inherent in the Treaty's "pillar" design have come home to roost: Article K.1 states that the aim is to achieve "the objectives of the Union, in particular the free movement of persons, ... without prejudice to the powers of the European Community". However for the purposes of completing the single market and removing border controls, the free movement of persons is already a Community objective.

Furthermore, whereas Community competence centres on the objectives, Title VI gives an exhaustive list of the areas regarded as matters of common interest for cooperation in the fields of justice and home affairs. These two different approaches are difficult to reconcile in order to make practical headway.

This overlap poses problems as regards the content of many instruments. This is the case for the joint action on travel facilities for schoolchildren from non-member countries, which is moreover - as the Commission has expressly stated - a Community matter. The same problem arises with the proposed convention on controls on persons crossing external frontiers. Visa policy offers a good example of the complications arising from the existence of several "pillars". The list of non-member countries whose nationals require a visa is laid down in a Community regulation, while the conditions for the issue of visas are to be decided through intergovernmental cooperation.

(b) The possibility of using the "bridge" (Article K.9)

127. The possibility of using the "bridge" provided by the Treaty to apply Community rules to certain areas covered by Title VI could be one solution to these problems. However, the procedure laid down is cumbersome: it requires the Member States' unanimous approval and ratification in accordance with their respective national constitutional provisions.

In November 1993 the Commission, in line with its obligations flowing from the Treaty, sent a report to the Council on the possibility of applying Article K.9 to asylum. However, since the report was presented immediately after the Treaty came into effect, the Commission did not formally propose making use of the bridge. The Council has agreed to review this question in 1995.

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II. EXTERNAL POLICIES

128. The establishment of a common foreign and security policy and the consolidation of various fields of Community external activity by the Treaty reflects the Community's determination to assert "its identity on the international scene" on two fronts - Community action (A) and intergovernmental cooperation (B).

A. AREAS OF COMMUNITY ACTIVITY

1. Development cooperation (Articles 130u to 130y)

129. The inclusion in the Treaty of provisions on development cooperation was both a culmination and a starting point:

- a culmination in that the Treaty consecrated thirty years of Community action in favour of developing countries;
- a starting point in that, faced with sweeping international changes and the challenges created by new and interdependent factors (drugs, migration, terrorism, AIDS, etc.), the Treaty lays the bases for more dynamic, more coordinated and more complementary action by the Union.

By laying emphasis on greater coordination, the Treaty has helped to improve the effectiveness of the whole. Nevertheless, coordination still falls short of the ideal. Indeed, it works very much in one direction. More precisely, the Member States very rarely set out their own bilateral aid policies at meetings in Council bodies. This situation is harmful to the developing countries, since it diminishes the effectiveness of aid, and to the Member States in that it encourages "free rider" behaviour and prevents economies of scale. This reveals the limitations of voluntary coordination, which become all the more conspicuous as the number of Member States increases.

130. To obtain an effect of scall and make the Union's development policy as a whole more visible, more credible and more influential - particularly in comparison with other donors - it is essential to combine all individual efforts, by ensuring that the policies and activities of the Union and its Member States are complementary and transparent.

However, despite real differences, consensus does exist regarding the following three principles:

- the primary aim of the search for complementarity is to increase the effectiveness of cooperation;
- the most appropriate instrument in this respect is coordination;
- the search for complementarity must leave room for further developments.

The concept of multiannual programmes may be interpreted variously. Does it mean decisions taken by the Council in the context of, for example, cooperation with the Mediterranean countries or Asia? Or does it, as the Commission maintains, mean the regular adoption by the Council of multiannual "comprehensive programmes" defining objectives and means which apply both to the Community and to the Member States in development matters?

Such programmes can now be adopted by a qualified majority: this is a step forward. They should open the way for the establishment of medium-term strategies for each country and involving the concentration of resources on agreed priority objectives.

2. Sanctions against non-member countries (Article 228a)

131. The purpose underlying the introduction of this provision is to adapt the letter of the Treaty to what over the last few years has become Community practice when applying politically motivated economic sanctions. Formal recognition of the practice by Article 228a was intended in principle to allow practical Community sanctions to be imposed by qualified majority once a preliminary decision to break off or curtail economic relations has been taken in the common foreign and security policy context.

132. It must be said, however, that this intention has not been satisfied in practice and that, from an operational point of view, the procedure has not been improved.

Because of the unanimity rule required for the adoption of common positions, certain of these have affected the content of sanctions. The procedure for the adoption of sanctions against Haiti was particularly significant in this respect: the refusal of one Member State to countenance the imposition of financial sanctions by the Community, on the basis of a qualified-majority decision in accordance with the Treaty, in practice obliged the Community to confine itself to traditional economic sanctions. Thus, the contagious effect of the political-cooperation-style intergovernmental process, already manifest in the past, has continued. The common foreign and security policy bodies tend to act as the real centre of gravity in the implementation of the new provisions.

The measures have remained confined mainly to trade in goods and services and the suspension of air links. The scope of Article 228a, which relates to "economic relations", goes beyond trade policy proper. The provision can therefore encompass all services, including those which do not fall within the scope of Article 113.

The Council has placed a broad interpretation on the need for a prior common position or joint action - each executive act has had to be preceded by a new common position. Consequently, the possibility of directly adopting executive measures by qualified majority has remained a dead letter.

In practice, therefore, there has been a duplication of the number of Council acts, any Community regulation being, as it were, "replicated" and conditioned, from the point of view of both its activation and its substance, by a decision taken in the external policy context.

As for the imposition of financial sanctions by qualified majority, this has hitherto only been done for the sanctions against Bosnia-Herzegovina and the prohibition on making payments under contracts caught by the embargo against Haiti.

3. Common commercial policy (Articles 110 to 116)

(a) Changes

133. The changes introduced by the Treaty, except for the removal of Article 116, are both few in number and limited in scope. They comprise:

- the repeal of Articles 111 (transitional period), 114 (manner of concluding trade agreements) and 116 (cooperation within international economic organizations);
- in Article 113:
  - insertion of a reference to international organizations as parties with which trade agreements may be concluded under Article 113,
  - introduction of a reference to Article 228 as regards the method of concluding trade agreements, and
  - deletion of the reference to the transitional period;
- in Article 115, deletion of the reference to the transitional period;
- the various provisions of Article 228, which has become a general framework provision for international agreements.

(b) Practice

In practice, the Treaty has not solved the main problems confronting the Community in the conduct of a consistent and effective commercial policy. Furthermore, various new problems have arisen.

Scope of Article 113

134. On the strength of earlier rulings of the Court of Justice, the Commission has always placed a dynamic interpretation on this article. More recent rulings now make this interpretation obsolete: the Court has explicitly limited the scope of Article 113 to trade in goods and extended it only as regards cross-border provision of services and, in the field of intellectual property, to the implementation of protective measures at borders against imports of counterfeit goods.

135. This interpretation raises questions as to whether the commercial policy is adapted to the new international trade situation and whether it is effective. It favours the tendency which has developed in the Council of multiplying the legal bases for international trade agreements, thereby adding to the complexity of decision-making procedures.

Services currently account for 25% of total world trade, but the proportion is constantly increasing, as is the proportion of products covered by intellectual property rights. Furthermore, the boom in direct investment abroad constitutes a new variable, which has a complex relationship with trade : the replacement of traditional trade by production abroad is closely connected with an effect of stimulating trade.

The Community's trading partners have adapted easily to the change in the structure of international trade. This is reflected by the establishment of the World Trade Organization, in which the multilateral agreements on trade in goods and services and rules for the protection of intellectual property rights are brought together. Given that the Community is the world leader as regards both trade in services and direct investments abroad, the structure of Community law has manifestly been overtaken by commercial reality.

Implications for effectiveness

In the services field, the existence of extensive shared powers threatens to delay the conclusion of agreements by the Community because of the time needed to complete national ratification procedures.

Where intellectual property is concerned, the Member States taken individually obviously do not have the economic or political weight wielded, for example, by the United States to compel other countries to put an end to infringements of intellectual property rights. This handicap is aggravated by the fact that the Member States cannot resort to the sanctions weapon in the area of trade in goods, which falls within the Community's field of competence. Yet only this weapon really acts as a deterrent against partners which still have a traditional export structure.

The Treaty indirectly assigns certain powers to the Community in the field of investment promotion (Articles 73a to 73h). These cannot be exercised effectively while the Member States continue to conclude bilateral treaties on investments. The relationship between trade and investments is particularly significant in the context of agreements with the Eastern European countries, which tend to make access to their goods for markets conditional on the volume of investment and vice versa.

From the point of view of trade protection instruments, the scope of the new trade barriers regulation, which was adopted as part of the implementation of the Uruguay Round agreements, could be seriously affected. To the extent that it is based on Article 113 alone, the application of the Community instrument could be contested, with regard to certain infringements of the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPs) not relating to cross-border services and counterfeit goods.

Consequently, the Community risks losing the main benefit of the World Trade Organization's integrated dispute settlement system, and specifically of the cross-retaliation mechanism whereby violations of agreements on services and intellectual property can be met by sanctions in the goods field.

Deletion of Article 116

136. Article 116 required the Member States to cooperate so as to coordinate their own measures within international organizations with those of the Community. The Article could therefore be used in areas where powers were shared.

The disappearance of this article from the Treaty does not remove this requirement. On the contrary, the Court has ruled that the duty to cooperate and coordinate is incumbent on the Community and the Member States by virtue of Article 5 of the Treaty, both in the negotiation and in the conclusion and implementation of agreements in areas of shared competence. It is a legal obligation arising from the need for the Community to act as one on the international scene. Although the Court has not defined the means of acting to this effect, practical cooperation or coordination measures could be based on the basic provisions governing Community competence, in conjunction with Article 5.

Such measures should be mandatory where the field covered by the international organization or agreement in question involves exclusive Community competence, since when they are linked to national competence and in the absence of coordination, Community competence cannot be exercised effectively. This solution is of particular importance for the possible implementation of the compensation and cross-retaliation mechanisms of the World Trade Organization.

Interface between the common commercial policy and the common foreign and security policy

137. This problem has already been addressed in relation to economic sanctions.

It also arises in connection with export controls. Consequently, the integrated system for the control of exports of dual-use goods[3] has been adopted by two simultaneous Council instruments - a Community regulation establishing a Community system for the control of exports of dual-use goods, and a decision adopting a common position under the common foreign and security policy.

This duplication of instruments was undoubtedly not necessary from a legal point of view. Moreover, the list of goods which are subject to the control system appears in the decision taken under the common foreign and security policy and not in the Community regulation. Being subject to the unanimity rule, it will be difficult to amend.

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[3] Dual-use goods: goods which can be used for both civilian and military purposes.

Interface between the commercial policy and justice and home affairs cooperation

138. The negotiations relating to the movement of persons now in progress at the World Trade Organization in the context of the General Agreement on Trade in Services (GATS) are having to contend with an additional difficulty. The K.4 Committee, set up in the context of cooperation in the fields of justice and home affairs, recently presented a draft Council text concerning the entry of workers from non-member countries into the Community; this also covers the provision of services. In other words, the key provisions for the negotiations in progress will be drawn up in a context where unanimity is required and where trade considerations are unlikely to be the primary concern.

4. Shared competence

139. The foregoing serves to highlight the increasing extent of shared competence. The coexistence of Community powers with powers enjoyed by the Member States implies the involvement of both the Community institutions and the national authorities. As stated by the Court on three occasions, this should make unitary international representation all the more imperative.

It must be said that such unitary international representation, which is a condition *sine qua non* for the effectiveness of external action and which guarantees lasting cohesion, most notably within the internal market, is not guaranteed by the current provisions of the Treaty.

140. In fact, institutional practice shows that existing coordination is inadequate. Indeed, it has only a few positive elements. This is the case, for example, of the Community's full participation, albeit without member status, in the United Nations Commission on Sustainable Development. This shows that the Member States are prepared to cease acting in isolation where it is acknowledged that there is a common interest. The conclusion of the negotiations for the Treaty on the European Energy Charter is another example.

By contrast, recent trends reveal increasing difficulties for such coordination. The persistent deadlock over the International Labour Organization provide one example. Similarly, deciding the respective responsibilities of the Community and the Member States often gives rise to differences, as witnessed by the dispute concerning the agreement on the respect by deep-sea fishing vessels of conservation measures - concluded under the Food and Agriculture Organization of the United Nations - which the Commission has now referred to the Court.

These latter examples contradict the principle of consistency enshrined in Article C of the Treaty. Such practices imply a danger that the Community decision-making mechanisms will in practice become conditional on unanimity.

A coordination procedure giving practical expression to the need for unitary external action in accordance with Article C of the Treaty is therefore both indispensable and urgent if a dilution of the *acquis communautaire* on the international scene is to be avoided.

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B. THE COMMON FOREIGN AND SECURITY POLICY

141. **The Union is faced by new and rapidly evolving external challenges. To traditional and still-valid preoccupations, such as territorial defence, have to be added the possible effects on the Union's stability and security of changing patterns of economic activity, population movements driven both by unrest and by economic attraction, and cultural changes - including those arising from militant religious awareness.**

The Treaty includes a common foreign and security policy the better to equip the Union to confront these multifaceted challenges, by providing it with a full range of possibilities with which to act, and thus ensure the well-being and security of its peoples.

142. This important extension to the responsibilities of the Union is organized differently from the Community's traditional activities. The fact that the Treaty created a separate "pillar" (Title V) and gave it a clear intergovernmental character implies that this policy was seen both as an important development and as one of considerable sensitivity. It should also be seen in a longer-term perspective.

On the one hand, it is hardly a novelty that the Community and the Union have an interest in such matters. The new provisions of the Treaty were not developed in isolation, but constructed on the back of at least forty years of debate and more than twenty years of direct practice.

On the other hand, most Member States have long since accepted arrangements modifying their capacity to act alone in this area, despite the fact that foreign policy and security - much more than the economy - are thought to touch the most sensitive ways in which the nation state finds expression.

1. The new provisions

(a) The changes made

143. The framework of European Political Cooperation - launched in the early seventies - was relatively light, directed at achieving consultation and coordination, which in practice did not commit the Member States. Decisions were made by consensus. It proved to work in a low-key, pragmatic and flexible way, promoting understanding and tolerance of others' positions. However, there was rarely the will to act together and maximize the Community's influence. It suffered, moreover, embarrassing failures to agree on important occasions.

144. The Treaty's new framework is not drastically altered from that applying for the last twenty years, but the coverage has been extended, the type of possible initiatives formalized, and the obligation on Member States to align their policies made more explicit. The novel aspects can be summarized as follows:

- Inclusion within the Union framework. Activities in this area now fall under the authority of the European Council and a single institutional framework, albeit with specific procedures applying. The Commission is associated with all aspects of work and alongside the Member States has the right to make proposals. With the Council, it is supposed to ensure coherence between the various aspects of the Union's external activities.

- The definition of the instruments available. These comprise:

  common positions (Article J.2) intended to make cooperation more systematic and coordinated. Member States have to follow and uphold these.

  joint actions (Article J.3) under which both national and Community resources (of all sorts: manpower, know-how, finance, material, etc.) are directed to achieving the concrete objectives adopted. These joint actions also commit Member States. While the adoption of these actions requires unanimity, the precise way they are put into practice may be settled by qualified majority. Operational expenditure on such action may be charged to the Community budget and national budget (Article J.11).

- The inclusion of security (Article J.4 and Declaration No 30), including the setting-up of a common defence policy leading possibly to common defence. This comprises the inclusion of Western European Union as an integral part of the development of the Union and as a means of strengthening the European pillar of the Atlantic Alliance.

- The definition of various practical measures. These include the strengthening of the Council secretariat, and of its cooperation with the Commission; the involvement of national diplomatic missions and Commission delegations in implementing the decisions taken under the common foreign and security policy; the possibility of making operational expenditure from the Community budget; and improvements in the consultation and information of the European Parliament.

(b) Putting into practice the new provisions

145. Since the entry into force of the Treaty in November 1993, there has been a considerable intensification of work on foreign policy and security issues. This intensification has developed over a relatively short period of time, when the administrative support in the Union institutions has also had to be reorganized.

The Council secretariat dealing with these matters has been reinforced by increasing from one to two the number of officials seconded from each Member State; these are matched by an equivalent number of Council officials; new procedures of cooperation between the Council secretariat and the Commission have had to be developed; and security clearances both for individuals and for procedures have had to be worked out.

Western European Union has moved from London to Brussels. Its Permanent Council, which now meets weekly, facilitates the necessary contacts with the European Union and NATO and promotes the development of WEU's operational capabilities. The Council has a Planning Cell, mandated to plan for specific operations.

The Commission has transformed its limited staff dealing with European Political Cooperation into a new Directorate-General for External Political Relations (DG IA). The initial structure and responsibilities of this Directorate-General were revised at the end of 1994.

146. Eleven common positions have been adopted (Annex 16). The great majority concern economic sanctions, covering Libya, Sudan, Haiti (two) and former Yugoslavia (four). This reflects changes introduced by new articles in the first pillar which provide that economic sanctions can only be adopted following formal common positions.

The other common positions concern the Union's general objectives and priorities towards Rwanda and Ukraine, plus one on Burundi.

147. The joint actions undertaken (Annex 17) concerned former Yugoslavia, support for the Middle East peace process, the definition of a Stability Pact in Europe, support for democratic transition in South Africa, preparation of the conference on the Non-Proliferation Treaty, the control of dual-use goods, anti-personnel mines and the sending of observers to the Russian elections. These eight subjects have been covered by sixteen joint actions (six different phases of humanitarian aid to former Yugoslavia, and two each on the administration of Mostar and the Stability Pact).

148. With regard to the common security policy, work was already under way before the entry into force of the Treaty, on initial subjects of joint actions: Organization for Security and Cooperation in Europe, arms control, non proliferation, and the economic aspects of security. Three joint actions mentioned above concern security - the Non-Proliferation Treaty, anti-personnel mines and the control of dual-use goods (see also paragraph 137).

In 1992 the Council established a security policy working group, which started with the analysis of common interests in security matters and has now turned to operational tasks, such as aspects of integrating central European and Baltic states, the definition of the Union's relationship with Western European Union, and reflections on a common armaments policy.

Also in 1992, Western European Union's Council defined its tasks as being primarily humanitarian/rescue, peacekeeping and peacemaking in nature. NATO in 1994 supported the strengthening of a European pillar via Western European Union and endorsed the concept of combined joint task forces, i.e. separable but not separate military capabilities.

2. Operational assessment

(a) A general remark

149. Getting the common foreign and security policy under way has been a laborious process. Changes had to be made in administrative support. Moreover, Member States recognized (Declaration No 28) the importance of reducing the overlap between various intergovernmental committees and ensuring practical cooperation between institutions. There is little sign of movement on the former, and work still needs to be done on the latter. Unnecessary delays have resulted, and this has on occasion reduced the effectiveness of the policy adopted.

150. It is not easy to measure success in this area, especially in view of the limited experience so far. Nevertheless, the enhanced degree of cooperation and coordination has removed at least some of the incoherence previously evident in the actions of the Member States. The value of this should not be underestimated. However, the aim of a substantial improvement has not been achieved.

No doubt, this new machinery can in time be made to function more effectively, but some difficulties nevertheless appear to be structural. Member States have adopted common objectives in the field of foreign affairs and security; it is far from clear that they have provided the means to achieve them.

(b) Decision-making

151. The most immediately significant feature of this part of the Treaty is the formalizing of "joint actions". Member States no longer simply coordinate and align their positions, but also aim to act in concert, and in concrete ways. Two characteristics stand out from the joint actions decided so far:

- How their scope shrinks, between the mandate handed down by the European Council and what is finally undertaken. Part of the explanation lies in the practical rule of unanimity, together with differing interpretations of how the relevant Treaty provisions can be put into effect.

- How their nature varies, from ad hoc operations such as the observation of elections (Russia, South Africa) to the regulatory (control of double-use goods and anti-personnel mines), and from diplomacy (Stability Pact, Non-Proliferation Treaty) to the practical deployment of substantial resources (humanitarian aid in Bosnia, the administration of Mostar, Palestinian police).

152. In preparing the entry into force of the Treaty, the Council saw joint actions as the key instrument, backed up by common positions for day-to-day matters. This distinction has not been followed in practice.

The result is confusion about the role of the different instruments. "Positions" can extend to cover both fundamental orientations and concrete actions. "Actions" can be limited to ad hoc diplomatic or administrative measures.

While the full range of flexibility offered by the different instruments should be explored - especially as early experience has shown some procedures, such as the definition of a joint action, to be tortuous and bureaucratic - this confusion contributes to the impression that the common foreign and security policy lacks coherent form.

153. This confusion over form is compounded by the fact that Member States do not use the Treaty fully with regard to procedure. In addition to the specific provision (Article J.3(2)) for qualified-majority voting in certain circumstances, they agreed that they would, wherever possible, "avoid preventing a unanimous decision where a qualified majority exists in favour of that decision" (Declaration No 27). Similar wording existed in the main text of the Single European Act.

The only instance of these provisions being applied came with the recent joint action concerning anti-personnel mines.

154. Unanimous voting, even where the Treaty allows qualified-majority voting, is one of the problems of foreign and security policy and one of the reasons why it is so ineffective.

Reliance on unanimity and on "declarations" were features of European Political Cooperation. Unanimity and declarations continue to predominate (the latter at the rate of roughly two per week, despite not being specified in the Treaty). Confusion over the proper roles of the new policy instruments can only encourage this reversion to previous - ineffective - practice.

(c) The connection between the pillars

155. The pillars of the Treaty are not isolated structures, but have to be connected if the Union as a whole is to function. These connections have given rise to financial and legal difficulties which hinder the proper implementation of decisions.

156. The Council has recently adopted common positions intended to provide an overall framework for the Union's future relations with specific countries. As such, they include references to Community matters. Such overall positions are useful since they promote coherence in the Union's external relations.[4]

The Commission is aware of this need and has accordingly sent the Council communications covering the first and second pillars.
The Commission has pursued an integrated policy regarding the pre-accession strategy for the countries of central and eastern Europe, and policy with regard to the former Soviet Union, the Mediterranean, the Middle East and Japan. It does so in view of its responsibilities, which put it in a position to present a comprehensive picure of all these issues.

However, such general positions raise problems for maintaining clear distinctions between powers and procedures under the Community Treaties and those under Title V of the Union Treaty. Measures taken under Title V, including common positions, are not only politically binding but also legally binding on Member States. But action to achieve the Community's objectives must, legally speaking, be taken under the Community Treaties. The Union Treaty contains no clear provision for resolving these problems of interconnection between pillars.

