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Centrum für angewandte Politikforschung

## ***A BASIC TREATY FOR THE EUROPEAN UNION***

### **Draft Version for the Reorganisation of the Treaties**

Bertelsmann Group for Policy Research at  
the Center for Applied Policy Research

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*Draft Version*  
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## PREFACE

The debate on a constitution for the European Union is, with different levels of intensity, accompanying for decades the process of European integration. Through the proposal of the Reflexion Group from 18 October 1999 an interesting variant has been introduced into the discussion. According to the report by Dehaene, von Weizsäcker and Lord Simon the time has come for a “reorganisation of the Treaties”. The first part would list all constitutional regulations in a way which would be comprehensible to every citizen, while a second part would comprise the regulations of implementation. The reactions to this innovative proposal have been rather mixed. While the Commission and the European Parliament view this proposal in a rather positive light, especially the member states consider it to be unrealistic, not enforceable or at least, premature.

Therefore the Bertelsmann Group for Policy Research at the Center for Applied Policy Research (C•A•P) has set itself the task to subject this proposal to a practice test. The premise of our draft has been that many of the necessary elements of such a “Basic Treaty” are already included in the provisions of the existing treaties, so that no great modifications in the treaties would be necessary and existing deficits in this text would be revealed. The final result should be a basic document for the European Union which is comprehensible to its citizens, transparent and logical. It should be noted that in the course of this project we have not aimed at a judicially clear separation according to European law. But the connection of the respective basic and implementation provisions through cross-references can be carried out by way of standardised phrasing following the constitutional practice of the EU member states. Correspondingly, the implementation parts would have to be designed in a systematic way.

In a first step we have aimed at developing an outline for the Basic Treaty. Secondly, all articles of the TEU and the TEC with constitutional characteristics were assigned to this outline. Thirdly, the appropriate articles of the single parts of the treaties were brought into a systematic order. In the course of several run-throughs the draft has been shortened through the elimination of further articles and paragraphs, since existing overlapping and repetitions have become apparent through the re-organisation. Finally, the remaining articles were newly numbered and, as the sole intervention in the usual phrasing, the cross-references of the articles and other references have been adapted in order to obtain a coherent text.

As the most important finding of this project it has become obvious that already the present legal inventory of the TEU and TEC contains an almost complete basic treaty with all crucial general conditions. It is not less significant to us that the division indeed does lead to a readable basic document – to a text, which could be conceivably read and accessed by every citizen and could be used as basic working paper both by teachers and students. According to our study there is no need of a constitutional “big bang” – as most changes have already taken place in the course of European integration, perhaps without being actually appropriately noticed. However, the legal questions related to the process of a division should not be underestimated, challenging the knowledge of European experts. Some of the legal questions will have to be decided in the process of European integration rather than through legislative avenues.

In our opinion it is necessary to remedy some of these legislative defects, especially in the field of fundamental and human rights as well as regarding the allocation of competences between the Union and its member states. While the first problem could be solved by the charter of fundamental rights being currently developed and incorporated into the Basic Treaty, the problem of a clear catalogue of competences surely remains to be the major

challenge to the ongoing integration process. As a “three-pillar-structure” would be counterproductive for a transparent Basic Treaty, exemptions will have to be formulated for the second and third pillar, as long as these are not subject to the Community procedures. In addition, further analysis of problems that need to be solved can be found in the footnotes amending the Basic Treaty.

This effort should be understood in the context of the recognizable benefits of a Basic Treaty: Should a Basic Treaty succeed in extracting an understandable and therefore comprehensible fundamental order out of the complex treaty framework, that has been built for years by a multitude of politicians and diplomats, much could be gained in terms of transparency and acceptance of the EU.

Munich, April 2000

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**EUROPEAN BASIC TREATY<sup>1</sup>****OUTLINE*****PREAMBLE<sup>2</sup>***

*The Member States of the European Union – recognising the principles of liberty, democracy and the respect for human rights and fundamental freedoms as well as the rule of law – are determined to raise the process of European integration, which has been initiated by the foundation of the European Communities, on a new stage. The other people of Europe, who profess to the same high goal, should be invited to join those endeavours.*

*Preamble*

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<sup>1</sup> Annotation: The italic parts in the column "European Basic Treaty" have been amended or altered by the workgroup.

<sup>2</sup> Very shortened version of the former preamble of the TEU.

