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***REPORT ON THE OPERATION OF  
THE TREATY ON EUROPEAN UNION***

(presented by the Commission)

## 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".

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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 individuals' 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:

<u>Role of national parliaments under the Treaty</u>	
<b>1. <u>Constitutional ratification</u></b>	
. Amendments to the Treaty	Article N
. Accession of new Member States	Article O
<b>2. <u>Approval of acts</u></b>	
<i><u>In the Union framework:</u></i>	
. 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
<i><u>In the Community framework:</u></i>	
. 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
<b>3. <u>Implementation of Community law</u></b>	
. 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 but 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:

<u>CODECISION PROCEDURE</u>	
Commission proposals	124
formally adopted:	33
without conciliation	18
after conciliation	15
not accepted by Parliament:	2
rejected at third reading	1
(proposal for a Directive on voice telephony)	
rejected after agreement in the Conciliation Committee	1
(proposal for a Directive on biotechnology)	
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:

<b><u>ASSENT OF THE EUROPEAN PARLIAMENT</u></b>	
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 "IIb" 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.<sup>1</sup> 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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<sup>1</sup> 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) Economic and social cohesion (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) Research and technological development (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.<sup>2</sup> 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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<sup>2</sup> The United Kingdom proposed joint action for the protection of the financial interests of the Communities.

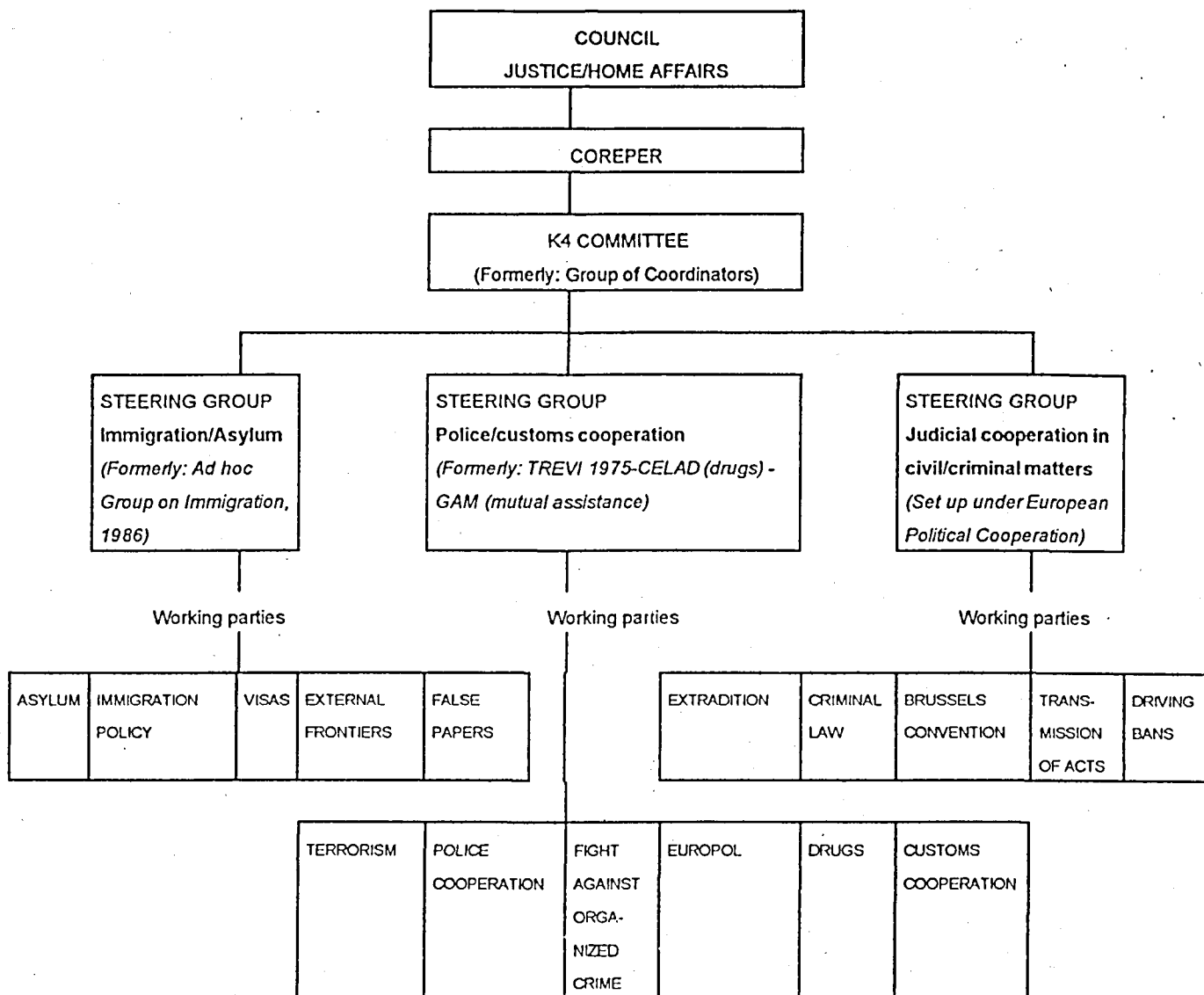
The Commission proposed a convention on controls on persons crossing the external frontiers of the Community and a convention on the protection of the financial interests of the Communities. Thus two proposals concerning the protection of the financial interests of the Communities have been tabled, by 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 scale 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.