The Commission has worked with the Council to try and define a *modus vivendi* concerning common positions covering both pillars. The practical benefits of this *modus vivendi* still have to be demonstrated.

This is not a theoretical discussion. The case of dual-use goods (mentioned in paragraph 137) is a good illustration of the serious drawbacks: insistence on superfluous or unsuitable instruments, procedures inevitably coloured by the search for unanimity and finally the subjection of these goods to an obscure and partly non-Community legal arrangement.

157. Expenditure on common foreign and security policy operations can be charged either to the Community budget or to Member States (Article J.11). The latter appear to be generally oriented to charging expenditure to the Community budget, raising the potential question of spending priorities. Of the total operational expenditure allocated to joint actions, roughly three quarters has been charged to the Community budget and one quarter to the Member States. In the Community budget, expenditure on the administration of Mostar was specifically charged to the common foreign and security policy item; other significant expenditure, such as on humanitarian aid or the Palestinian police force, has been charged to various items of the development and cooperation budget.

Normal budgetary procedures apply, which means that Parliament can have the last word on expenditure decided by Council in the field of common foreign and security policy. Negotiations on an interinstitutional agreement concerning such expenditure have made little progress. The main stumbling block is the arrangements for consultation. In the mean time, the budget appropriations concerned have been frozen in the reserve and must be transferred on an ad hoc basis before they can be used.

The hybrid structure of the Treaty, with decisions under one pillar requiring funding under another, has introduced an additional source of conflict. The complexity of the present system gives rise to procedural debates instead of debates of substance.

158. These budgetary and legal difficulties are symptomatic of a Union constructed in pillars. Each has its own rules and procedures governing the powers of the institutions involved; these reflect real or presumed differences in the nature and state of development of the policies involved. A particular initiative can require action coordinated under different pillars. In these cases, the rules and procedures of one pillar can affect the way the rules and procedures of the other operate. For instance, the general rule of unanimity in the second pillar can influence the method of adoption of the related Community measures and could even reintroduce a unanimity requirement for matters for which the Treaty provides for a qualified majority.

This conflict inevitably hinders constructive cooperation and effective implementation, for each of the institutions is fearful that its own role, and the proper functioning of a part of the Treaty with which it is particularly associated, will be subverted. The impossibility of legal review of action under the second pillar compounds this mutual mistrust.

The Commission has tried to play its part in resolving these difficulties. All the institutions should cooperate in seeking practical arrangements which respect the spirit of the Treaty and avoid attempts to establish "linkages" between instruments or procedures belonging to different pillars. A guiding principle should be the respect of the *acquis communautaire* to which the Treaty made explicit reference (Article C).

(d) Western European Union

159. If the interaction between the pillars of the Union itself has given rise to difficulties, another connection which has not operated satisfactorily is that between the Union and Western European Union, which is an integral part of the development of the European Union. The connection has been used rarely and with limited success.

There are different schedules for the respective presidencies, although these are now of the same length. Moves are now being made to harmonize them. Western European Union is usually represented at NATO meetings, but very rarely indeed at meetings of the Council of the European Union.

The exchange of documents and the cross-participation of secretariats in meetings needs to be improved.

An informal joint reflection group on armaments has been set up.

160. In practical terms, the use made of Western European Union so far in joint actions under the common foreign and security policy has been limited to the provision of a policing contingent for the administration of Mostar.

The 1994 NATO summit indicated that the Alliance was prepared to make its forces available to Western European Union for operations by the European allies under the common foreign and security policy. Translating this principle into reality was made more difficult by a number of practical and political problems which need to be resolved rapidly.

It should be added that the creation of Eurocorps and other multinational corps are promising experiments with a view to an integrated, multilateral force answerable to Western European Union and/or NATO.

161. Western European Union is supposed to complement the common foreign and security policy by providing an additional military element, just as the Community complements it in providing a supplementary economic element. The security and defence dimension of the common policy has yet to take effective shape.

The subject is of course a sensitive one for all Member States, in different ways, but a clearer consensus is urgently required on the long-term role of Western European Union and its position vis-à-vis the Union.

3. The need for greater effectiveness

162. Member States bring to the common foreign and security policy a wide range of capacities and of practices and instruments with which to give effect to it.

Successive presidencies have tended to regard the common foreign and security policy as something which can be used in addition to national policies, rather than the reverse. Only through greater continuity will the policy take on sufficient form and cohesion to become effective and make its full contribution to fostering stability and security.

163. One prerequisite for effectiveness is better and earlier analysis of external developments over the long, medium and short term. It is important to get a complete view of any problem, and to arrive at a common assessment, on the basis of all the information available. Only then can the Union decide how best to act.

In contrast to other areas of policy, the power to make proposals is shared between all the Member States, as well as with the Commission. This makes it even more important to ensure effectiveness by guiding, expressing and arguing for the common interest. The changing troika is ill-adapted to this task.

This lack of effectiveness is felt not only in internal decision-making, but also in the external representation of the Union. Non-member countries have difficulties in distinguishing clearly the responsibilities of the different parts of the Union, and the legal status and powers of each; this is compounded by the constantly changing composition of the troika. In negotiations, therefore, confidence has constantly to be rebuilt, and assessments remade: this can only make these negotiations more difficult. Within the Union, moreover, the lack of continuity means that the public is rarely aware of which body or individual is representing its interests, and this can only contribute to a certain sense of alienation vis-à-vis the Union.

164. Better common background analysis, better decision-making and clearer representation of the Union will all contribute to giving substance to the common foreign and security policy. They will have to become practical realities if the policy is to make real progress.

165. The definition of a common foreign and security policy and its inclusion in the Union structure are real steps forward, although comparison with the degree of integration in

economic terms underlines how unbalanced progress has been. Developing a fully effective policy is nevertheless a time-consuming process, for it involves building up familiarity, practice and confidence. Time is not on the Union's side, however, and public opinion expects more.

Member States have been working together in this area for more than twenty years. There are important precedents concerning the willingness of the majority of Member States to decide on even the most sensitive subjects on a joint basis.

These various considerations all indicate that further development of the current framework for the common foreign and security policy is desirable and possible.

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C. OVERALL ASSESSMENT

166. The Treaty gives both the Council and the Commission responsibility for ensuring the consistency of the Union's external activities as a whole. The experience of the last three years leaves much to be desired as regards the degree of consistency actually achieved. This poses a problem which is both political and institutional.

167. In today's world, the various elements of external policy are closely interconnected.

The Union is the world's largest trading entity. It is also one of the largest providers of funds for the developing countries and one of the biggest financial contributors to several continuing processes - the Middle East peace process, humanitarian aid in former Yugoslavia, etc. Finally, with the establishment of economic and monetary union, it will become one of the most important monetary areas in the world economy.

Given that its external activities are conducted through two parallel channels - traditional Community negotiation and the mechanisms of the common foreign and security policy - it is doubtful whether the Union can derive the full benefit and influence which it might normally expect from this situation.

168. This difficulty, which is inherent in the existence of separate "pillars", is aggravated on the institutional level by various shortcomings of the Treaty and by the lack of shared conviction in its application:

- First, the coexistence of the Union, without a legal personality, and the Community has generated confusion in the minds of non-member countries and several international organizations.

Whereas the outside world had become accustomed to the idea of a single entity behaving as such even when competence was shared between the Community and the Member States, the functional duplication of Union and Community has greatly disturbed our partners and raised doubts in their minds as to the Community's ability to commit itself internationally.

In more practical terms, simultaneous recourse to Community instruments and to those of the common foreign and security policy has inevitably created difficulties.

The link between foreign policy and economic sanctions, for which a satisfactory solution was ultimately found before the Treaty entered into force, has hardly been improved by the insertion of Article 228a. If anything, this has served to make procedures more unwieldy.

Lastly, the scrapping of Article 116 has deprived the Community of a useful instrument for coordination of the Member States' positions in international negotiations where, alongside exclusive Community competence, the Member States continue to have competence in connected fields. Replacing this article with the mechanisms of the common foreign and security policy (Article J.2) is clearly not a move in the right decision. In the light of Court of Justice Opinion 1/94, the Commission takes the view that it should be possible to ensure the necessary coordination on the basis of the relevant basic provision of the EC Treaty. The views of the institutions still have to move closer together on this point.

- However, it is becoming increasingly apparent that opinions differ on the need for a common discipline in the field of external action and on the instruments necessary to implement it. Several real cases have highlighted this lack of shared conviction.

  However, the Court of Justice has underlined on several occasions the need for "close cooperation" between the Community and its Member States in the fields of shared competence. The Commission's appeals for such coordination have so far met with little response. In the recent past, there has even been a tendency to revert to autonomous behaviour, fed by doubts concerning the actual extent of exclusive Community competence, or even concerning the basis of Court rulings.

169. All these phenomena are worrying to the Commission in that the increasing lack of discipline as regards respect for the Community's external responsibilities threatens over time to undermine the internal market.

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CONCLUSION

170. The Treaty on European Union is composite in nature. It was initially intended to introduce economic and monetary union, as a complement to the single market. Consideration of further steps towards political union then became unavoidable, in response to the major upheavals that struck Europe at the turn of the decade. The Treaty undoubtedly shows signs of these mixed origins.

Notwithstanding the confusion and the fears that were created, together with a background of economic difficulties, the Treaty was endorsed by the peoples and parliaments of first twelve and then fifteen different countries. This would suggest that it represents a suitable point of balance.

The Treaty on European Union is innovative: it lays the foundations for a real union and contains the essential components of a unique political edifice.

The finding of this report is that the Treaty is good in parts.

171. On some essential points the Treaty has produced substantial benefits:

- economic and monetary union has entered the second stage on schedule. Here the Treaty is not just a series of statements of principle but a set of instructions for the introduction of a single currency by the turn of the century. The credibility of this grand venture is now established. The recent upheavals on the foreign exchanges, far from calling it into question, make it more necessary than ever . Economic and monetary union is also an example of individual Member States advancing at their own pace towards an agreed objective.

- the Union has functioned more democratically, mainly because of the enhanced role played by the European Parliament. Its approval of the Commission strengthens the Commission's legitimacy. The new codecision procedure has proved operational and effective, in conjunction with qualified-majority voting in the Council. It contains the principal ingredients of a balanced legislative regime.

172. The Treaty also has its shortcomings, which are of various kinds:

(a) Some are probably not too serious because they may be the result of the unavoidable running-in period of a Treaty which has not long been in force. These would include certain shortcomings of the new, and indeed promising, concept of Union citizenship: implementation has been far from complete and contrasts sharply with the expectations generated.

Some of the limitations of the foreign and security policy can also be placed in the same category, this policy requiring more effective decision-making, and a more visible representation of the Union in the outside world, as well as the development of concerted practices, the ability to analyse situations jointly, and systematic searching for the common interest.

(b) Other inadequacies are the result of the failure to apply the Treaty. These have nothing to do with the Treaty itself, which has potential that has not been exploited either by the Member States or by the institutions. For instance, the possibility which exists of taking decisions by qualified majority in areas covered by intergovernmental cooperation is unused.

The common foreign and security policy is the flagship area in which this regrettable phenomenon has developed. The loss in terms of impact and identity on the international scene is considerable and the cost in public opinion far too high.

The conclusion this suggests is disturbing: minimalist interpretation or the refusal to make use of all the possibilities of effective action is subverting the true spirit of the Treaty.

(c) The Treaty also has some real structural weaknesses.

The many different types of procedure which exist - the result of successive compromises - detract from the effectiveness of decision-making, make the Treaty difficult to understand, and make it unclear who is responsible for what. The complexity of the Treaty's structure and of its decision-making systems, together with the general lack of transparency, are obvious handicaps.

The agreement on social policy between fourteen Member States is a dangerous precedent for the operation and cohesion of the Union in that all the Member States do not share the same objective.

The serious inadequacies of the provisions on justice and home affairs also belong to this category: neither the legal instruments provided nor the administrative structures set up appear capable of satisfying the need for coordination in this area.

173. The Commission therefore has to express two concerns:

- first, the less-than-convincing experience with intergovernmental cooperation under the second and third pillars suggests that there can be no question of trying to accommodate further enlargements with the present arrangements for their operation;

- moreover, it is not certain that the Treaty has actually brought the Union closer to the general public: the subsidiarity principle has in some instances been used for other than its intended purpose, and there is still a shortage of openness in the fields of justice and home affairs.

174. The 1996 Intergovernmental Conference will be the opportunity to make the necessary adjustments. But until the Treaty has been amended, its provisions will continue to apply and the Commission will remain its guardian.

For the moment, it has to be applied to the best possible effect. Each Member State, and each institution, can help to improve the operation of the existing system by rediscovering the will and the imagination that constructive collaboration implies.

This is the spirit which the Commission would like to see prevail, both in the application of the Treaty provisions and in the preparation of the 1996 Intergovernmental Conference.

ANNEXES

ANNEX 1

ELECTIONS TO THE EUROPEAN PARLIAMENT - JUNE 1994: PARTICIPATION OF NON-NATIONAL VOTERS[1]

	Potential voters among non-national residents	Non-national voters registered
Belgium	471 000	24 000 (5,1 %)
Denmark	27 042	6 719 (24,85 %)
Germany	1 369 863	80 000 (5,84 %)
Greece	40 000	628 (1,57 %)
Spain	172 466	24 227 (14,05 %)
France	1 100 000	47 632 (4,35)
Ireland	ca. 17 000 (excluding UK nationals)	6 000 (35,29%) (excluding UK nationals)
Italy	99 100	2 000 (2,02 %)
Luxembourg	105 000	6 907 (6,58 %)
Netherlands	160 000	15 000 (9,37 %)
Portugal	30 519	715 (2,34 %)
United Kingdom	ca. 400 000 (excluding Irish nationals)	7 755 (1,94%) (excluding Irish nationals)

ELECTIONS TO THE EUROPEAN PARLIAMENT - JUNE 1994: NON-NATIONAL CANDIDATES[1]

	Non-national Union candidates	Candidates elected
Belgium	18	
Denmark	1	
Germany	12	1
Greece	5	
Spain	1	
France	5	
Ireland	1	
Italy	2	
Luxembourg	8	
Netherlands	2	
Portugal	0	
United Kingdom	2	

[1] Estimated. Source Member States

ANNEX 2

OPINIONS GIVEN BY THE COMITTEE OF THE REGIONS

Commission Document	Title	Consultation	Session
COM(93) 69	IDA Network	Obligatory	May 94
COM(93) 347	ISDN Network	Obligatory	May 94
COM(93) 453	Europe against AIDS	Obligatory	May 94
COM(93) 523	Youth for Europe III	Obligatory	May 94
COM(93) 685	Energy networks	Obligatory	May 94
COM(93) 699	Cohesion Fund	Obligatory	April 94
COM(93) 708	Socrates Programme	Obligatory	May 94
COM(94) 62	Community grants for trans-European networks	Obligatory	May 94
COM(94) 83	Action plan to combat cancer	Obligatory	Sept 94
COM(94) 106	Trans-European transport network	Obligatory	Sept 94
COM(94) 107	European high-speed train network	Obligatory	Sept 94
COM(94) 202	Programme Promotion, information, education, training, public health	Obligatory	Nov 94
COM(94) 223	Action Drug Dependence	Obligatory	Nov 94
COM(94) 264	Year of lifelong learning 1996	Obligatory	Nov 94
COM(94) 356	ARIANE-Kaleidoscope 2000	Obligatory	April 95
COM(94) 413	AIDS prevention	Obligatory	April 95

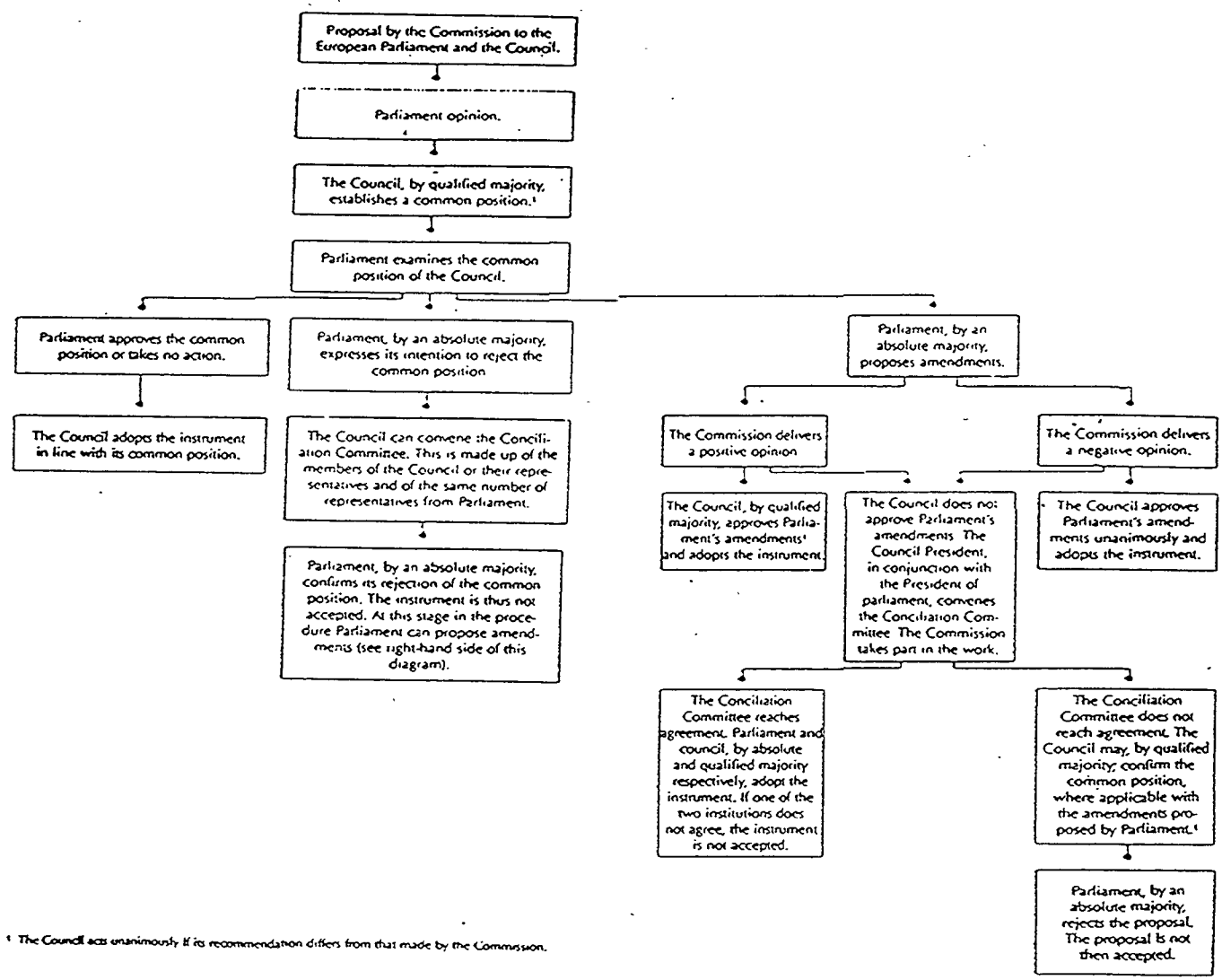
Commission Document	Title	Consultation	Session
COM(93) 575	Asssessment of the effects of projects on the environment	Optional	May 94
COM(93) 576	Green Paper consumers	Optional	May 94
COM(93) 645	Energy and cohesion	Optional	Feb 95
COM(94) 36	Quality of bathing water	Optional	Sept 94
COM(94) 38	Right to vote and eligibility	Optional	Sept 94
COM(94) 46	Community initiatives	Optional	May 94
COM(94) 61	Community initiative urban areas	Optional	May 94
COM(94) 82	Community initiative textile and clothing industry Portugal	Optional	May 94
COM(94) 96	Green Paper Programme industry audiovisual policy	Optional	Sept 94
COM(94) 145	Green Paper mobile and personal communications	Optional	Sept 94
COM(94) 207	Integrated Programme SME	Optional	Feb 95
SEC(94) 279	Northern Ireland peace process	Optional	April 95
COM(94)319	Industrial competitiveness	Optional	April 95
COM(94) 333	White Paper Social Policy	Optional	Nov 94
COM(94) 347	Towards a European information society	Optional	Feb 95

Commission Document	Title	Consultation	Session
COM(93) 700	White Paper on Growth, Competitiveness and Employment	Initiative	Sept 94
COM(94) 117	Reform common organization of the market in wine	Initiative	Nov 94
	Bovine Somatotropin (BST)	Initiative	Nov 94
	Clearance of accounts EAGGF	Initiative	Feb 95
	Rural tourism	Initiative	Feb 95
COM(94) 234	Combating drugs	Initiative	April 95
COM(94) 300	Workers' rights - Transfers of undertakings	Initiative	April 95
COM(94) 413	AIDS prevention	Initiative	April 95
	Mountain regions	Initiative	April 95
	Review of Maastricht Treaty	Initiative	April 95
SEC(94) 1863	Trans-european airport network	Initiative	April 95

ANNEX 3

THE CO-DECISION PROCEDURE

Article 189b of the Treaty on European Union



[1] The Council acts unanimously if its recommendation differs from that made by the Commission.

ANNEX 4

SCOPE OF CODECISION PROCEDURE

Article 189b EC

1. Codecision and qualified-majority voting in the Council

Article 49	:	free movement of workers
Article 54(2)	:	right of establishment
Article 56(2), second sentence	:	idem
Article 57(1) and (2), third sentence	:	idem
Article 66	:	services
Article 100a	:	internal market
Article 100b	:	idem
Article 126	:	education (encouragement measures)
Article 129	:	health (encouragement measures)
Article 129a	:	consumers
Article 129d	:	trans-European networks (guidelines)
Article 130s(3)	:	environment: general action programme

2. Codecision and unanimity

Article 128	:	Culture (encouragement measures)
Article 130i	:	Research (framework programme)

ANNEX 5

SCOPE OF COOPERATION PROCEDURE

Article 189c EC

Article 6	:	non-discrimination on the basis of nationality
Article 75(1)	:	transport
Article 84	:	transport
Article 103(5)	:	rules for the multilateral surveillance procedure
Article 104a(2)	:	arrangements for applying Article 104a(1)
Article 104b(2)	:	arrangements for applying Article 104
Article 105a(2)	:	harmonization measures on the circulation of coins
Article 125	:	Social Fund
Article 127	:	vocational training
Article 129d	:	trans-European networks (except guidelines)
Article 130e	:	economic and social cohesion, decision
Article 130o	:	research, implementation of programmes
Article 130s(1) and (3)	:	environment, action and implementation of programmes
Article 130w	:	development cooperation
Article 118a	:	social policy
Article 2(2)	:	agreement on social policy (between 14 Member States) annexed to the Protocol n ° 14

ANNEX 6

ASSENT OF THE EUROPEAN PARLIAMENT(**)

Scope

Article 8a(2)	:	citizenship
Article 105(6)	:	specific tasks of the European Central Bank
Article 106(5)	:	amendments to the Statute of the European System of Central Banks and the European Central Bank
Article 130d	:	Structural Funds and Cohesion Fund
Article 138(3)	:	uniform electoral procedure (Parliament acts by a majority of its component members)
Article 228(3)	:	certain international agreements
Article O Treaty on European Union	:	accession of new Member States

(**) Except in the case of accession and the case of the uniform electoral procedure, where the Parliament acts by an absolute majority of its component members, Parliament's assent is attained by an absolute majority of the votes cast.