**FIRST PART: GENERAL PRINCIPLES AND GOALS****GENERAL PRINCIPLES***ARTICLE 1 (ex-Article 1 TEU)*

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union". This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. The Union shall be founded on the policies and forms of co-operation established by this Treaty and the respective implementation provisions. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

*Ever Closer Union**ARTICLE 2 (ex- Article 2 TEU)*

The Union shall set itself the following objectives:

- to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of *Article 28 (ex- Article 17 TEU)*;
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
- to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;
- to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of co-operation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community. The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in *Article 16 (ex- Article 5 TEC)*.

*General Objectives*

**SECOND PART: FUNDAMENTAL RIGHTS<sup>3</sup> AND  
CITIZENSHIP OF THE UNION**

**FUNDAMENTAL  
RIGHTS**

***Title I: Fundamental Rights***

**ARTICLE 3 (ex- Article 6(1-3) TEU)<sup>4</sup>**

- (1) The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.  
 (2) The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.  
 (3) The Union shall respect the national identities of its Member States.

*Normative  
principles*

**ARTICLE 4 (ex- Article 12 and 13 TEC)**

- (1) Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.<sup>5</sup> (ex- Article 12 TEC)  
 (2) Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. (ex- Article 13 TEC)

*Non-discrimination*

**ARTICLE 5 (ex- Article 3(2) TEC and 141(1) TEC)**

- (1) *Within the scope of her activities* the Community shall aim to eliminate inequalities, and to promote equality, between men and women. (ex- Article 3(2) TEC)<sup>6</sup>  
 (2) Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. (ex- Article 141(1) TEC)<sup>7</sup>

*Equality of Men and  
Women*

<sup>3</sup> These rights, formerly dispersed in the Treaties, should be replaced by a coherent catalogue.

<sup>4</sup> Art 6(4) has been moved to the financial provisions.

<sup>5</sup> Sentence 2 can be dropped as it is a community procedure.

<sup>6</sup> Art 3(1) TEC will appear in the chapter "Relation between the Union and the Member States", Art 3(2) must be updated.

<sup>7</sup> The definition of "pay" and the rest of Art 141 to be found in the implementation provisions of the Social Policy.



*ARTICLE 6 (ex- Article 136 TEC)*<sup>8</sup>

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

*Fundamental Social Rights*

***Title II: Citizenship of the Union****ARTICLE 7 (ex- Article 17 TEC)*

(1) Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

*Citizenship of the Union*

(2) Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

*ARTICLE 8 (ex- Article 18(1) TEC)*<sup>9</sup>

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

*Free Movement for the Citizens of the Union*

*ARTICLE 9 (ex- Article 19 TEC)*<sup>10</sup>

(1) Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. *This right shall be exercised subject to the specific implementation provisions.*

*Right to Vote*

(2) Without prejudice to *Article 36(4) (ex- Article 190(4) TEC)* and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. *This right shall be exercised subject to the respective implementation provisions.*

*ARTICLE 10 (ex- Article 20 TEC)*

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

*Diplomatic Protection*

<sup>8</sup> Subparagraphs 2 and 3 have been dropped or rather belong to the implementation provisions.

<sup>9</sup> Implementation provisions of Art 18(2) TEC have been dropped, although subject to unanimity so far.

<sup>10</sup> Implementation provisions of Art 19(1,2) have been dropped and replaced by a half-sentence.

*ARTICLE 11 (ex- Article 194 TEC)*

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly.

*Right to Address a  
Petition*

*ARTICLE 12 (ex- Article 21 TEC)<sup>11</sup>*

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 40 (ex- Article 195 TEC).

*Ombudsman*

*ARTICLE 13 (ex- Article 255 TEC)<sup>12</sup>*

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, unless otherwise provided in the respective implementation provisions.

*Right to Access  
Documents*

*ARTICLE 14 (ex- Article 286 TEC)<sup>13</sup>*

From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.

*Data Protection*

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<sup>11</sup> Art 21, first and last subparagraph, and Art 22 have been dropped.

<sup>12</sup> Paragraphs 2 and 3 belong to the implementation provisions.

<sup>13</sup> Text must be updated, paragraph 2 dropped; has been part of the final provisions but belongs to this section.

**THIRD PART: RELATION BETWEEN THE UNION AND THE MEMBER STATES** **COMPETENCE**

**Title I: General Principles**

**ARTICLE 15 (ex- Article 2 TEC)**

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in *Articles 20 and 22 (ex- Articles 3 and 4 TEC)*, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

*Cross-Sectional Tasks*

**ARTICLE 16 (ex- Article 5 TEC)**

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

*Principle of Subsidiarity*

**ARTICLE 17 (ex- Article 10 TEC)**

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

*Loyalty to the Union*

**ARTICLE 18 (ex- Article 11(2) TEU)<sup>14</sup>**

The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

*Loyalty to the Union's CFSP*

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

**ARTICLE 19 (ex- Article 7 TEU)<sup>15</sup>**

(1) The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the

*Suspension of Voting*

<sup>14</sup> Paragraph 1 results from a catalogue of competences.