### *The common commercial policy and the new realities in international trade*

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<sup>3</sup> 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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<sup>3</sup> 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.<sup>4</sup>

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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 picture 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 Participation in June 1994 European Parliament elections
- Annex 2 Opinions given by the Committee of the Regions
- Annex 3 Outline of codecision procedure
- Annex 4 Scope of codecision procedure
- Annex 5 Scope of cooperation procedure
- Annex 6 Assent of the European Parliament
- Annex 7 Provisions requiring unanimity in the Council
- Annex 8 Decision-making procedures
- Annex 9 Proposals for legislation - decline in numbers
- Annex 10 Public debates in the Council, by Presidency
- Annex 11 Public debates in the Council
- Annex 12 State of play on consolidation
- Annex 13 Response to requests for access to Commission documents
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- Annex 16 Common positions adopted under the common foreign and security policy
- Annex 17 Joint actions adopted under the common foreign and security policy

**ELECTIONS TO THE EUROPEAN PARLIAMENT - JUNE 1994:**  
**PARTICIPATION OF NON-NATIONAL VOTERS<sup>1</sup>**

	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<sup>1</sup>**

	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	

<sup>1</sup> Estimated. Source: Member States.

OPINIONS GIVEN BY THE COMMITTEE 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
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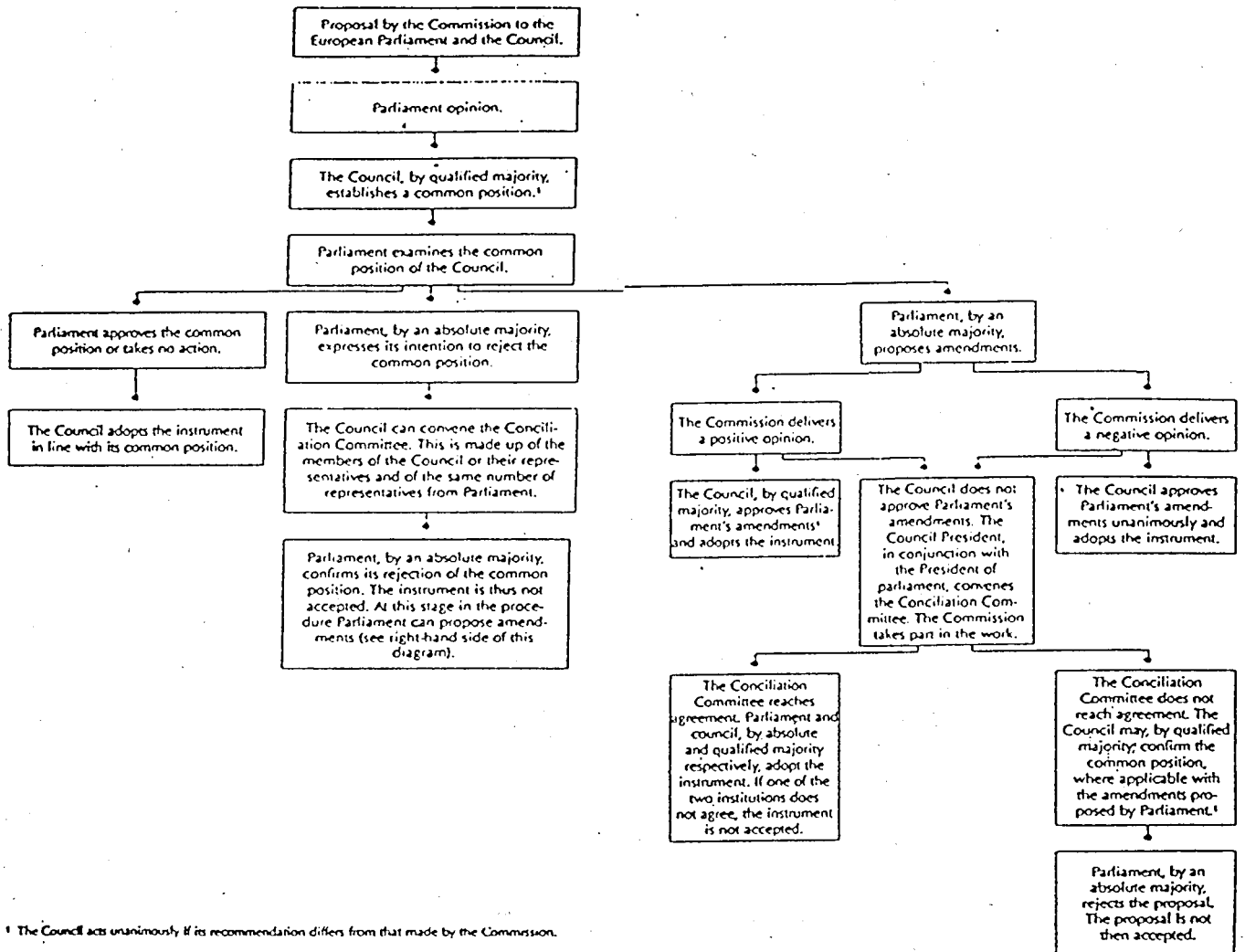
COM(93) 575	Assessment of the effects of projects on the environment	Optional	May 94
COM(93) 576	Green Paper consumers	Optional	May 94
COM(93) 645	Energy and cohesion	Optional	Feb 95
COM(94) 36	Quality of bathing water	Optional	Sept 94
COM(94) 38	Right to vote and eligibility	Optional	Sept 94
COM(94) 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
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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

## THE CO-DECISION PROCEDURE

### Article 189b of the Treaty on European Union



† The Council acts unanimously if its recommendation differs from that made by the Commission.

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)



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

**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

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(\*\*) 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.

## 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

## MAIN DECISION-MAKING PROCEDURES PROVIDED FOR IN THE TREATY ON EUROPEAN UNION

### EC Treaty<sup>1</sup>

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))<sup>2</sup>

#### 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

<sup>1</sup> 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.

<sup>2</sup> 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<sup>3</sup>.
  - 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)).

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<sup>3</sup> 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)