ANNEX 7

LIST OF PROVISIONS REQUIRING UNANIMITY IN THE COUNCIL

EC Treaty

Article 8a	– right of movement and residence save as otherwise provided in the Treaty
Article 8b	– right to vote in EP and municipal elections
Article 8e	– additional rights of citizenship
Article 45(3)	– compensatory aid for imports of raw materials
Article 51	– social security (coordination of arrangements)
Article 57(2)	– amendment of principles laid down by law governing the professions in a Member State
Article 73c	– measures which constitute a step back as regards liberalization of capital movements
Article 93	– State aid
Article 99	– taxation
Article 100	– approximation of laws for the common market where Article 100a is not applicable
Article 100c	– list of countries whose nationals require visas (until 1996)
Article 103a	– financial assistance for a Member State and economic measures in the event of severe difficulties
Article 104c(14)	– excessive deficits
Article 105(6)	– tasks for the European Central Bank
Article 106(5)	– amendments to the Statute of the European System of Central Banks
Article 109(1) and (4)	– agreements on an exchange-rate system
Article 109f(7)	– European Monetary Institute
Articles 109k(5) and 109l(4) and (5)	– Economic and Monetary Union: institutional provisions
Article 121	– social security for migrant workers: assignment to the Commission of powers for implementation of common measures
Article 128	– culture
Article 130	– industry
Article 130b	– specific action outside the Structural Funds
Article 130d	– Structural Funds and Cohesion Fund
Article 130i and o	– adoption of the framework research programme and setting-up of joint undertakings
Article 130s	– certain environmental provisions
Article 136	– overseas countries and territories
Article 138(3)	– adoption of a uniform electoral procedure for the European Parliament
Article 145	– conferral of implementing powers
Article 151(2)	– appointment of the Council's Secretary-General
Article 157(1)	– alteration of the number of Members of the Commission
Article 159	– non-replacement of a Member of the Commission

Articles 165 and 166	–	increase in members of the Court of Justice and Advocates-General
Article 168a(2) and (4)	–	increase in actions heard by Court of First Instance and approval of Rules of Procedure
Article 188	–	amendment of Title III of the Statute of the Court of Justice and approval of Rules of Procedure
Article 188b	–	Court of Auditors: appointment of members
Article 189a	–	amendment of a Commission proposal
Article 189b(3) and c(d) and (e)	–	second reading in codecision and cooperation procedure
Article 194	–	appointment of members of the Economic and Social Committee
Article 198a and b	–	Committee of the Regions: appointment of members and approval of Rules of Procedure
Article 201	–	provisions relating to the own resources system
Article 209	–	Financial Regulations
Article 217	–	rules governing languages
Article 223	–	trade in arms
Article 227	–	overseas territories
Article 228(2)	–	conclusion of certain agreements
Article 235	–	objective of the Community without provision for the necessary powers
Articles 238 and 228(2)	–	association agreements

Common foreign and security policy (ref. declaration No 27 annexed to the TEU)

Article J.3 in conjunction with Article J.8	–	adoption of joint action
Article J.2(2) in conjunction with Article J.8	–	defining of common positions
Article J.11	–	decision to charge operational expenditure to the Community budget

Justice and home affairs

Article K.3 (in conjunction with Article K.4)	–	adoption of common positions, or joint action
Article K.8	–	charging of operational expenditure to the Community budget
Article K.9	–	crossover to Article 100c

Protocols (ref. Article 239)

Articles 12 and 45 (see Article 165 EC)	–	Protocol on the Statute of the Court of Justice
Article 41(1)	–	Protocol No 3 (Statutes of the European System of Central Banks and of the European Central Bank
Article 2(3) and Article 4	–	Agreement on social policy (between 14 Member States) annexed to the Protocol n° 14
Article 6	–	Protocol No 6 on the convergence criteria referred to in Article 109j EC

Final provisions of TEU

Article O TEU	–	accession of new Member States

ANNEX 8

MAIN DECISION-MAKING PROCEDURES PROVIDED FOR IN THE TREATY ON EUROPEAN UNION

EC Treaty[1]

In the first eight cases, legislation is always enacted on a Commission proposal.

1. Assent and unanimity (5 cases)

- Citizenship (Art. 8a(2))
- Structural Funds + Cohesion Fund (Art. 130d) + consultation of Economic and Social Committee (ESC) and Committee of the Regions (CoR)
- Certain international agreements (Art. 228(2) (second sentence) and (3) (second subparagraph))
- Final provisions (accession; already provided for in Single Act) (Art. O of the Treaty on European Union)
- Uniform electoral procedure (Art. 138(3))[2]

2. Codecision and qualified majority (12 cases)

- Free movement of workers (Art. 49) + consultation ESC
- Right of establishment (Art. 54) + consultation ESC
- " " (Art. 56 , second sentence)
- " " (Art. 57)
- Services (Art. 66)
- Internal market (Art. 100a) + consultation of ESC
- " (Art. 100b) + consultation of ESC
- Education (Art. 126 - except Recommendations) + consultation of ESC and CoR
- Environment (Art. 130s(3) - first subparagraph) + consultation of ESC
- Trans-European networks, guidelines (Art. 129d) + consultation of ESC and CoR
- Health (Art. 129 - except Recommendations) + consultation of ESC and CoR
- Consumer protection (Art. 129a) + consultation of ESC

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[1] The Court of Auditors, European Central Bank (ECB), European Monetary Institute (EMI), Monetary Committee, Economic and Financial Committee, Economic and Social Committee (ESC) and Committee of the Regions (CoR) are mentioned where the Treaty requires them to be consulted.

[2] Except for accession and the uniform electoral procedure, where Parliament's assent requires an absolute majority of Members, assent is given by absolute majority of the votes cast.

3. Codecision and unanimity (2 cases)

- Culture (except Recommendations - Art. 128) + consultation of CoR
- Research (Framework Programme, Art. 130i)

4. Cooperation (15 cases)

- Non-discrimination (Art. 6)
- Transport (Art. 75(1) + 84) + consultation of ESC
- Social (Art. 118a) + consultation of ESC
- Social (Protocol (14 Member States) - Art. 2(2))
- Social Fund (Art. 125) + consultation of ESC
- Vocational training (Art. 127) + consultation of ESC
- Trans-European networks (other measures - Art. 129d) + consultation of ESC and CoR
- Economic and social cohesion (implementing decisions - Art. 130e) + consultation of ESC and CoR
- Research (implementation of programmes, Art. 130o) + consultation of ESC
- Environment (Art. 130s(1), end of 130s(2) and second subparagraph of 130s(3))
- Development cooperation (Art. 130w)
- Multilateral surveillance (Art. 103(5).
- Application of prohibition of privileged access (Art. 104a(2))
- Application of prohibition of assuming commitments and of overdraft facilities (Art. 104b(2))
- Coins (Art. 105a(2)) + consultations of ECB

5. Simple consultation with unanimity in the Council (14 cases)

- Citizenship (Art. 8b)
- Citizenship - ratification by Member States (Art. 8e)
- Right of establishment (Art. 54(1)) + consultation of ESC
- Transport (Art. 75(3)) + consultation of ESC
- Taxation (Art. 99) + consultation of ESC
- Harmonisation of legislation (Art. 100) + consultation of ESC
- Visas (Art. 100c(1))
- Social (Protocol (14 Member States) - Art. 2(3)) + consultation of ESC
- Cohesion (Art. 130b) + consultation of ESC and CoR
- Research (Art. 130o - first paragraph) + consultation of ESC
- Environment (Art. 130s(2)) + consultation of ESC
- Industry (Art. 130(3)) + consultation of ESC
- Financial Regulation (Art. 209) + opinion of Court of Auditors
- Agreements pursuant to Article 228(2) (second sentence) and 228(3) (first subparagraph)

6. Simple consultation with qualified majority in the Council (5 cases)

- Common agricultural policy (Art. 43(2))
- Visas (Art. 100c(3))
- Research (specific programmes Art. 130i(4)) + consultation of ESC
- Agreements pursuant to Article 228(2) (first sentence) and (3) (first subparagraph)
- Rules for application of protocol on excessive deficit (Art 104c(14), third subparagraph)

7. No consultation with unanimity in the Council (3 cases)

- Social (Protocol (14 Member States) - Art. 4)
- Culture (Recommendations, Art. 128(5))
- Measures appropriate to the economic situation (Art. 103a(1))

8. No consultation with qualified majority in the Council (5 cases)

- Education (recommendation - Art. 126(4), second indent)
- Health (recommendation - Art. 129(4), second indent)
- Commercial policy (Art. 113(4))
- Social (Protocol (14 Member States) - Art. 4)
- Agreements pursuant to Article 113(3) (Art. 228(3))

9. Council qualified majority, report from Commission, opinion of the Monetary Committee, opinion and recommendation from Commission, having considered observations of Member States concerned[3].

- Excessive deficits (Art. 104c(6)).

10. Council (two thirds majority, excluding the votes of the Member States concerned) and recommendation from Commission.

- Excessive deficit procedure (Art. 104c(13).

11. Council qualified majority, on recommendation from European Central Bank (ECB) or Commission after consulting ECB.

- Exchange rate policy (Art. 109(2)).

[3] The following procedures do not take into account the multitude of different consultation variations

12. Council qualified majority, opinion of Commission, and consultation of Monetary Committee

- Protective measures - Stage 2 of EMU (Art. 109i(3)).

13. Council qualified majority (draft), recommendation from Commission, report to European Council, conclusion European Council, and information of European Parliament.

- Coordination of economic policy of Member States (Art. 103(2))

14. Council qualified majority, proposal from Commission, consultation of ECB and of the Economic and Financial Committee, President of Council shall inform EP.

- Composition of Economic and Financial Committee (Art. 109c(3))

15. Council unanimity (of those states without derogation), proposal from Commission, consultation of ECB

- Introduction of ECU as the single currency and related measures (Art. 109 l (4)) and implementation of art 109 K (2) provisions by (art 109 l (5)).

16. Council unanimity (except for natural disasters), proposal from Commission, President of Council informs European Parliament

- Severe economic difficulties (Art. 103a(2))

17. Commission and European Monetary Institute report to Council, opinion of EP, assessment by Council, and decision by Council meeting in Heads of State or Government composition

- Entry into stage 3 in 1997 (Art. 109j(3))
- Entry into stage 3 in 1999 (Art. 109j(4))

18. Council qualified majority, consultation of European Parliament, discussion of Council meeting in Heads of State or Government composition after proposal from Commission.

- Abrogation of derogation (Art. 109k(2))

19. Council qualified majority on recommendation of ECB after consulting EP and Commission

- Implementing measures provided for by statute of ESCB (Art. 106(6)), this same procedure: limits and conditions under which the ECB can impose fines etc. (Art. 108 a(3)).

20. Council qualified majority, recommendation of ECB, consultation of Commission, assent of European Parliament

- Technical modification of statutes of ESCB (Art. 106(5)).

21. Council unanimity, on recommendation from ECB after consulting European Parliament

- Exchange rates of ECU with non-Community currencies (Art. 109(1)).

22. Council unanimity on recommendation from Commission after consulting ECB and European Parliament.

- Exchange rates of ECU with non-Community currencies (Art. 109(1)).

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Common foreign and security policy

The Council always decides on a proposal either from the Member States or from the Commission (J.8 (3)).

1. European Council, unanimity

- Principles and general guidelines for common foreign and security policy (Art. J. 8(1))

2. Council, unanimity without consultation of European Parliament (3 cases)

- Common positions (Art. J.2 (2) and J.8)
- Joint actions (Art. J.3 and Art. J.8(2))
- Operational expenditure (Art. J.11)

3. Council, qualified majority without consultation of European Parliament (2 cases)

- Measures to implement joint actions pursuant to Art. J.3(2), first subparagraph (Art. J.8(2)
- Procedural questions pursuant to Art. J.3(2), second subparagraph (Art. J.8(2))

4. Consultation and information of European Parliament

- The Council Presidency consults Parliament on the main aspects and fundamental options of the common foreign and security policy (Art. J.7, first subparagraph).
- The Council Presidency and the Commission inform Parliament of common foreign and security policy developments (Art. J.7, first subparagraph).

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Justice and home affairs

In matters covered by points (1) to (6) of Article K.1 (K.3(2), first indent) and Article K.9, the Council decides on a proposal either from the Member States or from the Commission. In matters covered by points (7), (8) et (9) of Article K.1, the Council decides on a proposal from the Member States .(Art. K.3(2), second indent).

1. Council, unanimity (5 cases)

- Common positions (Art. K.3(2)(a) and K.4(3))
- Joint actions (Art. K.3(2)(b) and K.4(3))
- Conventions pursuant to Art. K.3(2)(c) (Art. K.4(3)) (subject to ratification by the Member States)
- Operational expenditure (Art. K.8(2))
- Decisions to apply Art. 100c (Art. K.9)

2. Council, qualified majority (2 cases)
- Possibility of taking measures to apply joint actions (Art. K.3(2)(b)).
- Measures to apply conventions pursuant to Art. K.3(2)(c) (two-thirds majority unless provided otherwise)

3. Consultation and information of Parliament

- The Council Presidency consults Parliament on the main aspects of justice and home affairs activities (Art. K.6, second subparagraph)
- The Council Presidency and the Commission inform Parliament of work done on justice and home affairs (Art. K.6, first subparagraph)

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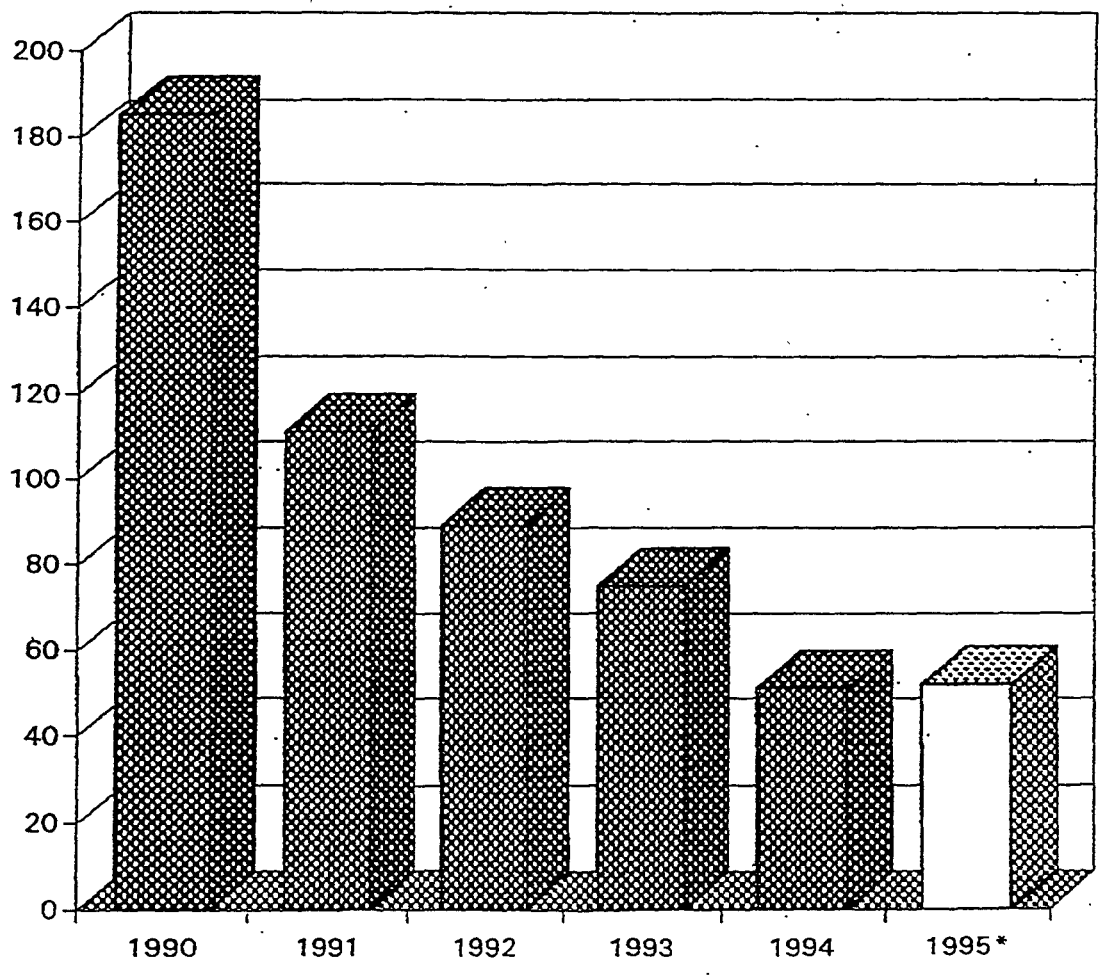
Number of proposals for principal legislation



* = forecast from Commission work programme for 1995 (COM(95)26 final)

1990: 185	1993: 75
1991: 111	1994: 51
1992: 89	1995: 52*

ANNEX 10

PUBLIC DEBATES IN THE COUNCIL, BY PRESIDENCY

PRESIDENCY	TERM	NUMBER
1) Danish	1st half 1993	9
2) Belgian	2nd half 1993	4
3) Greek	1st half 1994	3
4) German	2nd half 1994	2
5) French	1st half 1995 (to date)	4

ANNEX 11

PUBLIC DEBATES IN THE COUNCIL

I. Danish Presidency (9)

COUNCIL	DATE	ITEM
1. General affairs	1.2.1993	Presentation of Danish Presidency's work programme
2. General affairs	1.2.1993	Opening of accession negotiations
3. Agriculture	10.2.1993	Proposal on agricultural prices and related measures for 1993/94 - Presentation by the Commission
4. Economic and financial affairs	15.2.1993	Presentation of Danish Presidency's work programme on economic and financial matters
5. General affairs	5.4.1993	Opening of negotiations with Norway
6. Internal market	5.4.1993	Sutherland report
7. Social affairs	6.4.1993	Employment situation
8. Industry	3.5.1993	Industrial competitiveness and environmental protection
9. Development cooperation	25.5.1993	Run-up to 2000

II. Belgian Presidency (4)

COUNCIL	DATE	ITEM
1. General affairs	19.7.1993	Presentation of Belgian Presidency's work programme
2. Economic and financial affairs	13.9.1993	Presentation of Belgian Presidency's work programme on economic and financial matters
3. Internal market	11.11.1993	Strengthening the competitiveness of small businesses and craft trades and developing employment in the Community
4. Environment	3.12.1993	Green paper on civil liability

III. Greek Presidency (3)

COUNCIL	DATE	ITEM
1. General affairs	7.2.1994	Presentation of Greek Presidency's work programme
2. Economic and financial affairs	14.2.1994	Presentation of Greek Presidency's work programme in economic and financial matters
3. Agriculture	21.2.1994	Proposals on agricultural prices and related measures for 1994/95 - Presentation by the Commission

IV. German Presidency (2)

COUNCIL	DATE	ITEM
1. Economic and financial affairs	11.7.1994	Presentation of German Presidency's work programme in economic and financial matters
2. General affairs	18.7.1994	Presentation of German Presidency's work programme

V. French Presidency (4)

COUNCIL	DATE	ITEM
1. Economic and financial affairs	16.1.1995	Welcome for new Member States and presentation of French Presidency's work programme in economic and financial matters
2. General affairs	23.1.1995	Presentation of French Presidency's work programme and tribute to Jacques Delors
3. Economic and financial affairs	20.2.1995	Presentation of Commission's work programme in economic and financial matters
4. Agriculture	21.2.1995	Proposals on agricultural prices and related measures for 1995/96 - Presentation by the Commission

ANNEX 12

STATE OF PLAY ON CONSOLIDATION SINCE THE EDINBURGH EUROPEAN COUNCIL

Instrument	Commission proposals	State of play
1.Directive 67/548/EEC Dangerous substances	COM (93) final - 21.12.1993 and COM (94) 103 final - 12.04.1994 (amended consolidation proposal)	Parliament - Legal Affairs Committee : favourable opinion at first reading - 02.02.1995 Council - Working Party - meeting : 06.07.1994
2. Directives 74/561/EEC, 74/562/EEC, 77/796/EEC Access to occupation	COM(93) 586 final - 16.12.1993	Parliament - - favourable opinion: 20.04.1994
3. Directive 71/307/EEC Textile names	COM (93) 712 final - 25.01.1994	Parliament - Legal Affairs Committee: favourable opinion at first reading - 02.02.1995
4. Directive 72/276/EEC Textile fibres	COM (93) 713 final - 24.01.1994	Parliament - Legal Affairs Committee: favourable opinion at first reading - 02.02.1995
5. Directives 72/464/EEC and 79/32/EEC Excise duties on tobacco products	COM (94)355 final - 03.10.1994	Parliament - Legal Affairs Committee: favourable opinion - 02.02.1995
6. Regulations (EEC) 1408/71 and 574/72 Social security for migrant workers		Deferred to 1995
7. Directive 76/768/EEC Cosmetics		Deferred to 1995 (suspended in 1994 following judgment by Court of Justice of 25.01.1994 - Case C-219/91
8. Regulation 805/68/EEC Beef and veal: common organization of the market	COM (94)467 final -03.11.1994	Parliament - Legal Affairs Committee : favourable opinion - 02.02.1995

STATE OF PLAY ON CONSOLIDATION
(continued)

9. Regulation 136/66/EEC Oils and fats: common organization of the market		Consolidation has been abandoned in favour of recasting
10. Directive 77/93/EEC Harmful organisms - vegetable products		Draft prepared in nine official languages. Proceedings held up pending Finnish and Swedish versions.
11. Directives 66/400/EEC; 66/401/EEC; 66/402/EEC; 66/403/EEC; 69/208/EEC; 70/457/EEC; 70/458/EEC Seeds and seedlings		Draft prepared in nine official languages. Proceedings held up pending Finnish and Swedish versions.
12. Directive 77/780/EEC etc Banking legislation		Deferred to 1995
13. Directive 77/143/EEC Roadworthiness testing		Consolidation has been abandoned in favour of recasting
14. Directive 85/3/EEC Road vehicles	COM (93) 679 final - 15.12.1993	Parliament: favourable opinion at first reading 15/11/94 Council - Working Party - meeting :12.12.1994
15.Directive 64/432/EEC Cattle and pigs: health policy	COM (93) 698 final - 07.01.1994	Parliament: favourable opinion , 19.04.1994 Council - Working Party meeting : 26-27.04.1995

ANNEX 13

RESPONSE TO REQUESTS FOR ACCESS TO COMMISSION DOCUMENTS

(Situation at 22.03.1995)

The table sets out the percentages of cases in which documents requested were supplied or withheld and requests treated as ineligible.* It shows that the Commission allowed access as requested in more than half of all cases and withheld documents in less than a fifth.