<sup>15</sup> In case the Basic Treaty connects TEU and TEC, Art 309 TEC can be dropped. In a simplified version only the respective general principles could be named, whereas the procedure could be excluded.

Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in *Article 23 (ex- Article 6(1) TEU)*, after inviting the government of the Member State in question to submit its observations. *Rights*

(2) Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

(3) The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

(4) For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in *Article 49(2) (ex- Article 205(2))* of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

(5) For the purposes of this Article, the European Parliament shall act by a two thirds majority of the votes cast, representing a majority of its members.

## ***Title II: Tasks of the Union***

### ***ARTICLE 20 (ex- Article 3 TEC)<sup>16</sup>***

(1) For the purposes set out in *Article 15 (ex- Article 2 TEC)*, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

### *Catalogue of Competences*

- (a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;<sup>17</sup>
- (b) a common commercial policy;<sup>18</sup>
- (c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;<sup>19</sup>
- (d) measures concerning the entry and movement of persons as provided for in *Title III*;<sup>20</sup>
- (e) a common policy in the sphere of agriculture and fisheries;<sup>21</sup>
- (f) a common policy in the sphere of transport;<sup>22</sup>
- (g) a system ensuring that competition in the internal market is not distorted;<sup>23</sup>
- (h) the approximation of the laws of Member States to the extent required for the functioning of the common market;<sup>24</sup>
- (i) the promotion of co-ordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a co-ordinated strategy for employment;<sup>25</sup>
- (j) a policy in the social sphere comprising a European Social Fund;<sup>26</sup>
- (k) the strengthening of economic and social cohesion;<sup>27</sup>
- (l) a policy in the sphere of the environment;<sup>28</sup>
- (m) the strengthening of the competitiveness of Community industry;<sup>29</sup>
- (n) the promotion of research and technological development;<sup>30</sup>
- (o) encouragement for the establishment and development of trans-European networks;<sup>31</sup>
- (p) a contribution to the attainment of a high level of health protection;<sup>32</sup>
- (q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;<sup>33</sup>
- (r) a policy in the sphere of development co-operation;<sup>34</sup>
- (s) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;<sup>35</sup>
- (t) a contribution to the strengthening of consumer protection;<sup>36</sup>
- (u) measures in the spheres of energy, civil protection and tourism.<sup>37</sup>

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<sup>16</sup> The list of competences of Art 3 TEC has been arbitrarily arranged. It does not correspond with the order of Art 23-188 TEC nor does it have a clear hierarchy of priorities or a qualitative distinction of single policies. In

*ARTICLE 21 (ex- Article 308 TEC)*<sup>38</sup>

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

*General Authorization*

*ARTICLE 22 (ex- Article 4 TEC)*<sup>39</sup>

(1) For the purposes set out in *Article 15 (ex- Article 2 TEC)*, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic policy which is based on the close co-ordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

*Significance of EMU*

(2) Concurrently with the foregoing, and as provided in this Treaty and

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order to increase transparency it should be made apparent, in which policies the Union is actually responsible and holds jurisdiction (exclusive or primary competence), which policy fields are only partially dealt with by the Union or are only co-ordinated by it (competing or partial competence) and which policies are still decided on in an intergovernmental way (intergovernmental competences) without any relevant participation of the supranational institutions. The list of competences of Art 3 could therefore be divided into primary (exclusive) and partial (amending) policy fields (see also the so far not clearly defined formulation of Art 5). In case the three-pillar structure and the division into TEU, TEC, TECSC and TEAEC will be overcome, the relevant policies would also have to be assigned to this list. Exemption and transition regulations regarding the application of the Community procedures might possibly become necessary for the second and third pillar of the TEU. See for related proposals for a clear catalogue of competences: Weidenfeld, Werner (ed.): *Europe '96. Reforming the European Union*. Gütersloh 1994, especially pp. 14 and following; based on that: Fischer, Thomas/Schley, Nicole: *Europa föderal organisieren. Essentialia einer Strukturreform zur Jahrtausendwende*. Gütersloh 1998; Fischer, Thomas/Schley, Nicole: *Europa föderal organisieren – Ein neues Kompetenz- und Vertragsgefüge für die Europäische Union*. Bonn 1999.