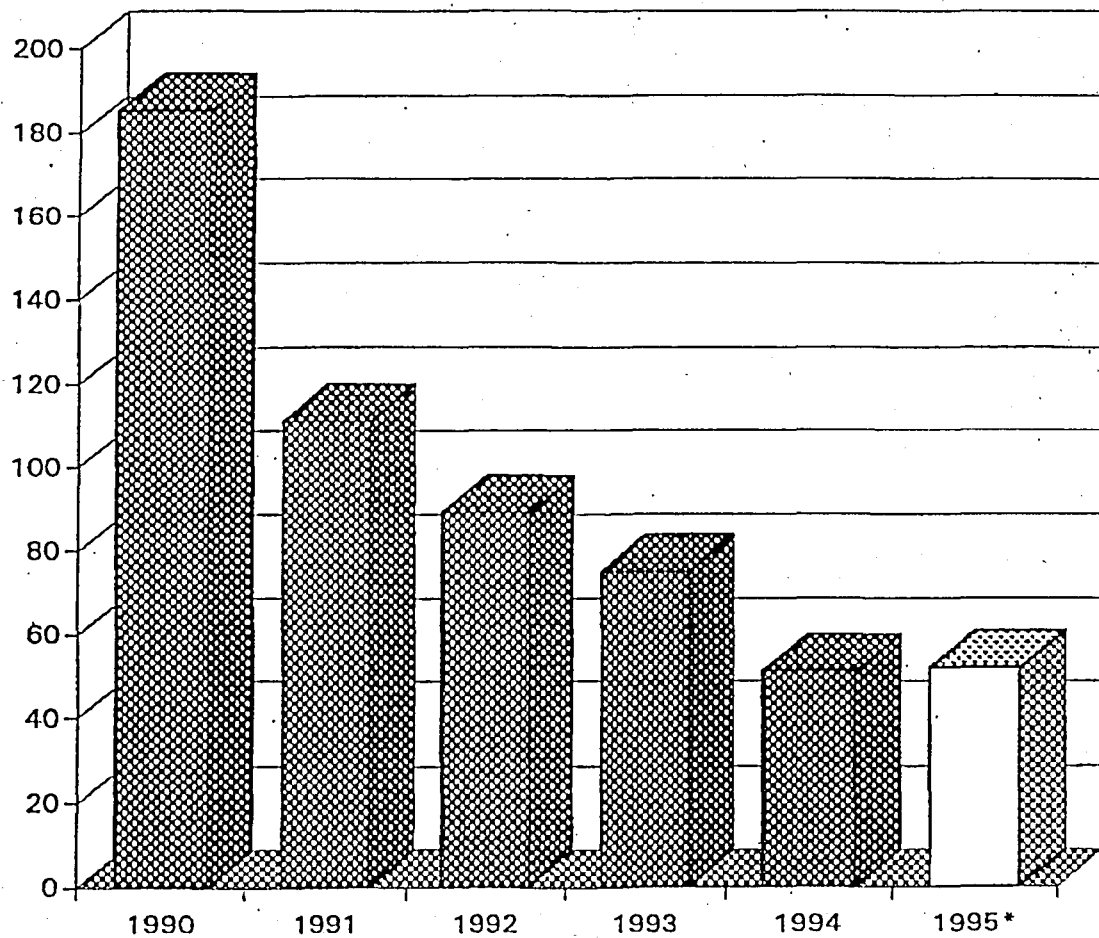
- Possibility of taking measures to apply joint actions (Art. K.3(2)(b)).
- Measures to apply conventions pursuant to Art. K.3(2)(c) (two-thirds majority unless provided otherwise)

### 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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\* \*  
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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*

**PUBLIC DEBATES IN THE COUNCIL, BY PRESIDENCY**

<u>PRESIDENCY</u>	<u>TERM</u>	<u>NUMBER</u>
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

## 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

**STATE OF PLAY ON CONSOLIDATION  
SINCE THE EDINBURGH EUROPEAN COUNCIL**

<u>Instrument</u>	<u>Commission proposals</u>	<u>State of play</u>
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

**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.

<b>1.</b>	<b>Documents supplied:</b>	<b>53.7%</b>
<b>2.</b>	<b>Documents withheld:</b>	<b>17.9%</b>
	<u>Grounds given</u>	
	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%
<b>3.</b>	<b>Ineligible requests:</b>	<b>28,4%</b>
	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.

**SUMMARY TABLE  
CHIEF LEGAL BASES FOR SOCIAL POLICY  
INSTRUMENTS**

PROTOCOL N° 14 ON SOCIAL POLICYQUALIFIED 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 TREATYQUALIFIED MAJORITY POSSIBLE

- Art. 49: free movement of workers
- Art. 54: right of establishment
- Art. 57: mutual recognition of qualifications
- Art. 125 (new): ESF (improvement of decision)
- Art. 127 (new): vocational training
- Art. 118a: health and safety at work
- Art. 100a, Art. 43: agriculture, transport

UNANIMITY (15) REQUIRED

- Art. 51: social security (measures free movement)
- Art. 100: internal market
- Art. 130d: tasks, priority objectives organization of Structural Funds
- Art. 235

**INSTRUMENTS ADOPTED IN THE  
FIELDS OF JUSTICE AND HOME AFFAIRS**

**Joint actions**

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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**

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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**

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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	
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### Recommendations

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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)
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#### Statements

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
Financing of terrorism		Press release 10550/93 (Presse 209)
Statement on extradition		Press release 10550/93 (Presse 209)

#### Conclusions

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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

<u>SUBJECT</u>	<u>Adoption</u>	<u>Publication</u>
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)



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

JOINT ACTIONS ADOPTED  
(Article J.3. of the Treaty)

1. Ex:Yugoslavia

- 08.11.93 Support for the conveying 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.