1.	**Documents supplied:**	**53.7%**
2.	**Documents withheld:**	**17.9%**
	Grounds given	
	Public interest	3.1%
	Private interest	0%
	Business secrets	2.1%
	Commission financial interests	0%
	Confidentiality requested by the person or Member State that supplied the information	1.1%
	Confidential discussions	5.6%
	Documents of committees whose proceedings are confidential	2.4%
	Multiple grounds given	3.6%
3.	**Ineligible requests:**	**28,4%**
	Documents already published	14.7%
	Documents not from the Commission	11.2%
	Request not specific enough	1.1%
	Non-existent documents	1.4%

* 22 out of 260 requests received are still being processed.

ANNEX 14

SUMMARY TABLE
CHIEF LEGAL BASES FOR SOCIAL POLICY INSTRUMENTS

PROTOCOL N° 14 ON SOCIAL POLICY

QUALIFIED MAJORITY POSSIBLE
(Art. 2(1))

- improvement of the working environment to protect the health and safety of workers
- working conditions
- informing and consulting workers
- equal opportunities - labour market and treatment at work
- integration of persons excluded from the labour market

UNANIMITY (14) REQUIRED (Art. 2(3))

- social security and social protection for workers
- protection of workers in the event of termination of employment contract
- representation and collective defence of workers' and employers' interests, including co-determination
- conditions of employment of nationals of non-member countries residing lawfully in the Community
- financial contributions for promotion of employment and job-creation

EXPLICITLY OUTSIDE COMMUNITY POWERS
(Art. 2(6))

- remuneration
- right of association, right to strike, right to impose lock-outs

EC TREATY

QUALIFIED MAJORITY POSSIBLE

- Art. 49: free movement of workers
- Art. 54: right of establishment
- Art.57: mutual recognition of qualifications
- Art. 125 (new): ESF (implementing decision)
- Art. 127 (new): vocational training
- Art. 118a: health and safety at work
- Art. 100a, Art. 43: agriculture, Art.75: transport

UNANIMITY (15) REQUIRED

- Art. 51: social security (measures needed for free movement)
- Art. 100: internal market
- Art. 130d: tasks, priority objectives and organization of Structural Funds
- Art. 235

ANNEX 15

INSTRUMENTS ADOPTED IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Joint actions

SUBJECT	Adoption	Publication
Decision 94/795/JHA on a joint action adopted by the Council on the basis of Article K.3(2)(b) of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State	30.11.1994 Council JHA	OJ L 327, 19.12.1994
Joint action 95/73/JHA concerning the Europol Drugs Unit on the basis of Article K.3(2)(b) of the Treaty on European Union	10.3.1995 Council JHA	OJ L 62, 20.3.1995, p. 1

Convention

SUBJECT	Adoption	Publication
Convention on simplified extradition procedure between the Member States of the European Union	10.3.1995 Council JHA	OJ C 78, 30.3.1995

Resolutions

SUBJECT	Adoption	Publication
Resolution on the interception of telecommunications	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Resolution on fraud on an international scale – protection of the financial interests of the European Union	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Resolution on limitations on admission of third-country nationals to the Member States for employment	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Resolution relating to the limitations on the admission of third-country nationals to the Member States for the purpose of pursuing activities as self-employed persons	30.11.1994 Council JHA	Official transmission to European Parliament Press release 11321/94 (Presse 252-G)
Resolution on the legal protection of the financial interests of the Communities	6.12.1994 Council JHA	OJ C 355, 14.12.1994
Resolution on the admission of third-country nationals to the territory of the Member States of the EU for study purposes	30.11/1.12.1994 Council JHA	Official transmission to European Parliament Press release 11321/94 (Presse 252-G)

Resolution on minimum guarantees for asylum procedures 5354/95 ASIMM 70	9.3.1995 Council JHA	

Recommendations

SUBJECT	Adoption	Publication
Fight against money laundering	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Recommendation on the responsibility of organizers of sporting events	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Recommendation on environmental crime	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Recommendation on the organization of a training module on the operational analysis of crime	6.5.1994 Council Development	Press release 10550/93 (Presse 209) page 9
Recommendation for the exchange of information on the occasion of major events or meetings	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Recommendation concerning the adoption of a standard travel document for the expulsion of third-country nationals	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Council Recommendation on a specimen bilateral readmission agreement between an EU Member State and a third country	30.11/1.12.1994 Council JHA	Official transmission to European Parliament
Council Recommendations (5) on the fight against trade in human beings for the purposes of prostitution	29/30.11.1993 and 20.6.1994 Council JHA	Press release 10550/93 (Presse 209-G)

Decisions

SUBJECT	Adoption	Publication
Transmission to the European Parliament of documents on international organized crime - Council recommendations and report of the ad hoc working party	20.6.1994 Council JHA	Decision to transmit to European Parliament Letters 5917/5918 of 13.7.1994
EDU/Europol Appointment of Mr Storbeck as coordinator of the Europol Drugs Unit, extension of the term office of Mr Bruggemann as caretaker deputy coordinator until the end of 1994	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)

EDU/Europol staff Appointment from 1.1.1995 for three years or until the entry into force of the Convention of two assistant coordinators and two members of the Steering Committee	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)

Statements

SUBJECT	Adoption	Publication
Financing of terrorism		Press release 10550/93 (Presse 209)
Statement on extradition		Press release 10550/93 (Presse 209)

Conclusions

SUBJECT	Adoption	Publication
Conclusions on racism and xenophobia	29/30.11.1993 Council JHA	Press release 10550/93 (Presse 209)
Conclusions on international organized crime	29/30.11.1993 Council JHA	Official transmission to European Parliament
Conclusions on the application of Article K.9 of the TEU to asylum policy	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Text on evidence in the context of the Dublin Convention	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Form of laissez-passer for the transfer of an asylum applicant from one Member State to another	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Procedure for drawing up joint reports on the situation in third countries	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
CIREA - Distribution and confidentiality of joint reports on the situation in certain third countries	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Standard form for determining the State responsible for examining an application for asylum	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Conclusions on the Commission communication on immigration and asylum	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Conclusions on conditions for the readmission of persons who are illegally resident in a Member State but who hold a residence permit for another Member State (Article 8(2) of the draft External Frontiers Convention)	31.10.1994 Council General Affairs	Press release 10314/94 (Presse 219-G)

Enlarged and strengthened relations with third countries, in particular the countries of Central and Eastern Europe - exchanges of information in the area of international sports events	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Conclusions of the EU Council on the operating procedures and development of the Centre for Information, Discussion and Exchange on the crossing of frontiers and immigration (CIREFI)	30.11/1.12.1994 Council JHA	Official transmission to European Parliament Press release 11321/94 (Presse 252-G)
Conclusions on the implementation of Article K.5 of the TEU: - expression of common approaches in international organizations and conferences	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Conclusions concerning a contribution to the development of a strategic plan of the Union to combat customs fraud in the internal market	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Conclusions on relations with third countries in the JHA field	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
Racism and xenophobia. Adoption of the contribution of the JHA Council	10.3.1995 Council JHA	

Other

SUBJECT	Adoption	Publication
1994 programme of joint surveillance operations on air and sea traffic	21/22.2.1994 Council JHA	Press release 5044/94 (Presse 24-G)
Guidelines for joint reports on third countries	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Second report on CIREA's activities	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
List of honorary consuls already empowered to issue visas who, as a transitional measure, will be empowered to issue uniform visas (viz. certain honorary consuls of Denmark and the Netherlands who are to qualify for this exemption from the rule precluding honorary consuls from having power to issue uniform visas)	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Assessment of the terrorist threat; document relating to the internal and external threat to Member States of the Union	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Interim report to the Council on money laundering	20.6.1994 Council JHA	Press release 7760/94 (Presse 128-G)
Guidelines for the training of instructors	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)

European Council report on the implementation of the action plan in the field of Justice and Home Affairs in December 1993	30.11/1.12.1994 Council JHA	Press release 11321/94 (Presse 252-G)
EDU/Europol activities report (1.1.1994/31.12.1994)	9/10.3.1995 Council JHA	Press release 5423/95 (Presse 69-G)
EDU/Europol work programme (January to June 1995)	9/10.3.1995 Council JHA	Press release 5423/94 (Presse 69-G)
Strategy to combat drugs	9/10.3.1995 Council JHA	Press release 5423/94 (Presse 69-G)
Report on organized crime in the European Union in 1993	9/10.3.1995 Council JHA	Press release 5423/94 (Presse 69-G)
Customs strategy at external frontiers	9/10.3.1995 Council JHA	Press release 5423/94 (Presse 69-G)

ANNEX 16

COMMON POSITIONS ADOPTED
(Article J.2 of the Treaty)

1. Libya

22.11.93	Reduction of economic relations with Libya.

2. Sudan

15.03.94	Embargo on arms, munitions and military equipment for Sudan.

3. Haiti

30.05.94	Reduction of economic relations with Haiti.
14.10.94	Termination of the reduction of economic relations with Haiti.

4. Ex-Yugoslavia

13.06.94	Prohibition of the satisfaction of the claims referred to in para.9 of UN Security Council resolution 757.
10.10.94	Suspension of certain restrictions on trade with the Federal Republic of Yugoslavia (Serbia and Montenegro).
10.10.94	Reduction of economic and financial relations with those parts of Bosnia-Herzegovina under control of Bosnian Serb forces.
23.01.95	Prorogation of the suspension of certain trade restrictions with the Federal Republic of Yugoslavia (Serbia and Montenegro).

5. Rwanda

24.10.94	Objectives and priorities of the EU towards Rwanda.

6. Ukraine

28.11.94	Priorities and objectives of the EU towards the Ukraine.

7. Burundi

24.03.95	Burundi

ANNEX 17

JOINT ACTIONS ADOPTED
(Article J.3. of the Treaty)

1. Ex:Yugoslavia

08.11.93	Support for the convoying of humanitarian aid in Bosnia-Herzegovina.
20.12.93	Supplementary.
07.03.94	Extending the application of the 8.11.93 decision.
16.05.94	Adapting and extending the application of the 8.11.93 decision.
27.07.94	Supplementary.
12.12.94	Extending the application of the 08.11.93 decision.
12.12.94	Continued support for EU administration of Mostar.
06.02.95	Supplementary (Mostar).

2. Russian Parliamentary Elections

09.11.93	Dispatch of a team of observers.

3. South Africa

06.12.93	Support for the transition towards a democratic and multiracial South Africa.

4. Stability Pact

20.12.93	Inaugural conference.
14.06.94	Continuation.

5. Anti-personnel mines

Limitation on production, distribution, etc.

6. Middle East Peace Process

19.04.94	Support for the process.

7. Non-proliferation

25.07.94	Preparation for the 1995 conference on the Non-Proliferation Treaty.

8. Dual-use goods

19.12.94	Control of exports of dual-use goods.

COMMISSION

COMMISSION POSITION OF 6 DECEMBER 1995

ON THE REFLECTION GROUP REPORT

IP/95/1352

Brussels, 6 December 1995

Intergovernmental Conference 1996: Commission reacts to Westendorp report

The Reflection Group set up by the Corfu European Council to help prepare the ground for the 1996 Intergovernmental Conference has adopted its report and made it public.

The Commission is glad the Group has completed its task of identifying the points to be covered by the Conference and putting forward its members' suggested solutions. The Commission hopes that the Conference will offer a veritable answer to the challenges ahead of the Union, notably in the enlargement context.

The Commission was represented on the Reflection Group. It firmly supports all the general ideas in the report. There are some areas (employment, the environment, etc.) that will be dealt with in substance at the Conference, and this the Commission welcomes. The Commission will also insist on adherence to common objectives and the single institutional set-up, though the question of greater flexibility will have to be investigated in view of the wider diversity within an enlarged Union.

The Commission also welcomes the general agreement reached on the priority to be given to achieving Economic and Monetary Union on the terms and within the timetable set by the Maastricht Treaty, which remain unchanged.

In view of its attachment to openness, the Commission is setting out below the main positions which it will be taking on matters on which members of the Reflection Group diverged.

Acting in accordance with Article N of the Treaty, the Commission will give its detailed formal opinion on what it expects of the Conference of Representatives of the Member States before it opens.

1. The citizen and the Union

Matching what the Union can offer with what the citizen expects of it is one of the Commission's constant concerns. There are several ways of going about this:

- **promoting Europe's values**. The Commission is among those who believe that the Treaty should state these values clearly and that the Union should guarantee them, either by acceding as such to the European Human Rights Convention or by enacting its own Bill of Rights. In any event, there are some values that must be expressed clearly, such as equal rights for women and men, non-discrimination, and the outlawing of racism and xenophobia:

- **freedom and security**. The Commission agrees with the general view that the Union is not up to scratch in justice and home affairs cooperation.

  There are obvious remedies:

- a stronger role for the European Parliament;
- more extensive judicial review by the Court of Justice;
- qualified majority decision-making to be the rule;
- better legal instruments than the current joint actions, common positions and international conventions.

The Commission's view is that the simplest way of achieving all this would be to use Community institutions and procedures while acknowledging that the intergovernmental model may be the most suitable for judicial and police cooperation;

- **a more open Union**. The Commission feels the time has come to treat access to information as a right of the Union citizen. It is ready to make every effort to boost democracy at all levels. National Parliaments should be provided with information as and when they need it.

  The Commission also considers that the Treaty itself could be made far easier to read through consolidation and simplification of the existing texts. Work on this should commence without delay.

2. Operation of the Union and preparation for enlargement

The institutions exist to achieve the Union's objectives. The way they operate needs reviewing with the twofold aim of raising their general efficiency and preparing for a situation in which a substantially larger number of Member States will be involved.

This entails simplifying the Union set-up, making it easier to understand and giving it more effective decision-making machinery:

- the European Council is a vital component of the machinery for taking the really big decisions and should continue to function as the source of general guidance;

- the current legislative and administrative decision-making processes need radical simplification. There should be no more than three legislative procedures - codecision in simplified form, which should be the standard procedure, the assent procedure and the simple consultation procedure. Commission implementing measures also need to be simpler and more transparent, the possibility of *ex post* review by the Council and Parliament being preserved;

- qualified-majority decision-making has proved its worth as a dynamic means of engendering the compromises that are needed. The prospect of enlargement makes it essential that this procedure be the norm;

- the composition of the institutions will have to evolve with enlargement to bring the dual aims of effectiveness and representativeness within reach. But the specific nature of each institution must be preserved.

3. External action

There are two problems with the Union's external action:

- lack of coherence between the political, economic and defence aspects;
- shortcomings in decision-making and organization on the specifically diplomatic front.

If these problems are to be solved, there will have to be a real display of political will by the Member States.

The Commission is accordingly proposing:

- a clear definition of the **objectives** of the Union's external policy;
- better **preparation** of decision-making via an analysis and forecasting unit combining the departments concerned in the Member States, the Council and the Commission, and possibly in WEU. This innovation, of course, would be meaningful only if the Member States were willing to share the information gathered by their own diplomatic services;
- more efficient **decision-making** in the common foreign and security policy by doing away with the routine need for unanimity;
- **implementation** of foreign policy in general by the duo of Commission and Council Presidents, backed up by systematic coordination facilities. External relations could then function as a coherent, continuous whole.

The Commission further believes that the Union should act on the undertakings given when the Union Treaty was signed regarding security and defence.

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4.

COURT OF JUSTICE AND

COURT OF FIRST INSTANCE

COURT OF JUSTICE REPORT OF MAY 1995 ON

CERTAIN ASPECTS OF THE IMPLEMENTATION

OF THE TREATY ON EUROPEAN UNION

I. NOTICES

Report of the Court of Justice on Certain Aspects of the Application of the Treaty on European Union

INTRODUCTION

1. The European Council, meeting at Corfu on 24 and 25 June 1994, decided to set up a Study Group to prepare for the work of the 1996 Intergovernmental Conference provided for under Article N(2) of the Treaty on European Union. It invited the institutions, before the Study Group begins its work on 1 June 1995, to draw up reports on the operation of the Treaty on European Union.

2. In responding to that request, the Court of Justice must reconcile its concern to provide a useful contribution to the work of the Group with the duty of discretion incumbent upon it as a judicial institution.

Under the revision procedure laid down by the Treaties, it is essentially the Member States who have the task of drawing up and approving such amendments as are deemed necessary to meet the requirements of a Union which is, necessarily, always in a state of evolution. In that context, the Court's duty is to indicate what is needed, or indeed indispensable, to allow the judicial system of the Union to continue carrying out its task effectively. It is of the utmost importance that the Union, based on the principle of the rule of law, should possess a system of courts capable of ensuring that that rule is observed.

This report will therefore concentrate on the judicial system and will touch on other aspects only in so far as they may have implications for its operation.

After first outlining the role of the judicature within the framework of the Union, the Court's report will deal with the application of certain provisions of the Treaty on European Union, and submit observations on prospective amendments affecting or likely to have repercussions on the judicial system.

I – THE ROLE OF THE COURTS IN THE EUROPEAN UNION

3. The Union, like the European Communities on which it is founded, is governed by the rule of law. Its very existence is conditional on recognition by the Member States, by the institutions and by individuals of the binding nature of its rules.

The Court of Justice, which is charged with ensuring that in the interpretation and application of the Treaties the law is observed, is responsible for monitoring the legality of acts and the uniform application of the common rules. The Treaties, the protocols annexed to certain conventions between Member States, and certain agreements concluded by the Communities with non-member

States, confer various kinds of jurisdiction upon the Court. It is called on to rule on direct actions brought by the Member States, by the institutions and by individuals; to maintain close cooperation with national courts and tribunals through the preliminary ruling procedure; and to give opinions on certain agreements envisaged by the Communities. The Court thus carries out tasks which, in the legal systems of the Member States, are those of the constitutional courts, the courts of general jurisdiction or the administrative courts or tribunals, as the case may be.

In its constitutional role, the Court rules on the respective powers of the Communities and of the Member States, and on those of the Communities in relation to other forms of cooperation within the framework of the Union and, generally, determines the scope of the provisions of the Treaties whose observance it is its duty to ensure. It ensures that the delimitation of powers between the institutions is safeguarded, thereby helping to maintain the institutional balance. It examines whether fundamental rights and general principles of law have been observed by the institutions, and by the Member States when their actions fall within the scope of Community law. It rules on the relationship between Community law and national law and on the reciprocal obligations between the Member States and the Community institutions. Finally, it may be called upon to judge whether international commitments envisaged by the Communities are compatible with the Treaties.

As regards the remainder of the Court's jurisdiction, the setting up of a two-tier system for all actions brought by natural or legal persons, which are now dealt with by the Court of First Instance subject to the possibility of an appeal to the Court of Justice, has undoubtedly afforded greater protection to individuals and has enabled the latter to devote itself more fully to its essential task of ensuring the uniform interpretation of the law, under conditions which preserve the quality and efficiency of the judicial system.

4. The Court considers it indispensable, if the essential features of the Community legal order are to be maintained, that the functions and prerogatives of its judicial organs be safeguarded in the forthcoming process of revision. The success of Community law in embedding itself so thoroughly in the legal life of the Member States is due to its having been perceived, interpreted and applied by the nationals, the administrations and the courts and tribunals of all the Member States as a uniform body of rules upon which individuals may rely in their national courts. Even before there was the idea of citizenship of the Union, the Court had inferred from the Treaties the concept of a new legal order applying to individuals and had in many cases ensured that those individuals could exercise effectively the rights conferred upon them.

Any decision affecting the structure of the judicial system must therefore ensure that the courts remain independent and their judgments binding. Were that not to be the case, the very foundations of the Community legal order would be undermined.

By virtue of Article L of the Treaty on European Union, the Court of Justice has, for all practical purposes, no jurisdiction over activities of the Union which fall within the spheres of common foreign and security policy and of cooperation in the fields of justice and home affairs.[1] In that regard, the attention of the Intergovernmental Conference should be drawn to the legal problems which may arise in the long, or even the short, term. Thus, it is obvious that judicial protection of individuals affected by the activities of the Union, especially in the context of cooperation in the fields of justice and home affairs, must be guaranteed and structured in such a way as to ensure consistent interpretation and application both of Community law and of the provisions adopted within the framework of such cooperation. Further, it may be necessary to determine the limits of the powers of the Union vis-à-vis the Member States, and of those of each of the institutions of the Union. Finally, proper machinery should be set up to ensure the uniform implementation of the decisions taken.

5. It is obvious that the need to ensure uniform interpretation and application of Community law and of the conventions which are inseparably bound up with the achievement of the objectives of the Treaties presupposes the existence of a single judicial body, such as the Court of Justice, which can give definitive rulings on the law for the whole of the Community. That requirement is essential in any case which is constitutional in character or which otherwise raises a question of importance for the development of the law.

II – THE APPLICATION OF THE TREATY ON EUROPEAN UNION

6. As far as the Court of Justice is concerned, the effect of the amendments introduced by the Treaty on European Union has to date been only limited. The reasons for that are, firstly, that the Treaty has only recently come into force and, secondly, that a certain period is bound to elapse between the introduction of procedures or the implementation of provisions, and their repercussions in terms of litigation.

7. At a formal level, the amendments required by the Treaty on European Union have been made to the EC Statute of the Court and to the Rules of Procedure both of the Court of Justice and of the Court of First Instance. The amendments to the Statute were approved by the Council, at the request of the Court, by decision of 22 December 1994.[2] The Court of Justice adopted the amendments to its Rules of Procedure on 21 February 1995, following approval by the Council.[3] The Court of First Instance adopted the amendments to its Rules

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1 – In its order of 7 April 1995 in Case C-167/94 *Grau Gomis and Others*, not yet published in the ECR, the Court held that it had no jurisdiction, in the context of a preliminary ruling, to interpret Article B of the Treaty on European Union.

2 – OJ 1994 L 379, p. 1.

3 – OJ 1995 L 44, p. 61.

of Procedure on 17 February 1995, following approval by the Council and with the agreement of the Court of Justice.[4]

8. At a practical level, as yet the first innovation to have borne fruit to any appreciable extent is the one whose implementation depended on the Court itself, namely the new version of Article 165(3). Under that provision, the Court of Justice may now assign any case to a Chamber unless a Member State or an institution which is a party to the proceedings requests that the case be heard in plenary session. Whilst cases raising fundamental issues are still heard in plenary session, the Court makes regular use of this new possibility in cases which previously had to be heard by the plenary. This has probably contributed to the shortening of the length of proceedings revealed in the most recent statistics.[5] That achievement has been made possible by the attitude of the Member States and the institutions, which have confined to exceptional cases their requests that the Court sit in plenary session.

9. As regards the other Treaty amendments of direct concern to the Court, one action has been brought under the new version of Article 173(1) of the EC Treaty, for annulment of a measure adopted by the European Parliament and the Council in accordance with the procedure laid down in Article 189b of the EC Treaty.[6]

The new version of Article 173(1) of the EC Treaty, which endorses the solution provided by the Court's case-law[7], namely that an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects vis-à-vis third parties, has also formed the basis for a recent action brought by the Council.[8]

Similarly, the European Parliament, whose right to bring an action for annulment of an act of the Council or the Commission in order to safeguard its prerogatives had already been recognized[9] and indeed exercised on a number of occasions before the Treaty on European Union entered into force, has been able

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4 — OJ 1995 L 44, p. 64.

5 — Between 1993 and 1994, the average length of proceedings for direct actions before the Court of Justice went from 22.9 months to 20.8 months; for preliminary rulings from 20.4 to 18.0 months; and for appeals from 19.2 to 21.2 months. The last figure is due in particular to the relative increase in the number of appeals in the field of competition, which are often long and complex, compared with those in Community staff cases.

6 — Case C-233/94 *Germany* v *Parliament and Council*.

7 — Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339.

8 — Case C-41/95 *Council* v *Parliament*.

9 — Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041.

to bring three further actions for annulment[10] on the basis of the new version of Article 173(3) of the EC Treaty, which endorses the previous case-law.

The Court has not been called upon to apply the other amendments relating specifically to the judicial system of the Union. That is true, for example, of the new version of Article 171 of the EC Treaty (and of the corresponding provision of the Euratom Treaty), which enables the Commission to bring an action before the Court of Justice seeking imposition of penalties on a Member State which has failed to comply with a judgment finding that it had infringed the Treaty; similarly there have been as yet no cases concerning the European Monetary Institute or pursuant to the last subparagraph of Article K.3(2)(c) of the Treaty on European Union, which allows attribution of jurisdiction to the Court of Justice in respect of the interpretation and application of conventions concluded within the framework of cooperation in the fields of justice and home affairs.[11]

As regards the new version of Article 168a of the EC Treaty (and the corresponding provisions of the ECSC and Euratom Treaties), which makes it possible to confer jurisdiction on the Court of First Instance to hear and determine certain classes of action or proceedings brought by the Member States or the institutions, with the exception of questions referred for a preliminary ruling, the Court of Justice considers that the possibility of applying that provision can only be evaluated in the light of experience gained from exercise by the Court of First Instance of the jurisdiction recently transferred to it to hear and determine actions brought by individuals.[12]

10. Some of the other amendments introduced by the Treaty on European Union have already given rise to cases currently pending before the Court of Justice.

These include the principle of subsidiarity embodied in Article 3b of the EC Treaty,[13] the new provisions relating to movement of capital in Articles 73b to 73h

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10 – Case C-21/94 *Parliament* v *Council*, Case C-271/94 *Parliament* v *Council* and Case C-303/94 *Parliament* v *Council*.

11 – The only convention of that type yet signed, the Convention on simplified extradition procedure between the Member States of the European Union, drawn up by Council Act of 10 March 1995 (OJ 1995 C 78, p. 1) does not give any jurisdiction to the Court of Justice.

12 – Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21) and Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29).

13 – Case C-84/94 *United Kingdom* v *Council* and Case C-233/94 *Germany* v *Parliament and Council*.

of that Treaty[14] and certain of the new legal bases introduced into the EC Treaty.[15]

III – POSSIBLE REVISION OF PROVISIONS RELATING TO THE JUDICIAL SYSTEM

11. The development of the Community legal order has been to a large extent the fruit of the dialogue which has built up between the national courts and the Court of Justice through the preliminary ruling procedure. It is through such cooperation that the essential characteristics of the Community legal order have been identified, in particular its primacy over the laws of the Member States, the direct effect of a whole series of provisions and the right of individuals to obtain redress when their rights are infringed by a breach of Community law for which a Member State is responsible. To limit access to the Court would have the effect of jeopardizing the uniform application and interpretation of Community law throughout the Union, and could deprive individuals of effective judicial protection and undermine the unity of the case-law.

But that is not all. The preliminary ruling system is the veritable cornerstone of the operation of the internal market, since it plays a fundamental role in ensuring that the law established by the Treaties retains its Community character with a view to guaranteeing that that law has the same effect in all circumstances in all the Member States of the European Union. Any weakening, even if only potential, of the uniform application and interpretation of Community law throughout the Union would be liable to give rise to distortions of competition and discrimination between economic operators, thus jeopardizing equality of opportunity as between those operators and consequently the proper functioning of the internal market.

One of the Court's essential tasks is to ensure just such a uniform interpretation, and it discharges that duty by answering the questions put to it by the national courts and tribunals. The possibility of referring a question to the Court of Justice must therefore remain open to all those courts and tribunals.

It is true that the effectiveness of the preliminary ruling procedure, which from a technical point of view is merely a step in the national proceedings, depends on the time it takes. If it takes too long, national courts may be discouraged from submitting questions for a preliminary ruling. The Court is aware of the need to reduce further the time taken to deal with such questions and would stress in that connection that the recent transfer to the Court of First Instance of all direct actions brought by individuals should make it possible to obtain a significant

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14 – Case C-163/94 *Ministerio Fiscal* v *Sanz de Lera*, Case C-165/94 *Ministerio Fiscal* v *Díaz Jiménez*, C-250/94 *Ministerio Fiscal* v *Kapanoglu*, Case C-294/94 *Ministerio Fiscal* v *Quintanilha* and Case C-20/95 *Ministerio Fiscal* v *Weg*.

15 – Case C-268/94 *Portugal* v *Council* and Case C-271/94 *Parliament* v *Council*.

reduction in the time taken for other types of proceedings, in particular references for a preliminary ruling.

The Court is currently examining further measures to increase its productivity. It should be pointed out in that regard that for cases of great importance – particularly constitutional or economic importance – it is hardly possible, or even desirable, to speed up the proceedings before the Court. For cases of lesser importance, however, procedural simplification may certainly be envisaged and could have beneficial effects. The measures necessary for that purpose fall within the framework of the Statute of the Court and its Rules of Procedure, or are pure matters of practice, and do not require any amendment to the Treaties.

12. In view of the considerable period of time which elapsed before its Rules of Procedure were adapted in line with the Treaty on European Union (it was not possible to adopt the necessary amendments until February 1995), the Court considers that the rule in Article 188(3) of the EC Treaty (and in the corresponding provisions of the other Treaties), which requires the unanimous approval of the Council for any amendment to those Rules, should be relaxed. Thus, the Court might be authorized to adopt its Rules of Procedure without the approval of the Council or, if the Member States felt it indispensable to retain the right to be consulted, such approval might be deemed to be given on expiry of a specified period in the absence of amendments by the Council to the Court's proposal. A similar amendment would need to be made to Article 168a(4) of the EC Treaty and to the corresponding provisions of the other Treaties concerning the Rules of Procedure of the Court of First Instance.

13. In its requests submitted to the Council following the introduction of a two-tier court system, the Court of Justice has already stressed that such a system is not appropriate for preliminary ruling procedures both because it would be likely to lead to unacceptable procedural delays and because it would raise problems as to the authority of judgments given at first instance and as to identification of the parties entitled to lodge an appeal. The Court's jurisdiction to give preliminary rulings cannot be split up on the basis of pre-established criteria relating to the subject-matter of the case or the status of the referring court, which might jeopardize the consistency of the case-law, or on the basis of a flexible system of case-by-case referrals from the Court of Justice to the Court of First Instance, which might run counter to certain conceptions of the 'lawful judge' (juge légal).

14. The Court has been informed of certain proposals, first, for amending Article 173 of the EC Treaty and the corresponding provisions of the other Treaties to allow the European Parliament to bring actions for annulment without having to establish an interest and, second, for giving the Parliament the right to request the Court's opinion on an international agreement envisaged by the Community, in accordance with Article 228(6) of the EC Treaty. It is, of course, for the Intergovernmental Conference to decide what action is to be taken on those proposals. The Court wishes to point out that there should be no technical objection to such amendments and that, as regards the procedure for obtaining opinions, it has already allowed the Parliament to submit observations in

connection with requests made by Member States, the Council or the Commission. However, the Court doubts whether it would be appropriate to remove to the judicial arena disputes which could just as satisfactorily be settled at a political level, given the mechanisms provided for that purpose.

15. The Court has begun to reflect on the future judicial structure of the Union. The organization of the judicial system will in any event depend on political decisions as regards developing the process of union among the peoples of Europe and as regards the prospects of further enlargement.

At the present stage of development, the Court feels that the structure of the judicial system should not be altered. In particular, there seems to be no need to amend Article 168a of the EC Treaty and the corresponding provisions of the other Treaties with regard to the allocation of tasks between the Court of Justice and the Court of First Instance. A more detailed assessment cannot be made until it has become possible to evaluate the capacity of both Courts to deal satisfactorily with the volume of litigation assigned to them. In any case, the obvious need to maintain an efficient court system means that the number of courts should not be increased unless there are objective reasons for doing so, particularly since the national courts are called upon to play a central role as the courts with general jurisdiction for Community law.

However, if closer integration is achieved in certain fields, with a concomitant increase in the volume of litigation, it might be that, in the longer term, it would be desirable for the Chambers of the Court of First Instance to become specialized or perhaps for new specialized Community courts to be established. Once the principle of the two-tier system is accepted, there is a certain logic in having the vast majority of direct actions dealt with by one or more courts of first instance and in subjecting certain appeals to the Court of Justice to a filtering system. Increasing the number of courts would be unlikely to endanger the unity of the case-law provided there is still a supreme court to ensure uniformity of interpretation through appeals or preliminary rulings as the case may be.

16. With regard to the prospects of enlargement of the Union, the Court wishes to draw the attention of the Intergovernmental Conference to the problem of maintaining the link between the number of Judges and the number of Member States, even though the Treaties do not provide for any link between nationality and membership of the Court.

In that regard, two factors must be balanced.

On the one hand, any significant increase in the number of Judges might mean that the plenary session of the Court would cross the invisible boundary between a collegiate court and a deliberative assembly. Moreover, as the great majority of cases would be heard by Chambers, this increase could pose a threat to the consistency of the case-law.

On the other hand, the presence of members from all the national legal systems on the Court is undoubtedly conducive to harmonious development of

Community case-law, taking into account concepts regarded as fundamental in the various Member States and thus enhancing the acceptability of the solutions arrived at. It may also be considered that the presence of a Judge from each Member State enhances the legitimacy of the Court.

Finally, it should be noted that the question of the number of Judges arises in a completely different way in the Court of First Instance, which normally sits in Chambers and whose decisions are subject to an appeal to the Court of Justice.

17. The Court does not intend to express any opinion with regard to the procedure for the appointment of its members or the term of their appointment, beyond those aspects which concern the preservation of its independence and its functional efficiency.

The Court stresses that the procedure for appointment laid down by the Treaties and the practice generally followed in renewing the terms of office of its members have satisfactorily ensured its independence and the continuity of its case-law. The Court would not, however, object to a reform which would involve an extension of the term of office with a concomitant condition that the appointment be non-renewable. Such a reform would provide an even firmer basis for the independence of its members and would strengthen the continuity of its case-law. Provided that the fixed term of appointment of each member were calculated from the time of taking office, such a solution would also have the advantage, over time, of limiting the operational inconveniences regularly suffered by the Court's activities as a result of the partial replacement rule.

However, without needing to express an opinion at this stage on the other proposals which have been put forward, the Court considers that a reform involving a hearing of each nominee by a parliamentary committee would be unacceptable. Prospective appointees would be unable adequately to answer the questions put to them without betraying the discretion incumbent upon persons whose independence must, in the words of the Treaties, be beyond doubt and without prejudging positions they might have to adopt with regard to contentious issues which they would have to decide in the exercise of their judicial function.

18. The Court would like to put forward once again the suggestion, already raised during the preparations for the Treaty on European Union, that Article 167(5) of the EC Treaty (and the corresponding provisions of the ECSC and Euratom Treaties) should be amended to allow the Advocates General as well as the Judges to take part in the election of the President of the Court from among the Judges. The basis for that proposal lies in the fact that the status of Advocate General is identical to that of Judge; without prejudice to their specific function, they are members of the Court in the same way as the Judges. As such, moreover, they have the same responsibilities with regard to administrative decisions and are concerned in the same way with the functioning of the institution. Since the President organizes the business and directs the administration of the Court, it would be perfectly logical for the Advocates General to take part in the election together with the Judges. It is evident that the President, who directs the hearings and deliberations of the Court sitting in plenary session, can be chosen only from

among the Judges. The Advocates General would thus be entitled to vote but not to stand for election.

IV – REPERCUSSIONS ON THE JUDICIAL SYSTEM OF CERTAIN AMENDMENTS ENVISAGED

19. The Court is aware that the Intergovernmental Conference is called upon to examine problems of a constitutional nature, such as changes in the nomenclature of acts and the introduction of a hierarchy of norms, together with the introduction into the Treaty of a catalogue of fundamental rights in keeping with the democratic nature of the Union, which renders the protection of human rights an essential element of European construction. Whilst it is not for the Court to express a view on the desirability of such reforms, it nevertheless notes that they have important aspects which will necessarily have repercussions on the system of judicial review.

20. In the first place, if a catalogue of fundamental rights were to be introduced into the text of the Treaty, the question would arise as to the mechanism for reviewing observance of those rights in legislative and administrative measures adopted in the framework of Community law.

In the exercise of its present jurisdiction, the Court already examines whether fundamental rights have been respected by the legislative and executive authorities of the Communities and by the Member States when their actions fall within the field of Community law. In doing so, it draws on the constitutional traditions common to the Member States and on the international instruments relating to the protection of human rights in which the Member States have cooperated or to which they are parties, in particular the European Convention on Human Rights. The Court would not, therefore, be taking on a new role in reviewing respect for of such fundamental rights as might be provided for in the Treaty. It may be asked, however, whether the right to bring an action for annulment under Article 173 of the EC Treaty (and the corresponding provisions of the other Treaties), which individuals enjoy only in regard to acts of direct and individual concern to them, is sufficient to guarantee for them effective judicial protection against possible infringements of their fundamental rights arising from the legislative activity of the institutions.

21. Secondly, if the Intergovernmental Conference were to decide to revise the nomenclature of the acts of the institutions and possibly to establish a hierarchy amongst those acts, it would be essential to take account of the consequences which such changes would have for the system of remedies, in particular the right of individuals to bring actions for the annulment of such acts.

22. It would be premature to formulate any more detailed observations but, in view of the fundamental importance of those matters for the judicial protection of individuals, the Court wishes to be involved at the appropriate moment in any process of reflection.

23. Finally, in the Court's opinion, the forthcoming process of revision might provide an opportunity for codifying and streamlining the constitutive Treaties. The multiplicity of Treaties forming the constitutional basis for the law of the Union, of which one (the ECSC Treaty) expires in July 2002, the sometimes artificial compartmentalization entailed by the system of three pillars, the survival of many superseded or obsolete provisions, and a numbering system which uses both letters and figures, all run counter to the need for transparency and put citizens of the Union in an unsatisfactory position from the point of view of legal certainty.

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24. The Court has confined itself, at the present stage, to expressing observations of a general nature concerning, essentially, the judicial sphere. The Court reserves the possibility of submitting to the Study Group its observations on the reports of the other institutions in so far as they concern the judicial system or include proposals likely to have repercussions on it. Furthermore, the Court would like to be associated in an appropriate manner with the preparatory work prior to the revision of the Treaties. In any event, the Court must be consulted should the Intergovernmental Conference intend to amend the Treaty provisions relating to the judicial system.

COURT OF JUSTICE AND

COURT OF FIRST INSTANCE

CONTRIBUTION OF 17 MAY 1995 BY

THE COURT OF FIRST INSTANCE

WITH A VIEW TO

THE 1996 INTERGOVERNMENTAL CONFERENCE

I – DEVELOPMENT OF THE COMMUNITY COURTS

Since it was set up in 1989, the role and jurisdiction of the Court of First Instance have been progressively extended. Under Council Decisions 93/350 of 8 June 1993[16] and 94/149 of 7 March 1994[17], it has acquired general jurisdiction to hear and determine at first instance all direct actions brought by natural and legal persons; in addition, it has received jurisdiction in completely new areas under Regulation No 4064/89 on the control of concentrations between undertakings[18], under Regulation No 40/94 on the Community trade mark[19] and under Regulation No 2100/94 on Community plant variety rights[20]. The Treaty on European Union has paved the way for an acceleration of that process with the amended version of Article 168a, which makes it possible to give jurisdiction to the Court of First Instance to hear and determine all actions, whether brought by natural or legal persons or by institutions or Member States, with the exception of questions referred for a preliminary ruling under Article 177. Finally, jurisdiction to hear and determine actions brought by natural and legal persons relating to the European Central Bank, and disputes involving its staff, has already been conferred on the Court of First Instance by the abovementioned Council Decisions.

The jurisdiction of the Court of First Instance is thus much wider now than when it was set up as a Community court. Further extension can, moreover, be envisaged on the basis of the present version of Article 168a and is likely to be implemented progressively, particularly in fields where one and the same measure may be challenged simultaneously before the Court of Justice and before the Court of First Instance, depending on the standing of the applicant. That situation leads to problems of coordination between the two Courts, particularly in the fields of State aids and anti-dumping measures, which could be resolved by giving the Court of First Instance jurisdiction to hear and determine all actions of those types, regardless of the standing of the applicant.

The extension of the jurisdiction of the Court of First Instance, coupled with a constant progression in the amount of traditional litigation, has led to a very considerable increase in the number of cases brought each year before the Court of First Instance, with a more than fourfold increase since 1990. Concurrently, over

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16 – OJ 1993 L 144, p. 21.

17 – OJ 1994 L 66, p. 29.

18 – OJ 1989 L 395, p. 1.

19 – OJ 1994 L 11, p. 1.

20 – OJ 1994 L 227, p. 1.

the same period, the numbers of cases decided by the Court of First Instance and pending before it have increased to a very considerable extent.

That trend towards an appreciable increase in the number of cases brought before the Court of First Instance is set to become even more pronounced in the future. As a result, a growing proportion of Community litigation will fall to be dealt with by the Court of First Instance and the number of cases to be decided by it will exceed, as it has already exceeded, the number brought before the Court of Justice.

Moreover, the volume of litigation on Community trade marks alone, the effects of which will very soon be felt with some 100 cases expected to be brought by the second half of 1996, will grow sharply, to exceed 400 cases a year, from 1997 onwards. Other more or less similar areas of litigation, such as plant variety rights or industrial designs, will be added in the near future.

Independently of the new jurisdiction conferred on the Court of First Instance, a considerable increase can be seen in the volume of cases already falling within its jurisdiction, particularly those which require close examination of complex facts as, for example, in the fields of competition proceedings, State aids and anti-dumping measures. That increase is no doubt simply a consequence, at least in part, of the establishment of a two-tier system within the Community judicature and the resulting improvement in the conditions under which cases are dealt with.

II – MEASURES TO ENSURE THE PROPER ADMINISTRATION OF JUSTICE

In order to respond to that situation, it is essential that measures be taken to ensure that the Community courts can operate properly in a rapidly changing context. If they were not, the Court of First Instance would soon no longer be able to ensure the proper administration of justice in the best possible manner and to perform the task for which it was set up, namely to improve judicial protection for individuals and to alleviate the case-load of the Court of Justice. In the absence of any such measures, the increased volume of Community litigation would result in a lengthening of proceedings under conditions likely to jeopardize the protection of individuals.

To that end, the Court of First Instance has already taken a number of steps to adapt its internal operational arrangements in order, inter alia, to rationalize the number, structure, organization and working methods of its chambers and to shorten the time taken for oral procedures and the length of judgments. In addition, with the approval of the Council, it has amended its Rules of Procedure to allow an increasing number of cases to be dealt with by a chamber of three judges. Further measures simplifying the procedure before the Court of First Instance, with a particular view to streamlining, simplifying and clarifying the way in which cases are prepared for hearing, will shortly be submitted to the Council.

The Court of First Instance is aware that it is not only judicial procedure whose efficiency has an impact on the protection of individuals. It is particularly

attentive to certain ideas which are aimed at improving the Community decision-making process in certain fields at an earlier stage and which could prevent litigation arising and thus reduce the number of cases brought.

Nevertheless, it must be acknowledged that the operational imperatives of the Court of First Instance are such that it will not be possible to cope with the increase in volume of Community litigation solely by recourse to such modifications, which are bound to remain limited in scope, and that its role as court of general jurisdiction at first instance will necessarily affect not only its operating methods but also its structure and composition.

The debate which has opened up in recent years in that regard has engendered a number of ideas on which the Court of First Instance feels it should make its views known to the Intergovernmental Conference.

In the first place, the Court of First Instance feels that some of those ideas – in particular the establishment of new courts on a regional or specialized subject-matter basis – are unlikely to provide a solution to the problems faced and should not, therefore, be retained.

With regard to the creation of 'regional courts', this Court has already expressed its conclusion that, at the present stage in the Community's development, such a solution would be of no relevance or interest and would be extremely costly.[21] That assessment is still valid, particularly since a juxtaposition of several parallel courts would be likely to jeopardize the unity and consistency of Community case-law and would necessarily entail a considerable increase in the cost of the administration of justice.

As regards the idea of setting up specialized courts, the Court of First Instance would point out that such a solution, which would entail considerable administrative and budgetary costs and does not really seem compatible with the concept of a Community judicature of general jurisdiction, does not appear desirable since it might jeopardize the unity not merely of that judicature but of its case-law. The same reservation would not, however, apply to the setting up, if necessary, of specialized chambers within the Court of First Instance.

The Court of First Instance wishes, on the other hand, to draw the attention of the Intergovernmental Conference to a number of options which might be envisaged as a solution to the problems arising out of the increasing volume of Community litigation and which might be implemented either as alternatives or concurrently.

First, there are a number of measures which would be more especially suitable for implementation in specific areas which give rise to a large volume of

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21 – 'Reflections on the Future Development of the Community Judicial System', a document drawn up by the Court of First Instance in December 1990 to report on its views to the Intergovernmental Conference whose deliberations were to lead to the Treaty on European Union.

litigation but do not generally require decisions on particularly complex or important questions of law. These include the appointment of assistant rapporteurs, the hearing of cases by a single judge and the specialization of chambers.

The appointment of assistant rapporteurs, which would require no more than an amendment to the Statute of the Court of Justice, would have the advantage of leaving responsibility for deciding the case with the judges while at the same time allowing research and drafting tasks to be carried out, under the responsibility of the court, by an expert of proven competence whose status would be transparent and who would be appointed in the light of his or her particular qualifications and specialization in a specific field. The presence of such an expert would be apparent in the course of proceedings, which would be an obvious safeguard for the parties, and he or she could be present during the Court's deliberations, which would offer a considerable advantage over the assistance provided by the judges' traditional associates, such as legal secretaries.

The introduction of the possibility of having cases dealt with by a single judge in certain fields would offer considerable advantages in terms of the Court's productivity and procedural efficiency. It would be possible to draw on the experience of similar systems in the courts of many of the Member States. It must of course be stressed that if a single judge were to sit alone in certain types of case, it would have to be possible for that judge to propose that the case be referred to a chamber if he or she considered that it was of particular importance. Alternatively, such a solution might be restricted to cases which a chamber, after an initial examination, decided did not present any particular difficulty. Recourse to a single judge might indeed be particularly effective if it were combined with the use of assistant rapporteurs in certain areas of technical specialization, especially where the judicial phase is preceded by a compulsory pre-litigation procedure in which individuals' interests receive appropriate protection. That solution could be achieved simply by an amendment to the Decision of 24 October 1988 establishing the Court of First Instance.

In the same context, mention may be made of the gains in productivity which could be expected from the setting up of specialized chambers for litigation of a repetitive kind. Setting up such chambers would make it possible to reap the advantages of specialization in certain series of actions, should the need be felt at a future stage, without thereby incurring the disadvantages which would necessarily ensue for the Community judicial system from the establishment of independent specialist courts or the appointment of specialist judges to the Community courts of general jurisdiction. A specialization of chambers falls within the scope of the Court's internal organization and can be implemented on the basis of the existing rules.

The Court of First Instance considers, however, that all those measures will not be sufficient to enable it to cope with the increasing number of actions with which it will be faced. Without at present putting forward any specific proposals in that regard, the Court of First Instance wishes, therefore, to draw the attention of the Intergovernmental Conference to the fact that an increase in the number of

judges will inevitably have to be envisaged. In that regard, account must be taken of the fact that the Court of First Instance sits almost exclusively in chambers composed of three or five judges, so that an increase in its overall membership would not give rise to any operational difficulties. An increase in the number of judges would make it possible to form a greater number of chambers and deal with a greater number of cases, and constitutes the most effective way of dealing with the increase in litigation. Again, such an increase could be achieved simply by an amendment to the Decision of 24 October 1988.

Since all the above solutions can be implemented without any amendment to the Treaties, the Court of First Instance merely wishes to mention them at the present stage. It will submit, at the appropriate time, reasoned proposals through the channels and procedures provided.

III – JUDGES' TERMS OF OFFICE

Various proposals have been made in the past to amend the rules governing the appointment of the judges.

It is not for the Court of First Instance to put forward specific proposals in that regard, but the attention of the Intergovernmental Conference should be drawn to certain aspects of the problem which have not always been taken into consideration.

Continuity in the membership of the Court of First Instance is of fundamental importance for the proper administration of justice. The replacement of a judge inevitably entails not only disruption in the scheduling of proceedings but also the loss of considerable investment in terms of both the time and the effort required of each new judge to adapt to the specific nature of work in a Community court. It is therefore essential that the relevant provisions allow the judges to carry out their functions for a sufficient length of time.

At present, the rules provide for appointment for a normal term of six years, with a partial renewal of membership at fixed dates every three years and replacement for the remainder of the predecessor's term if a judge leaves before the expiry of his or her term of office (Article 7 of the EC Statute of the Court of Justice). The effect of those provisions is that six years is the longest period for which an appointment can be made, subject, of course, to renewal. In addition, as a result of the system of fixed dates for renewals, some members of the Court of First Instance are appointed for a considerably shorter initial term – much too short in the light of the requirements of continuity in the work of the Court and the effort of adaptation demanded of the new judge.

The Court of First Instance feels that it would be helpful to amend those provisions so that every judge, regardless of his or her date of appointment, will always be appointed for a sufficient length of time.

The present system of renewable appointments does, however, appear the best suited to the specific requirements of the way in which the Court of First

Instance operates. Renewal ensures the continuity in the exercise of the judicial function required by the nature of the litigation which the Court has to deal with.[22]

Finally, the Court of First Instance wishes to draw the attention of the Conference to the fact that any projected intervention by the Parliament in the procedure for appointing judges should be confined to the initial appointment, for the obvious reason that it cannot extend to a review of the manner in which judicial functions have actually been carried out. Any such intervention by the Parliament should be solely for the purpose of ascertaining whether the prospective nominees possess the qualifications required by the Treaty in order to exercise their functions.[23]

IV – APPROPRIATE REFERENCE TO THE COURT OF FIRST INSTANCE IN THE TREATY

The Treaty mentions the Court of First Instance only in Article 168a, with the words 'A Court of First Instance shall be attached to the Court of Justice ...', which derive ultimately from those of the Single European Act by which the Council was empowered to set up a new court. It must nevertheless be asked whether that formula can still be considered satisfactory today.

It seems contrary to the need for clarity and transparency in the provisions of the Treaty that Article 4, which lists all the institutions and organs of the Community, should make no reference to the Court of First Instance. The failure to mention the Court of First Instance, which is now an integral part of the Community's judicial system, constitutes all the more serious a lacuna in that, unlike the organs mentioned in Article 4(2), the Court exercises decision-making powers.

The Court of First Instance therefore wishes to point out to the Intergovernmental Conference that it might be desirable to make good that omission in the present version of the Treaty by inserting into Article 4 an appropriate reference to the Court of First Instance, thus making it clear that the

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22 – In this regard, the report of the Committee on Institutional Affairs of the European Parliament 'on the role of the Court of Justice in the development of the European Community's constitutional system', drawn up by Mr Willi Rothley and submitted on 13 July 1993, stresses that there is no need, for the moment, to change the way in which the members of the Court of First Instance are appointed (PE 155.441/fin.).

23 – In this regard, it should be borne in mind that the working document of the Committee on Institutional Affairs of the European Parliament on the 'composition and appointment of judicial organs and of the Court of Auditors', prepared by Mr Brendan Donnelly and submitted on 19 January 1995 (PE 211.536) likewise stresses that any new procedure ' should ensure that any parliamentary scrutiny avoids political considerations and concentrates entirely on verifying the qualifications required of office-holders in Articles 167 and 168a of the Treaty, namely that a nominee can demonstrate his or her independence and that they have held high judicial office or can otherwise show outstanding legal abilities.'

Community's judicial system is a two-tier system. Such a result might be achieved, for example, by inserting a provision to the effect that, within the Court of Justice as an institution, a Court of First Instance assists that Court in carrying out the tasks assigned to it, within the limits of the powers conferred upon it by the Treaty. Such an amendment to Article 4 would in no way alter the present institutional structure as laid down by the Treaty.

In that context, a change in the name of the Court of First Instance might be envisaged, as some have proposed. The Court is well aware that the name 'Court of First Instance' does not correspond in reality to the role it plays within the Community judicial system. On the one hand, its decisions on questions of fact are final and, on the other hand, it hears and determines appeals against decisions taken by quasi-judicial authorities. At the present stage, however, the Court of First Instance will not put forward any proposal for a change in its name, which is now familiar in the relevant legal circles.

Original version: French
Completed on: 24 May 1995
Catalogue No: DX-AC-95-015-EN-C

5.

COURT OF AUDITORS

REPORT OF MAY 1995

TO THE REFLECTION GROUP

ON THE OPERATION OF THE TREATY ON EUROPEAN UNION

INTRODUCTION

0.1. The European Council, meeting in Corfu on 24 and 25 June 1994, decided to set up a "Reflection Group" with the task of preparing the 1996 Intergovernmental Conference (IGC) provided for by Article N(2) of the Treaty on European Union. At the same time it invited the Community Institutions to draw up reports on the operation of the Treaty on European Union.

0.2. In the presentation of this report, the Court of Auditors wished in particular to highlight the inadequacies, the imperfections or the shortcomings of the present system for the management and control of Community funds which need to be remedied. It also wished to make more specific proposals for amending the Treaties or raise more general questions to which the IGC will have to give the appropriate answers.

1. THE GENERAL FRAMEWORK WITHIN WHICH THE COURT OF AUDITORS OPERATES WITHIN THE EUROPEAN UNION

Audit of the Union's finances by the Court of Auditors

1.1. The entry into force of the Maastricht Treaty has enabled the construction of Europe to enter a new stage, marked by the advent of the European Union, which was followed by several significant changes, amongst which were the election of a new European Parliament, the accession of Austria, Finland and Sweden to the Union and the appointment of a new Commission. At the same time, the necessary instruments were created and equipped with considerable financial resources for the purpose of achieving the twofold objective of carrying out the enlargement of the Union and respecting the commitments arising from the provisions of the Maastricht Treaty, especially as regards economic and social cohesion, the financing of trans-European transport networks and increased financial aid to the countries of Central and Eastern Europe and the Commonwealth of Independent States([1]).

1.2. The objective of financial and budgetary instruments is to ensure that policies which were formerly attributed to the Community and are now assigned to the Union are implemented as effectively and economically as possible. The Commission is responsible for the most efficient use or, according to the terms of the Treaty, the "sound financial management", of European public funds and the resources needed to develop Community activities. It is also responsible for accounting, in a spirit of democracy - this latter need is felt more and more pressingly - for the execution of

([1]) Thus the European budget alone has been multiplied by 2.7 in ten years, rising from 28 800 Mio ECU in 1985 to 79 800 Mio ECU in 1995. These are large sums, which have been given to the Union so that it may achieve the objectives that have been assigned to it in new fields and/or promote new policies or deal with its original objectives, such as in the field of the Common Agricultural Policy.

these policies, whether included in the budget or not, and is the body responsible for implementing the budget and managing a number of non-budgetary financial instruments.

1.3. The Court of Auditors' duty is to act as the external auditor of European public finances and to do so quite independently. The Member States conferred full institutional status upon the Court in the Maastricht Treaty, thus placing it on an equal footing with the "auditee".They also entrusted it with the new task of henceforth submitting to the European Parliament and the Council of the Union a Statement of Assurance (SOA) concerning the reliability of the accounts and the legality and regularity of the underlying transactions. This task is additional to the Court's normal work, which consists of producing Annual Reports and Special Reports and making observations on certain matters or giving opinions on specific questions at the request of other institutions, and/or opinions which must be delivered before the legislative authorities approve any provisions of a financial nature.

The Court's position within the institutional balance

1.4. In a system where the legislative and executive functions are shared between several institutions, the Court's status has developed in step with the evolution of this interinstitutional balance. For example, when the Treaty of Brussels took force on 22 July 1975 it established a system for sharing budget-related responsibilities between the Parliament, the Council and the Commission which required, as a corollary, the creation of an independent control body, the Court of Auditors.

1.5. Under the discharge procedure, the Court draws up Annual Reports and Special Reports on sound financial management, which then support, and form the basis for, the discussions held between the Commission, the Council and the European Parliament, with the latter taking the final decision as to whether to grant discharge to the Commission or withhold it. The Court's participation in the legislative procedure concerning financial and budgetary matters takes the form of detailed opinions delivered before any legislative text containing financial provisions is approved, in particular concerning the Financial Regulation and texts relating to the making available of own resources.

1.6. The amendment of the status of the Court and the extension of the range of tasks assigned to it are part of an overall enlargement, under the Treaty of Maastricht, of the powers and responsibilities conferred on the Institutions in budgetary and financial matters. These involve budgetary discipline in particular, which is to be exercised by the Commission([2]) at the same time as it implements the budget in accordance with the principle of sound financial management([3]), and measures taken by the Member

([2]) Article 201(a) of the EC Treaty.

([3]) Article 205 of the EC Treaty.

States to combat fraud affecting the Community's financial interests([4]). For the same purpose, the European Parliament may ask the Commission to give explanations on matters concerning budget implementation or the operation of the financial control systems([5]). For its part, the Commission does its best to follow up the European Parliament's observations, and reports to it on the measures taken([6]). Fraud, waste and inefficient management must be combatted as vigorously as possible: this objective was made explicit in the Maastricht Treaty and was vigorously reasserted at the meeting of the European Council held in December 1994 in Essen and by the Commission President, Mr. Santer, when he addressed the European Parliament in January 1995, at the time of the investiture of the new Commission. Mr. Santer stressed the need to make the necessary efforts to combat fraud against the Community's financial interests through both the management methods of the Institutions, especially the Commission, and national administrations, and by all parties in the matter of strengthening controls designed to prevent fraud.

The Court's priorities within the framework of the IGC

1.7. (a) Optimum external control requires certain responsibilities to be clarified, including in particular the Court's audit tasks, a matter which is dependent on certain appropriate measures being taken, e.g.:

- the field of application of the Court's audit powers should be clarified in areas which are not, or are only partly, covered by the inadequately explicit provisions of the Treaty on European Union. In accordance with the logic of this Treaty as a whole, it is important for the Court to be officially recognized as the Court of Auditors of the Union;

- it should be possible for the Court to institute legal proceedings, whenever it is prevented from carrying out its tasks satisfactorily. From the point of view of the SOA in particular, bearing in mind the importance of this new task, it is essential that the Court be granted the right of direct access to the Court of Justice in order to safeguard its prerogatives;

- the Court should be automatically entitled to audit all revenue and expenditure managed on behalf of the Community.

(b) In the field of Community management and the protection of its finances, the main question is that of improving the current system of internal control, particularly as regards the implementation of the budget: the Court established as much several years ago during its on-the-spot and documentary audits. The current model laid down by the Financial Regulation has revealed its limitations and shortcomings when it comes

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([4]) Article 209 of the EC Treaty.

([5]) Article 206(2) of the EC Treaty.

([6]) Article 206(3) of the EC Treaty.

to making those responsible for the management of Community public funds answerable for their actions. It is therefore appropriate to carry out an examination of the sort this matter warrants in preparation for the 1996 IGC. This examination should also look at the desirability of developing a system at Community level which will be more effective in making budget managers and financial officers more responsible and which could lead to the implementation of a strengthened procedure by which authorizing officers, Financial Controllers and accountants who are at fault may be punished with pecuniary penalties, i.e. the adoption and establishment of a specific structure of budgetary and financial discipline.

2. SPECIFIC ASPECTS OF THE COURT OF AUDITORS' RESPONSIBILITIES AND TASKS

Control of the second and third "pillars" (CFSP and JHA)

2.1. Since the Court is not mentioned in Article E of the Treaty on European Union (TEU), it is proposed that it should be referred to along with the other Institutions, which would actually mean amending the TEU.

2.2. This is proposed because the Court is in fact required to audit expenditure incurred under the second and third "pillars" which is chargeable to the budget of the European Communities. The expenditure involved is administrative expenditure in all cases (Articles J.11, paragraph 2, first sub-paragraph, and K.8, paragraph 2, first sub-paragraph, TEU), as well as operational expenditure if the Council decides to charge it to the European Communities' budget (Articles J.11, paragraph 2, second sub-paragraph, first indent, TEU).

2.3. The Court has also been approached about the possibility of controlling expenditure chargeable to Member States on a sliding-scale basis (e.g. the Europol budget), and has even been called upon to audit such expenditure (1994 expenditure, Mostar). In addition to these cases and when expenditure relating to projects carried out within the "pillars" remains directly chargeable to the national budgets and is controlled independently by the national audit authorities, the Court could be assigned a role, whilst respecting the control powers vested in those authorities.

The Court's external control tasks and access to the Court of Justice

2.4. When the Court audits the Community's finances it considers the legality and regularity of the revenue and expenditure and examines the soundness of the financial management, after which it makes its findings public. The TEU also conferred upon the Court the new task of submitting to the European Parliament and the Council an annual "Statement of Assurance concerning the reliability of the accounts and the legality and regularity of the underlying operations" (SOA). The first SOA, concerning the 1994 budget, will be submitted at the end of 1995.

2.5. The extensive controls necessary to carry out these tasks satisfactorily require the Court to be given the opportunity fully to exercise the right accorded to it under the terms of Article 188 C, paragraph 3, EC, (and the corresponding provisions of the ECSC and Euratom Treaties) of being given all of the information that it needs to carry out its controls, regarding both revenue and expenditure. This right must be respected if the Court is to help to safeguard the Community's financial interests in any meaningful way.

2.6. It is therefore suggested that the Court, in accordance with its status as an Institution, should also be given the means to ensure that its rights and prerogatives in this respect are interpreted and upheld by the Court of Justice. To this end, a new Article 180(a) and a paragraph 5 to Article 188(c) could be added to the EC Treaty.

Auditing funds managed on behalf of the Communities

2.7. A large share of the Community's funds is not managed by the Commission but by other bodies acting on behalf of the Community. This situation may nevertheless not be allowed to result in the Community Institutions losing control over the management of these funds.

2.8. As far as the Court is concerned, there is the important matter of obtaining access to the information it needs for audit purposes. Article 188(c), paragraph 3, EC, does not cover the matter of access to information held by bodies which manage funds on behalf of the Communities, are independent of the Member States and were not set up by the Communities. The same also applies to bodies set up by and managing funds for the Communities whose constituent instrument does not provide for control by the Court.

2.9. The Court considers that, given this lacuna and in the light of the volume of funds concerned, there should be explicit provision in the Treaty for access to the information concerned in the cases envisaged in 2.8. It is therefore proposed that Article 188 (c)(3) should be amended so that "bodies which manage items of revenue and/or expenditure on behalf of the Community" are explicitly mentioned as bodies which must accept documentary controls or on-the-spot audits and should also communicate any document or information needed by the Court to discharge its duties.

Consultation of the Court

2.10. The Court takes part in the legislative process by giving Opinions on certain draft regulations. It must be consulted in the cases covered by Article 209 EC and may be consulted in other cases.

2.11. As far as compulsory consultation is concerned, the Court considers that Article 209 EC should be used as the legal basis for all legislation intended to lay down new financial regulations or to derogate from the Financial Regulation.

2.12. As regards optional consultation, this possibility could be better exploited in the sense that the Court could be systematically consulted on any draft legislation which, on bases other than Article 209, affects the Community's budgetary and financial mechanisms, especially regarding control. It is thinking, for example, of the draft regulation on the protection of the Community's financial interests, on which it was not consulted.

3. SPECIFIC ASPECTS OF THE IMPLEMENTATION OF THE BUDGET

Fighting fraud

3.1. Fraud against Community funds is likely seriously to undermine the credibility of the Union. Fighting fraud is therefore a primordial task for each of the Institutions and Member States.

3.2. In order to carry out anti-fraud measures successfully, a legal framework is first indispensable. Such a framework must define the Community's responsibilities and those of the national authorities and must lay down effective procedures and balanced means for repressing fraud. The Court of Auditors is pleased to see that efforts are being made to introduce new legislation in this field and it hopes that they will create a satisfactory legal framework.

3.3. When it audits the legality and the regularity of Community revenue and expenditure, the Court has a role to play in fighting fraud, both by preventing it thanks to its external auditor role, by detecting cases of presumed fraud when it audits the accounts and the underlying transactions, and also when it audits the operations of those administrative authorities that, side by side with the judiciary, are primarily responsible for fighting fraud against Community funds. It should however be stressed that the Court's effectiveness in fighting fraud is a direct function of the resources available to it and of the ease and degree of directness of its access to all the data it needs to inspect during the audits: it ought, where necessary, to be able to obtain access to these by an order of the Court of Justice (see 2.4 - 2.6 above).

Responsibility for implementing the budget

3.4. The Court believes that it must stress, without prejudice to the important system of shared management between the Commission and the Member States, that Article 205 EC states that the Commission is solely responsible for the implementation of the budget. In this respect, the Court observes that the principle of subsidiarity, important as it is, is sometimes wrongly cited in order to shift that responsibility from the Community to the national level.

3.5. The Court must also direct the reader's attention to an aspect of the implementation of the budget which receives too little attention, namely the question of recovering unwarranted payments. It has observed that in the past too few concrete results have been achieved int his field.

3.6. The question of responsibility for the implementation of the budget is also too important for the manner in which that responsibility is discharged not to be accompanied by detailed rules on the responsibility of the individuals whose task is to implement the budget in their daily work. The Court, however, has observed that there are significant legislative loopholes regarding the internal control systems, as well as the responsibility of authorizing officers, Financial Controllers and accounting officers - although such matters are specifically dealt with in Article 209 EC. Cases where a financial official may be held responsible are only vaguely defined in the Financial Regulation and the procedures for bringing people to account have proved ineffective. This has resulted in a very limited number of cases in which errant officials have been disciplined or required to make up deficiencies from their own pockets. The system

encourages the feeling in the minds of authorising officers that they are not in fact themselves responsible for what they do, thanks to the guarantee offered in their support by the prior approval of the Financial Controller. This latter official, in turn, might be less inclined to submit expert reports to his Institution(7), in particular concerning the application of the principle of sound financial management, in respect of expenditure for which he had already indicated ex ante approval.

3.7. It follows from this that, in order to make good these shortcomings, the following amendments to the legislation are more necessary than ever: the context and extent of the responsibility of authorising officers, Financial Controllers and accounting officers must be defined in detail; the Institutions must be required to check the way in which individual responsibilities have been discharged; a strengthened procedure for sanctioning authorising officers must be introduced at Community level and, if necessary, a specific structure for supervising budgetary and financial discipline could be introduced: such a structure, which might offer the option of direct recourse to the Court of Justice, could establish the pecuniary responsibility of errant officials and punish them. As the Court already possesses the power of enquiry, it could play a part in such a structure.

4. ORGANIZATION OF THE COURT OF AUDITORS

4.1. In the experience of the Court of Auditors, which is organized and acts in accordance with the principle of collective responsiblity, as laid down in the Treaties, the consecutive increases in the number of its Members from 9 to 15 have not in any way affected the efficiency of its work. On the contrary, the Court of Auditors has found the increases in the number of its Members as a result of the successive enlargements very welcome because in practice they have been accompanied by an increase in the Institution's work-load. For example, the most recent increase has coincided with the Court of Auditors' new task of providing an SOA, with the increase in the budget and with the introduction of new Community policies, all of which has considerably increased the Court of Auditors' workload.

4.2. Moreover, when the Court of Auditors was established on 18 October 1977 it was decided that reappointments or replacements of Members would occur on a regular, cyclical basis (first after 4 years, then 2 years, then after a further 4 years), pursuant to Article 206 of the former EEC Treaty. However, this system has not functioned since 1989, in particular because of delays in the procedure for appointing Members. Consequently, Members are now replaced according to a different timetable.

4.3. As this new situation poses, inter alia, considerable problems for the election and the period of office of the President of the Court of Auditors and for the institution's work programme, it is proposed that, by analogy with the provisions which apply to the

(7) Cf. Art. 40 of Reg. No 3418/93 laying down implementing procedures for the Financial Regulation.

Members of the Court of Justice and after a transitional period to be determined by the political authorities, half of the Members should be replaced on a given date every three years.

5. OTHER PROPOSED ADAPTATIONS

Auditing of the ECSC

5.1. The former Article 78 F ECSC distinguished between the auditing of administrative revenue and expenditure (paragraph 1) and the auditing of other revenue and expenditure (paragraph 5). As the new Article 45 C ECSC lays down, in paragraph 1, that the Court of Auditors shall examine the accounts "of all revenue and expenditure of the Community", paragraph 5 of the same Article, which still refers to the other revenue and expenditure, has become superfluous. It is therefore proposed that paragraph 5 of Article 45 C should be deleted.

The reference in the Treaties to the status of the Members of the Court of Auditors

5.2. For the sake of rationality and simplicity in the harmonization of the Treaties, it is proposed that the status of the Members of the Court of Auditors should be defined by Article 154 EC (and Articles 29 ECSC et 123 EAEC) and that, at the same time, Article 188 B (8), EC should be repealed (and Articles 45 B (8) ECSC and 160 B (8) EAEC).

The composition of the budget

5.3. It is proposed that the Court of Auditors should be mentioned along with the other Institutions in Article 202(4) EC, which concerns the separate parts of the budget (and in the corresponding Articles in the ECSC and EAEC Treaties). The Treaties would thus reflect the institutional reality.

6. FOLLOW-UP OF THE WORK OF THE "REFLECTION GROUP" AND OF THE IGC

6.1. During the "Reflection Group" stage, the Court would like to be involved in the most appropriate way in the follow-up of the work of the "Reflection Group", either by being given observer status - if such a status should be created - or through the creation of a stable form of liaison which would enable it to monitor the work, so as to be informed as accurately as possible, and be given copies of all discussion papers. During the actual IGC, the Court would like to be given copies of all documents relating to its activities that will be submitted to the Ministers, or to their representatives, so that it may, where appropriate, make its own views on the subject known.

6.2. Generally speaking, the Members of the Court of Auditors are prepared to make any contribution that may help to improve the entire system of control of the Union's finances available to the "Reflection Group" and to the Conference throughout the period of its work. Moreover, the Court reserves the right to submit its own observations on reports or observations made or submitted by other bodies, to the extent

that such reports or observations directly or indirectly concern the status and powers of the institution, or, more generally, the system of control of Community finances.

ANNEX

AMENDMENTS TO THE TEXT OF THE TREATIES
which may result from the observations made by the Court of Auditors in its report

PRESENT TEXT	PROPOSED AMENDED TEXT	COMMENTS
	The audit of the 2nd and 3rd pillars	
Article E TEU: "The European Parliament, the Council, the Commission and the Court of Justice shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modiying and supplementing them and, on the other hand, by the other provisions of this Treaty."	Article E TEU: "The European Parliament, the Council, the Commission (...) the Court of Justice **and the Court of Auditors** shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty."	Mention of the Court in Article E of the TEU with the other Institutions (see 2.1 - 2.3 of the report).
	The audit powers of the Court of Auditors and access to the Court of Justice	
	Article 180(a) EC: **"The Court of Justice shall have jurisdiction in disputes concerning such rights and prerogatives as have been conferred on the Court of Auditors by this Treaty".** Article 188(c)(5), EC: **"Any infringement of the rights and prerogatives of the Court of Auditors may be placed by the latter before the Court of Justice. If the Court of Justice finds that an infringement has occurred, the persons responsible shall take such steps as may be necessary to comply with the Court of Justice's ruling".**	Provision for the Court of Auditors to refer disputes to the Court of Justice: - new article 180(a) EC; - addition of a paragraph to Article 188(c) EC (see 2.3 - 2.6 of the report)

PRESENT TEXT	PROPOSED APPENDED TEXT	COMMENTS
The audit of the bodies which manage funds on behalf of the Communities		
Article 188(c)(3) EC: "3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or derpartments shall inform the Court of Auditors whether they intend to take part in the audit. The other institutions of the Community and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."	Article 188(c)(3) EC: "3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community, **on the premises of any body which manages revenue and/or expenditure on behalf of the Community** and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or derpartments shall inform the Court of Auditors whether they intend to take part in the audit. The other institutions of the Community, **any body that manages revenue and/or expenditure on behalf of the Community** and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task."	Explicit recognition in the Treaty of the Court of Auditors' option of obtaining information from bodies that manage funds on behalf of the Community (see 2.7 - 2.9 of the report).

PRESENT TEXT	PROPOSED AMENDED TEXT	COMMENTS
The audit of the bodies which mange funds on behalf of the Communities		
Article 188(b)(3) EC: "3. The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament. However, when the first appointments are made, four Members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only. The Members of the Court of Auditors shall be eligibile for reappointment. They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected."	Article 188(b)(3) EC: "3. The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament. **The Members shall be partially renewed once every three years on a fixed date. The number of Members concerned shall be alternatively eight and seven. The transitional measures needed to introduce this system of partial renewal shall be adopted by the Council, acting unanimously after consulting the Court of Auditors.** The Members of the Court of Auditors shall be eligibile for reappointment. They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected."	Renewal of the Members' appointments on a fixed date, once every three years (see 4.2 and 4.3 of the report) N.B.: The same proposal applies to Articles 45(b)(3) ECSC and 160(b)(2) EEAC.
Auditing the ECSC		
Article 45(c)(5) ECSC: "The Court of Auditors shall also draw up a separate annual report stating whether the accounting, other than that for the expenditure and revenue referred to in paragraph 1, and the financial management relating thereto, have been effected in a regular manner. It shall draw up this report within six months of the end of the financial year to which the accounts refer and shall submit it to the Commission and the Council. The Commission shall forward it to the European Parliament."	Article 45(c)(5) ECSC: (...)	Deletion of paragraph 5 of Article 45(c) ECSC (see 5.1 of the report).

PRESENT TEXT	PROPOSED AMENDED TEXT	COMMENTS
Reference in the Treaties to the status of the Members of the Court of Auditors		
Article 154 EC: "The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice. It shall also, again by qualified majority, determine any payment to be made instead of remuneration."	Article 154 EC: "The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice, **as well as of the President and Members of the Court of Auditors**. It shall also, again by qualified majority, determine any payment to be made instead of remuneration."	Mention of the President and Members of the Court of Auditors in Article 154 EC with the Members of the other Institutions (see 5.2 of the report). N.B.: The same proposal applies to Articles 29 ECSC and 123 EAEC.
Article 188(b)(8) EC: "The Council, acting by a qualified majority, shall determine the conditions of employment of the President and Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration."	Article 188(b)(8) EC: (...)	Deletion of Article 188(b)(8) EC N.B.: The same proposal applies to Articles 45(b)(8) ECSC and 160(b)(8) EAEC.

PRESENT TEXT	PROPOSED AMENDED TEXT	COMMENTS
	The composition of the budget	
Article 202 fourth paragraph, EC: "The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure." Article 78(1), second subparagraph, ECSC: "The administrative expenditure of the Community shall comprise the expenditure of the High Authority, including that relating to the functioning of the Consultative Committee, and that of the Eruopean Parliament, the Council and the Court of Justice."	Article 202 fourth paragraph, EC: "The expenditure of the European Parliament, the Council, the Commission, (...) the Court of Justice **and the Court of Auditors** shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure." Article 78(1) second subparagraph ECSC: "The administrative expenditure of the Community shall comprise the expenditure of the High Authority, including that relating to the functioning of the Consultative Committee, and that of the European Parliament, the Council, (...)the Court of Justice **and the Court of Auditors.**".	Mention of the Court of Auditors in the fourth paragraph of Article 202 with the other Institutions (see 5.3 of the report). N.B.: The same proposal applies to Articles 78(a) fifth subparagraph ECSC and Article 175, fourth paragraph, EAEC Mention of the Court of Auditors in Article 78(1), second paragraph ECSC, along with the other Institutions.

6.

ECONOMIC AND SOCIAL COMMITTEE

OPINION OF 22 NOVEMBER 1995

ON THE 1996 INTERGOVERNMENTAL CONFERENCE

AND THE ROLE OF THE ECONOMIC AND SOCIAL COMMITTEE

I. INTRODUCTION

Following the entry into force of the TEU, the ESC has held wide-ranging discussions on its aims as an advisory body, on how it may best advance its role, and also on strengthening the links that it maintains between the process of European integration and citizens' groups.

In April 1995 the Bureau adopted a document (CES 273/95) on the role of the Committee. The first part gives an overview of Europe's future; the second part deals with the following proposed changes to the Treaty. These are the results of the detailed discussions held at the ESC.

This Opinion was drawn up, following extensive discussions, by the Ad Hoc Group set up by the Bureau. The members of the Group were:

President:	Carlos FERRER (ESC President)
Rapporteur:	Giacomina CASSINA
Co-Rapporteurs:	Manuel CAVALEIRO BRANDÃO (President of Group I - Employers) Tom JENKINS (President of Group II - Workers) Beatrice RANGONI MACHIAVELLI (President of Group III - Various Interests)
Members:	André LAUR (ESC Vice-President) Klaus BOISSEREE (member of Group III) Bent NIELSEN (ESC Vice-President) Jean PARDON (President of the Section for Economic, Financial and Monetary Questions)

The Committee will continue this consideration of its aims in the short and longer term in order to make changes to - and heighten - its representativeness. The goal of its assessment will be to help tackle the major issues facing European society, including job creation, in order to further the European social model and reshape society by fully involving citizens' groups in the European venture.

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On 23 November 1995 the Economic and Social Committee, acting under the third paragraph of Rule 23 of the Rules of Procedure, decided to draw up an Own-initiative Opinion on:

The 1996 Intergovernmental Conference: the role of the Economic and social Committee.

The Bureau's Ad Hoc Group on the 1996 IGC and the role of the Committee was instructed to prepare the ESC's work on the subject. The Rapporteur was Mrs CASSINA.

At its 330th Plenary Session (meeting of 23 November), the Committee adopted the following Opinion by a large majority, with 2 abstentions.

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II. PROPOSED AMENDMENTS TO THE TREATY ON EUROPEAN UNION

1. In discharging its consultative duties and, inter alia, through the use of its right of initiative, the ESC has often guided and even encouraged the Commission to draft proposals to respond to the changing needs of European society. The Commission's concern that the "pre-legislative" phase should be more fully prepared has led it to step up consultations, not only with the social partners and national authorities, but also in many cases with organizations representing specific interests and even private individuals. The Committee is therefore prepared to work together with the Commission in organizing consultations prior to the submission of proposals.

In order both to help make the consultative phase preceding the legislative process more transparent, and to consolidate its own consultative work, the ESC proposes the addition of the following paragraph after the first paragraph of Article 198:

"The Commission should consult the Committee before it takes any decisions on matters of relevance to the interests represented on the Committee."

2. Within the framework of the strengthening of democracy and the re-balancing of roles between the institutions, the Committee considers that the possible increased use of the co-decision procedure will require stronger consultative powers to meet society's expectations more fully. The ESC is also ready to perform its advisory duties with regard to the European Parliament.

The ESC therefore requests that it be empowered, where appropriate, to contribute to the procedure laid down by Article 189b, at the second reading stage. The ESC Rapporteur for the proposals dealt with under this procedure could attend meetings of the Conciliation Committee as an observer.

The following sentence should be added to the end of Article 189b(4):

"The Economic and Social Committee shall attend the Conciliation Committee's proceedings as an observer."

3. As a body representing economic and social interest groups directly involved in the establishment of Economic and Monetary Union, the ESC is closely monitoring this complex process, particularly through reports and Own-initiative Opinions on EMU itself and, in particular, on its socio-economic impact on European society.

The ESC requests that its consultative work be made more effective by recognition of its **right to be informed** under the procedures for multilateral surveillance of the economic policies of the Member States.

In the final paragraph of Article 103(2), the words "and the Economic and Social Committee" should be added after "shall inform the European Parliament". In the second paragraph of Article 103(4), the words "and shall inform the Economic and Social Committee" should be added after "multilateral surveillance".

4. The ESC has made a firm commitment to promoting the Citizens' Europe, while calling for it to be underpinned by a transparent legal framework, and for specific measures to be taken to achieve it.

The ESC therefore requests that in Article 8a(2) the words "and the opinion of the Economic and Social Committee" be added after "of the European Parliament". Similarly, in Article 8b(1) the words "and the Economic and Social Committee" should be added after "the European Parliament", and in the second paragraph of Article 8e, the words "and the Economic and Social Committee" should be added after "the European Parliament".

5. The Committee has always taken account of the cultural dimension of the integration process in its Opinions. The cultural aspect has implications for other policies (and vice-versa); these implications necessarily concern the Committee when European society is involved.

The ESC therefore requests that it be consulted on EU cultural policy.

In the first indent of Article 128(5), the words "the Economic and Social Committee and" should be inserted after "consulting".

6. The Single Market Observatory, set up with the support of the European Parliament, should be incorporated into the ESC's institutional tasks.

The following paragraph should be inserted at the end of Article 197:

"An observatory shall be established to analyze, review and report on the operation and further development of the internal market."

7. The ESC has done substantial work in developing contacts with its natural discussion partners in third countries. In many cases, it has promoted socio-professional dialogue, sometimes even before the Commission has taken any action, and on each occasion with positive results for dialogue and cooperation in the broad sense between the EU and third countries.

The ESC requests that this important function be institutionalized in all the Association Agreements. The ESC also requests that it be consulted on applications for accession.

In the first paragraph of Article O, "*and the Economic and Social Committee*" should be added after "*the Commission*".

8. The Council consults the EP on policies concerning cooperation in the fields of justice and home affairs. The ESC advocates a higher profile role for the EP in these policies, even if they are not put on a Community-wide footing. Most of these policies have a significant impact on citizens, European society and its constituent organizations. For this reason, the ESC is directly concerned.

The ESC requests that it be briefed on these policies in order to be able to act, under its right of initiative, on a more concrete basis and with maximum transparency in its relationships with the Council and the Commission.

The first paragraph of Article K.6 should be amended by adding the words "and the Economic and Social Committee" after "the European Parliament".

9. With due regard for the principle of subsidiarity, the ESC considers that any decision to broaden the European Union's powers to act must always be shared by the citizens and by organized society.

The ESC feels that - insofar as Article 235 is retained - the co-operation procedure should be used, and that consultation of the ESC should also be mandatory.

10. By diversifying its consultative role, the ESC has successfully responded to the demand for greater representation arising from the development of the integration process, and to the diversity of European society. This should be reflected in the Treaty.

The ESC proposes, therefore, that Articles 193 to 198 be amended as follows:

10.1. An amendment to Article 194, 2nd paragraph: The ESC's term of office should be aligned with that of the EP and the Commission (5 years).

10.2. The fourth paragraph of Article 194 should be deleted.

10.3. The Council's and Commission's role in convening the ESC should be abolished: In the third paragraph of Article 196, the text following "its chairman" should be deleted up to the end of the Article.

10.4. The second paragraph of Article 197 should be deleted, since the development of the integration process and of the ESC, combined with the autonomy it enjoys in determining its Rules of Procedure, have rendered the list contained in this paragraph incomplete and obsolete.

10.5. An amendment to Article 198, 3rd paragraph, to ensure that Opinions are followed up, by adding the following sentence: "The institutions which are assisted by the ESC shall inform it of the follow-up to the opinions issued." This information might, for example, be supplied by means of publication in the Official Journal.

11. The specification in Article 193 of the categories of economic and social activity to be represented is unsatisfactory, as it has remained unchanged since the ESC was first formed. The list of categories should be updated to take account of the major changes which have taken place during the last forty years in economic activity and in the pattern of employment together with those changes which are currently taking place as a result of, for example, the "information revolution".

12. With successive amendments to the Treaty, the ESC has secured greater responsibilities and autonomy. This has come about because the ESC has always succeeded in taking stock of its mission, its experiences and its prospects, and in gearing its work to the complex requirements of the consultative function within the integration process. Another factor has been the ESC's ability to commit itself to representing rapidly-changing socio-professional interests, above and beyond the basic role assigned to it in the Treaty.

The ESC therefore declares that it is "de facto" an Institution with an advisory role and requests that the 1996 IGC grant it "de jure" institutional status with all that this entails, in particular the right to bring an action before the Court of Justice, as laid down in the first paragraph of Article 175. With this in mind, the ESC proposes the following amendments:

12.1. In **Article 4(1)**, "an ECONOMIC AND SOCIAL COMMITTEE" **should be added** after "a COURT OF AUDITORS".

12.2. Article 4(2) should be deleted.

12.3. The first paragraph of Article 193 should be replaced as follows: "The Economic and Social Committee in its capacity as an advisory body, shall assist the institutions which exercise legislative powers where this Treaty so provides."

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III. THE PROPOSALS IN CONTEXT

N.B. TEU Articles are reproduced in the order in which they are mentioned in the Report.

Current text of the TEU	ESC Proposal
THE ECONOMIC AND SOCIAL COMMITTEE	
(1) Article 198, 1st paragraph The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.	**Article 198, 1st paragraph** The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate. <u>The Commission should consult the Committee before it takes any decisions on matters of relevance to the interests represented on the Committee.</u>
PROVISIONS COMMON TO SEVERAL INSTITUTIONS	
(2) Article 189b(4) The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.	**Article 189b(4)** The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. <u>The Economic and Social Committee shall attend the Conciliation Committee's proceedings as an observer.</u>

Current text of the TEU	ESC Proposal
ECONOMIC POLICY	
(3) Article 103(2), final paragraph [The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community (Art. 103, second paragraph). On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.	**Article 103(2), final paragraph** The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community. On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament and the Economic and Social Committee of its recommendation.
(3) Article 103(4), 2nd paragraph The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.	**Article 103(4), 2nd paragraph** The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance and shall inform the Economic and Social Committee. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.
CITIZENSHIP OF THE UNION	
(4) Article 8a(2) [Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect. (Article 8a (1))] The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament.	**Article 8a(2)** The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and the opinion of the Economic and Social Committee.

Current text of the TEU	ESC Proposal
(4) Article 8b(1) Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.	**Article 8b(1)** Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee; these arrangements may provide for derogations where warranted by problems specific to a Member State.
(4) Article 8e, 2nd paragraph [The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee before 31 December 1993 and then every three years on the application of the provisions of this Part. This report shall take account of the development of the Union. (Article 8e, 1st paragraph)] On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights laid down in this Part, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.	**Article 8e, 2nd paragraph** On this basis, and without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, may adopt provisions to strengthen or to add to the rights laid down in this Part, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Current text of the TEU	ESC Proposal
CULTURE	
(5) Article 128(5), first indent 5. In order to contribute to the achievement of the objectives referred to in this Article (culture), the Council: - acting in accordance with the procedure referred to in Article 189b and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 189b;	**Article 128(5), first indent** 5. In order to contribute to the achievement of the objectives referred to in this Article (culture), the Council: - acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 189b;
THE ECONOMIC AND SOCIAL COMMITTEE	
(6) Article 197, final paragraph [Economic and Social Committee ... specialized sections ... agricultural and transport sections ... terms of reference of specialized sections ... subcommittees ...etc.] The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialized sections and of the subcommittees.	**Article 197, final paragraph** [Economic and Social Committee ... specialized sections ... agricultural and transport sections ... terms of reference of specialized sections ... subcommittees ... etc.] The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialized sections and of the subcommittees. An observatory shall be established to analyze, review and report on the operation and further development of the internal market.
FINAL PROVISIONS (TITLE VII)	
(7) Article O, first paragraph Any European State may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.	**Article O, first paragraph** Any European State may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and the Economic and Social Committee and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

Current text of the TEU	ESC Proposal
PROVISIONS ON COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS	
(8) Article K.6, first paragraph The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this Title.	**Article K.6, first paragraph** The Presidency and the Commission shall regularly inform the European Parliament and the Economic and Social Committee of discussions in the areas covered by this Title.
GENERAL AND FINAL PROVISIONS (Part Six)	
(9) Article 235 If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.	Insofar as the Article is retained **Article 235** If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee take the appropriate measures.
THE ECONOMIC AND SOCIAL COMMITTEE	
(10.1.) Article 194, 2nd paragraph The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable.	**Article 194, 2nd paragraph** The members of the Committee shall be appointed by the Council, acting unanimously, for five years. Their appointments shall be renewable.
(10.2.) Article 194, 4th paragraph The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.	DELETE
(10.3.) Article 196, 3rd paragraph The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.	**Article 196, 3rd paragraph** The Committee shall be convened by its chairman.
(10.4.) Article 197, 2nd paragraph In particular, it shall contain an agricultural section and a transport section, which are the subject of special provisions in the Titles relating to agriculture and transport.	DELETE

Current text of the TEU	ESC Proposal
(10.5.) Article 198, 3rd paragraph The opinion of the Committee and that of the specialized section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.	**Article 198, 3rd paragraph** The opinion of the Committee and that of the specialized section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission. The institutions which are assisted by the ESC shall inform it of the follow-up to the opinions issued.
(11.1.) Article 4(1) The tasks entrusted to the Community shall be carried out by the following institutions: - a EUROPEAN PARLIAMENT, - a COUNCIL, - a COMMISSION, - a COURT OF JUSTICE, - a COURT OF AUDITORS.	**Article 4(1)** The tasks entrusted to the Community shall be carried out by the following institutions: - a EUROPEAN PARLIAMENT, - a COUNCIL, - a COMMISSION, - a COURT OF JUSTICE, - a COURT OF AUDITORS - an ECONOMIC AND SOCIAL COMMITTEE
(11.2.) Article 4(2) The Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.	DELETE
(11.3.) Article 193, first paragraph An Economic and Social Committee is hereby established. It shall have advisory status.	**Article 193, first paragraph** The Economic and Social Committee, in its capacity as an advisory body, shall assist the institutions which exercise legislative powers where this Treaty so provides.

Done at Brussels, 23 November 1995.

The President
of the
Economic and Social Committee

Carlos FERRER

The Secretary-General
of the
Economic and Social Committee

Simon-Pierre NOTHOMB

7.

COMMITTEE OF THE REGIONS

OPINION OF 20 APRIL 1995

ON THE REVISION OF

THE TREATY ON EUROPEAN UNION

FORWARD

With an eye on the lengthy process which lies ahead for reforming the Treaty on European Union, the Committee of the Regions has thought fit to submit its own contribution.

The present interim paper, setting out our current thinking, will be forwarded to the European Parliament, the Council of the Union, the European Commission and the Reflection Group. It should allow the Committee of the Regions very soon to launch, with these institutions, the talks necessary for its political activity in the context of the 1996 Intergovernmental Conference.

The COR's Assembly will be able to take account of the results of these interinstitutional talks throughout its work on the reform of the Institutions.

In July, a paper will be drawn up on the developments needed to create a positive momentum with the European Parliament and the other institutions.

The present paper is thus not definitive, but merely represents a point of departure.

The Committee of the Regions calls on the European Parliament and the other EU institutions to inform it of any proposals affecting the Committee of the Regions' powers that might win the COR's support.

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A. EXPLANATORY MEMORANDUM

The revision of the Maastricht Treaty

The Maastricht Treaty is a further milestone on the road towards European integration. It opens up new areas of Union activities whilst at the same time strengthening a number of existing areas and paving the way for a reform of the institutional machinery in order to increase efficiency and democratic legitimacy.

The Maastricht Treaty is the first occasion on which a European constitutional text has included mechanisms for regional and even local participation in the drawing up of Union policies. Moreover, by declaring subsidiarity to be a fundamental principle, the Maastricht Treaty limits Union activities to fields where efficiency requires supranational action; indeed it defines the Union, under the second paragraph of Article A, as one "*in which decisions are taken as closely as possible to the citizen*".

Article N of the Maastricht Treaty stipulates that an Intergovernmental Conference shall be convened in 1996 to examine the revision of certain Treaty provisions. This reflects an awareness that a short-term review of the Treaty is desirable, partly because of the innovative nature of some of its provisions and partly because of the profound changes facing the Union, particularly those stemming from its continuous expansion through the accession of new Member States.

At the Corfu summit held in June 1994 the European Council decided to set up a Reflection Group to prepare for the Intergovernmental Conference, inviting not only the Commission and Parliament, but more generally all the other institutions and bodies forming part of the Community's institutional machinery, to draw up reports and forward their comments to the Reflection Group.

As part of this process the Committee of the Regions, in its capacity as the body representing European regional and local authorities, considers that it would be appropriate to make a contribution to the revision of the Treaty in those areas falling within its remit. These areas will be analyzed later on in this Opinion.

Scope of the Committee proposals

The composition and functions of the Committee of the Regions are such that its remit is limited to regional and local issues. Its experience, and particularly that of the regional and local authorities represented on it, can therefore be brought to bear solely on Union policies affecting the powers and essential interests of "sub-state" levels of government and is naturally confined to the

institutional channels which enable these levels of government under the Maastricht Treaty to participate in the European decision-making process.

The Committee of the Regions has also only recently become part of the institutional make-up of the European Union and thus lacks the extensive experience of the Parliament, Commission and Council. Nor is there any Treaty provision which requires the Committee's participation in the institutional reform process.

Controversy surrounds the extent of the reform. Some institutions are intent on using the Intergovernmental Conference to revise the Treaty in depth with the aim of consolidating a future Union of more than twenty members, whilst the Member States themselves would seem to be more inclined to concentrate on those aspects whose revision is explicitly provided for in the Treaty, seeking to bring about a number of additional changes designed to improve the functioning of Union institutions on the basis of the experiences of the last few years.

The Committee of the Regions, which is a central pillar of democratic legitimacy in the Union, must not only support amendments designed to improve the functioning of the system, but must also lend support to any changes aimed at adapting it to an enlarged Union. The political function and composition of the Committee of the Regions give it the authority to express its views on the revision of the Treaty as a whole, enabling it to participate on a permanent basis in the consultations of the Reflection Group and at a later date in those of the Intergovernmental Conference itself. This Opinion along with the appended resolution - drawn up on the basis of the fourth paragraph of Article 198c of the EC Treaty conferring on the Committee the right to draw up Opinions on its own initiative - constitute the Committee's specific contribution to the Treaty review process. This contribution should focus on aspects that are of direct concern to the Committee of the Regions.

The Maastricht Treaty also provides an extremely solid platform from which to call for improvements in regional and local participation in the Union. When Article N of the Treaty speaks of revision, it points out that this will be carried out in accordance with Articles A and B. The second paragraph of Article A in turn specifies that one of the objectives is to "create an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen". It therefore goes without saying that the formulation of the subsidiarity principle, and the deepening and improving of mechanisms for regional and local participation, are an integral part of the philosophy underlying the revision of the Treaty.

For all of these various reasons the Committee of the Regions has confined its proposals on reform to the following aspects of the Treaty:

- the principle of subsidiarity,

- the system for instituting proceedings in the Court of Justice against acts by the institutions,
- the Committee of the Regions.

It is also proposed that regional and local involvement in the policies of the Union be stepped up and that consideration be given to further developing the concept of European citizenship and cooperation in the fields of justice and home affairs.

The principle of subsidiarity

The principle of subsidiarity implies that the public authorities do not take action when this can be done adequately and effectively by citizens. The principle also introduces the concept of gradation, i.e. higher levels of government act only when lower levels cannot do so satisfactorily. Subsidiarity in general, and subsidiarity within the process of European integration in particular, strengthens:

- democratic legitimacy, inasmuch as it avoids the creation of an excessively centralized European power disconnected from the problems of ordinary citizens, the closeness of the Union to its citizens being one of the basic components of this legitimacy,

- transparency, since it encourages a clear-cut allocation of functions between various levels of government, making it easier for the citizen to identify areas of action appropriate to each level,

- efficiency, since it presupposes that powers are exercised at the most appropriate level of government.

The Committee of the Regions, reiterating the position of its own members and that of the Assembly of European Regions and the Council of European Municipalities and Regions, thus warmly welcomes the inclusion of the principle of subsidiarity in the Maastricht Treaty. It nevertheless regrets that the concrete formulation of the principle of subsidiarity in Article 3b of the EC Treaty does no more than lay down a criterion for the exercise of shared powers between the Union and the Member States.

The Committee of the Regions believes that the principle of subsidiarity needs to be looked at both in terms of its formulation in the Treaty and in terms of its applications, viz: the prior examination of new legislation; the examination of existing legislation; the analysis of the case for undertaking new policies or activities; subsequent monitoring by the Court of Justice. We believe in particular that the Committee of the Regions must be more deeply involved in monitoring application of the principle of subsidiarity and must be brought into the heart of the work done by the Commission in this area.

Despite this, the scope of this Opinion and the appended resolution is restricted to the revision of the Treaty so that we shall be looking only at those aspects requiring constitutional changes at the same time. The Committee of the Regions, acting within the framework of its Special Commission for Institutional Affairs and taking into particular consideration a) the resolution at the Plenary Session of 15 November 1994 and b) the Opinion of the Commission for Regional Development, Economic Development and Local and Regional Finances on the "Application of the principle of subsidiarity in the European Union", will nevertheless also be taking appropriate action to ensure that progress is made on those aspects of subsidiarity which are not to be found in the Treaty and so are not covered by the appended resolution.

On the constitutional front, the Committee proposes a new formulation of Article 3b that defines the principle of subsidiarity not only as a criterion for exercising shared powers between the Union and the Member States, but also as a criterion for sharing powers and responsibilities among all levels of government participating in the European Union; the Committee also calls for appropriate mechanisms that enable it to institute proceedings in the Court of Justice in the event of infringements of subsidiarity affecting the powers of regional and local authorities.

Listing the powers of the Union and of Member States will make it easier to apply the principle of subsidiarity. The Committee of the Regions therefore urges the institutions of the Union, on the occasion of the revision of the Treaty, to initiate negotiations to establish a clear demarcation between the powers of the Union and those of the Member States. The Committee in turn calls upon the Member States to apply the principle of subsidiarity on their own territory, i.e. with regard to their own regions and local authorities.

The system for instituting proceedings in the Court of Justice

In the case of annulment proceedings, Community procedures confer on the Commission, Council and Member States the general right to bring actions, whereas the Parliament and European Central Bank may only bring actions to protect their prerogatives. Other natural or legal persons have to demonstrate that a legal act affects them directly and individually - which in practical terms means that decisions (e.g. sanctions) are applicable to specific parties since in other cases it is very difficult to provide proof. With some modification the same procedure applies to proceedings in the event of failure to act, i.e. when Union institutions have infringed the Treaties by neglecting to take action.

The Committee of the Regions and its constituent members are in an extremely weak position in respect of this system. The nature of the subsidiarity principle coupled with the lack of direct effect make it impossible to appeal against an act or a failure to act of a Union institution in breach of the above principle, insofar as the plaintiff has to provide proof that he has been directly and individually affected. Consequently, the Committee and its constituent members find themselves

in practice in a situation where they are unable to defend themselves - something which is contrary to the spirit of Community law.

The Committee of the Regions thus considers it necessary to propose that, in the case of annulment proceedings, as provided for under Article 173 of the EC Treaty, the Committee should be accorded the same special right to bring actions as the European Parliament and the European Central Bank. In the case of the Committee of the Regions, action could also be taken in order to defend the principle of subsidiarity. This would enable the Committee to fight legal provisions which, by infringing the principle of subsidiarity or demonstrating other violations, are prejudicial to the functions and powers of the Committee of the Regions and its constituent members.

Moreover, the legislative activities of the Union are of particular concern to regions endowed with legislative powers. The Committee therefore proposes that such regions also be granted the right to institute proceedings for the purpose of defending their powers.

In the case of proceedings for failure to act, as provided for under Article 175 of the EC Treaty, the Committee considers it equally necessary to be accorded the same right to bring actions as the institutions. Being accorded the status of an institution (a proposal made elsewhere in this report) would in fact resolve the problem and obviate the need to amend the above-mentioned Article 175.

The Committee of the Regions

The Maastricht Treaty makes it possible for the fist time for regional and local authorities to participate, in an advisory capacity, in the European Union's decision-making process. Such participation is channelled through the Committee of the Regions which, by virtue of its composition and functions, helps to bring the Union closer to the citizen, thereby reinforcing the Union's democratic legitimacy - both of which are basic objectives of the Treaty.

Through Opinions addressed to the Council and Commission, members of the Committee of the Regions make a contribution to refining Community legislation, representing as they do the points of view of the authorities responsible for actually implementing the legislation in a wide variety of fields. In this way they undeniably help to make European policies more effective. At the same time, the constant flow of detailed information stemming from the Committee of the Regions' commitments enables local and regional bodies in the Member States to influence the European policies of their respective central governments.

Despite this, the place occupied by the Committee of the Regions within the institutional machinery and its role in the decision-making process do not allow it to properly reflect

the contribution it makes, through its composition, to strengthening democratic legitimacy and bringing the Union closer to the citizen.

The Committee considers that its position and powers need to be strengthened in the following areas:

- **Institutional position**

Article 4 of the EC Treaty defines the Committee of the Regions as a body which assists the Council and the Commission in an advisory capacity.

The nature and political legitimacy of regional and local authorities, their decisive, overall contribution to the process of European integration, and the role assigned to them in accordance with the principle of subsidiarity (which sees them as two of the political power-sharing levels in the Union), require that the Committee which brings them together and represents them in the Union should be recognized as an institution in its own right.

The Committee furthermore believes that it should be free to draw up its own Rules of Procedure without having to submit them for approval to the Council of Ministers.

- **Composition**

According to Article 198a of the EC Treaty the Committee consists of representatives of regional and local authorities. The democratic legitimacy of which the Committee is guarantor, however, demands a more explicit reference to the political mandate and political legitimacy of its members and to the fact that they are appointed on the recommendation of the authorities they represent.

- **Structure**

The Committee of the Regions should be able to establish its structure and organize its work in keeping with its own specific character and objectives.

- **Organizational and budgetary autonomy**

The Committee needs its own independent administration and its own separate budget. The protocol appended to the Treaty, which refers to a common organizational structure with the Economic and Social Committee, should therefore be deleted and the appropriate budget decisions taken. The Committee should be guaranteed sufficient means to be able to fulfil its function, which is destined to grow in importance in the future.

- **Powers**

The Maastricht Treaty states that the function of the Committee is to respond to requests for Opinions from the Council and Commission, with mandatory consultations limited to the five areas laid down in the Treaty. The Committee may nevertheless expand its scope for action by making use of the right of initiative granted to it under the Treaty.

The Committee considers that its consultative function needs to be strengthened, firstly by providing for consultations by the European Parliament as well as by the Council and Commission, and secondly by extending mandatory referrals to Community policies administered by regional or local authorities in all, or in a significant number of Member States. It is surprising, for example, that there is no consultation of the Committee of the Regions in policy areas such as agriculture, transport, social policy, research and technological development, development cooperation, vocational training, protection of the environment, industry, energy, or consumer protection. Thirdly, without seeking to make Committee Opinions binding, their influence on the decision-making process should be stronger, which means requiring the institutions to justify before the Committee any decision not to follow the recommendations contained in the COR's Opinions.

The Committee also wishes to be more closely associated with initiatives of the Commission, cooperating with this institution at the various stages of producing concrete legislation, legislative programmes or White and Green Papers. The Committee's cooperation would, by definition, be confined to practical areas falling under the jurisdiction of local and regional authorities.

- **The policies of the Union**

The Treaty of Maastricht extends the Union's sphere of competence to new areas of activity which at national level are frequently handled by the regions and in some cases also by the local authorities. This same phenomenon is likewise apparent with some of the Community's traditional policies.

The Committee considers that in these areas it is necessary not only to make consultation of the COR mandatory, but also to offer recognition, in keeping with the principle of partnership, of the contribution regional or even local authorities can make to the policies in question. Cooperation with regional and local authorities in these areas of Union activity should therefore be envisaged.

Such cooperation would mean in practice that European Union measures and provisions with clear-cut implications for the economies of regions and local areas are properly evaluated before being applied.

The Committee believes that the need to promote cross-border and interregional cooperation between regional and local authorities should be the principle of spatial planning and spelt out in the Treaty in the interests of strengthening economic and social cohesion.

The Committee furthermore believes that it is important to recognize and take practical account of the need for greater coordination of Community policies with a major impact on urban areas, whilst strictly adhering to the principle of local autonomy as enshrined in the Council of Europe's Charter of Local Autonomy.

As a key component of the Union's democratic legitimacy and a body of crucial importance in bringing the Union closer to the citizen, the Committee of the Regions also considers, in the light of the experiences gained by its members, that the revision of the Treaty should be seen as an opportunity for deepening Community cooperation in the fields of justice and home affairs (the third pillar and in particular the right of asylum and immigration) as well as for developing the concept of European citizenship, by incorporating a list of fundamental citizens' rights in the Treaty.

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B. RESOLUTION

HAVING REGARD TO the Treaty on European Union signed in Maastricht, and more particularly TEU Article N in relation to Articles A and B,

HAVING REGARD TO the conclusions of the European Council held in Corfu in June 1994, and more particularly the references to the preparatory work of the Intergovernmental Conference to be held in 1996,

HAVING REGARD TO the resolution on subsidiarity adopted at the Plenary Session of this Committee on 15 November 1994, and the resolutions of the Assembly of European Regions on 6 September 1990 and 22 January 1993, and of the Council of European Municipalities and Regions on 3 December 1992,

HAVING REGARD TO the resolutions and reports on the principle of subsidiarity and on the Committee of the Regions, adopted by the various institutions of the European Union,

HAVING REGARD TO the Council of Europe's Charter on Local Autonomy,

HAVING REGARD TO the preparatory work undertaken by the Commission and European Parliament with a view to drawing up reports for the Reflection Group, and in particular the draft Opinions of the Committee on Institutional Affairs of the European Parliament,

WHEREAS the setting-up of the Committee of the Regions and the introduction of the principle of subsidiarity help to reinforce the democratic legitimacy of the European Union, bring the Union closer to the citizen and highlight the role of the regions and local authorities in the construction of Europe.

WHEREAS the concrete regulation of these mechanisms in the Treaty nevertheless needs to be improved if regional and local authorities are to play a more adequate, more effective role in the European Union,

WHEREAS it is desirable to reinforce the regional character of certain policies and introduce elements that will also guarantee compliance with the principle of municipal autonomy,

WHEREAS regional and local authorities have a fundamental interest in issues connected with immigration and asylum, and whereas they are of the fundamental conviction that the concept of European citizenship, as formulated by the Treaty, needs to be clarified and strengthened,

WHEREAS the Maastricht Treaty, in keeping with Article N, is to be revised at an Intergovernmental Conference in 1996, and whereas a decision has been taken to set up a Reflection Group to start work on preparations for this Conference in June 1995,

WHEREAS the Committee of the Regions can and must make a contribution to this revision, and whereas it should, by virtue of its composition and function, limit this contribution to improving the mechanisms in the Treaty for local and regional participation:

1. Requests that the formulation of the principle of subsidiarity in Article 3b of the EC Treaty contain an explicit reference to regions and local authorities and proposes, to this effect, that the second paragraph of Article 3b be worded as follows:

> *"The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, or by the regional and local authorities endowed with powers under the domestic legislation of the Member State in question".*

Requests that, in order to facilitate application of the principle of subsidiarity, the respective powers of the Union and of the Member States be clearly defined so that the European Union acts within the limits of the powers expressly conferred on it by the Treaty and in compliance with the principle of subsidiarity.

2. Requests that the Committee of the Regions and regions endowed with legislative powers be given the right to initiate annulment proceedings, and proposes that the third paragraph of Article 173 of the EC Treaty be amended to read as follows:

> *"The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament, the European Central Bank and the Committee of the Regions for the purpose of protecting their prerogatives. It shall also have jurisdiction in actions brought by the Committee of the Regions against violations of the principle of subsidiarity, and in actions brought by the regions whose legislative powers may be affected by a regulation, directive or decision".*

3. Requests that the Committee of the Regions likewise be granted the right to initiate proceedings for failure to act, and realizes that this can be achieved without having to amend Article 175 of the EC Treaty if the Committee of the Regions is granted the status of an institution. The COR proposes that, in the event of not being accorded the status of an institution, the first paragraph of Article 175 should be amended to read as follows:

> *"Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States, the other institutions of the Community and the Committee of the Regions may bring an action before the Court of Justice to have the infringement established".*

4. Requests that the Committee of the Regions be made an institution and accordingly proposes that Article 4 of the EC Treaty be worded as follows:

> *"1. The tasks entrusted to the Community shall be carried out by the following institutions:*
>
> - *a EUROPEAN PARLIAMENT*
> - *a COUNCIL*
> - *a COMMISSION*
> - *a COURT OF JUSTICE*
> - *a COURT OF AUDITORS*
> - *a COMMITTEE OF THE REGIONS.*
>
> *Each institution shall act within the limits of the powers conferred upon it by this Treaty.*
>
> *2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity".*

5. Requests that the political mandate and political legitimacy of COR members be spelt out and to this effect proposes that the first paragraph of Article 198a of the EC Treaty be reworded to read as follows:

> *"A Committee, hereinafter referred to as the Committee of the Regions, consisting of representatives appointed on the recommendation of regional and local bodies, who have a mandate from the electorate or are politically accountable to an Assembly elected by direct universal suffrage, is hereby established with advisory status".*

6. Calls for a strengthening of the powers of the Committee to organize its own work and consequently requests that the second paragraph of Article 198b be worded as follows:

> *"It shall adopt its own Rules of Procedure."*

7. Calls for full organizational and budgetary autonomy vis-à-vis the Economic and Social Committee and consequently proposes a departure from Protocol No. 16 on the Economic and Social Committee and the Committee of the Regions, appended to the Maastricht Treaty.

8. Requests that the consultative function of the Committee be strengthened and consequently proposes:

- that consultation of the Committee of the Regions be explicitly provided for not only in those areas already laid down under the present Treaty but also where consultation of the Economic and Social Committee is provided for, as well as under the first paragraph of Article 130w of the EC Treaty dealing with development cooperation policy, the second paragraph of Article 8e of the EC Treaty dealing with citizenship of the Union, and Article 94 of the EC Treaty dealing with state aid;

- that, as far as the consultative function is concerned, Article 198c of the EC Treaty, as amended by the Maastricht Treaty, should be worded as follows:

> *"The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where this Treaty so provides and in all other cases in which these institutions consider it appropriate.*
>
> *The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.*

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission. In the event of disagreement with the Committee's opinion, these institutions shall inform the COR of the reasons for their position".

9. Urges that the Committee of the Regions be allowed to cooperate with the Commission when the latter takes initiatives and proposes that a new paragraph be added to Article 198c reading as follows:

"The Committee shall offer the Commission its cooperation and advice in drawing up legislative programmes and Green and White Papers, and in preparing other initiatives in respect of policies affecting the powers of regional and local authorities".

10. Urges that when European Union policies have a bearing on regional or local powers, especially in respect of spatial planning, the right of Member States under the Treaty to cooperate and participate should be extended to regional and, where appropriate, local authorities.

11. Requests that, in the interests of strengthening economic and social cohesion, the Treaty should encourage cross-border and inter-territorial cooperation and proposes the following addition to the second paragraph of Article 130a of the EC Treaty:

"Through its activities it shall promote the cross-border and inter-territorial cooperation of regional and local authorities"

12. Urges that a provision be incorporated in the Treaty underlining the desirability of improving the coordination of Community policies with a major impact on urban areas, and calls for the principle of local autonomy, as defined in the Council of Europe's Charter on Local Autonomy, to be enshrined in the Treaty.

13. Urges the Intergovernmental Conference to make progress on Community cooperation in the fields of justice and home affairs for the benefit of European citizens.

14. Urges that the revision of the Treaty be seen as an opportunity to clarify for ordinary citizens the responsibilities and powers exercised within the European Union and trusts that this will lead to the adoption of a basic text defining:

- the fundamental rights of European citizens;

- the objectives of the European Union;
- the bodies of the European Union;
- the powers of these bodies.

15. Instructs its Chairman to forward this Resolution to the European Parliament, the Council, the Commission and the Reflection Group set up to prepare the Intergovernmental Conference.

Done at Brussels, 21 April 1995.

The Secretary-General of the Committee of the Regions	The Chairman of the Committee of the Regions
Dietrich PAUSE	Jacques BLANC