<sup>17</sup> In combination with Art 23-31 TEC and Art 135 TEC.

<sup>18</sup> In combination with Art 131-134 TEC.

<sup>19</sup> In combination with Art 2 dash 1 TEU and Art 14-15, Art 28-31, Art 39-60, Art 81-97 TEC; could in addition be united with the tasks of Art 3 g, h TEC and amended by the provisions of Art 14 and 15 TEC.

<sup>20</sup> In combination with Art 2 (subparagraph 4) TEU and Art 61-69 TEC and Art 29-42 TEU.

<sup>21</sup> In combination with Art 32-38 TEC.

<sup>22</sup> In combination with Art 70-80 TEC.

<sup>23</sup> See also Art 3 lit. c).

<sup>24</sup> See also Art 3 lit. c).

<sup>25</sup> In combination with Art 2 dash 1 TEU and Art 125-130 TEC.

<sup>26</sup> In combination with Art 2 dash 1 TEU and Art 136-148 TEC.

<sup>27</sup> In combination with Art 2 dash 1 TEU and Art 158-162 TEC.

<sup>28</sup> In combination with Art 6 TEC and Art 174-176 TEC.

<sup>29</sup> In combination with Art 157 TEC.

<sup>30</sup> In combination with Art 163-173 TEC.

<sup>31</sup> In combination with Art 154-156 TEC.

<sup>32</sup> In combination with Art 152 TEC.

<sup>33</sup> In combination with Art 149-150 (education) and 151 (culture) TEC.

<sup>34</sup> In combination with Art 3(2) TEU and Art 177-181 TEC.

<sup>35</sup> In combination with Art 182-188 TEC.

<sup>36</sup> In combination with Art 153 TEC.

<sup>37</sup> As part of the Single Market as well as the provisions of the Treaty on the European Coal and Steel Community (TECSC) and the Treaty on the European Atomic Energy Community (TEAEC).

<sup>38</sup> This article formerly appeared in the final provisions of the TEC, but systematically belongs here.

<sup>39</sup> In combination with Art 2 dash 1 TEU, Art 2 TEC and Art 98-124 TEC:

in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.

(3) These activities of the Member States and the Community shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

**ARTICLE 23 (ex- Article 6 TEC)**

Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in *Article 20 (ex- Article 3 TEC)*, in particular with a view to promoting sustainable development.

*Significance of Environmental Protection*

**ARTICLE 24 (ex- Article 285 TEC)**

(1) Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting in accordance with the procedure referred to in *Article 89 (ex- Article 251 TEC)*, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community.

*Statistics*

(2) The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

**Title III: Area of Freedom, Security and Justice**

**ARTICLE 25 (ex- Article 61 TEC)<sup>40</sup>**

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

*Area of Freedom, Security and Justice*

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons (...<sup>41</sup>), in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration (...<sup>42</sup>, and measures to prevent and combat crime (...<sup>43</sup>;
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries (...<sup>44</sup>;
- (c) measures in the field of judicial co-operation in civil matters (...<sup>45</sup>;
- (d) appropriate measures to encourage and strengthen administrative co-operation (...<sup>46</sup>;
- (e) measures in the field of police and judicial co-operation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

<sup>40</sup> This article and others maybe without numbers, are to be adapted after 5 years.

<sup>41</sup> According to Art 14 TEC.

*ARTICLE 26 (ex- Article 29 and 33 TEU)*<sup>47</sup>

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

*Co-operation in  
Criminal Matters*

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

- closer co-operation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol) (...)<sup>48</sup>;
- closer co-operation between judicial and other competent authorities of the Member States (...)<sup>49</sup>;
- approximation, where necessary, of rules on criminal matters in the Member States (...)<sup>50</sup>. (*ex- Article 29 TEU*)

(2) This *Article* shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. (*ex- Article 33 TEU*)

*Title IV: Common Foreign, Security and Defence Policy*<sup>51</sup>*ARTICLE 27 (ex- Article 11(1) TEU)*

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

*Foreign and Security  
Policy*

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international co-operation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

<sup>42</sup> According to Art 62 number 2 and 3, Art 63 number 1 (a) and number 2 (b) TEC.

<sup>43</sup> According to Art 31 (e) TEU.

<sup>44</sup> According to Art 63 TEC.

<sup>45</sup> According to Art 65 TEC.

<sup>46</sup> According to Art 66 TEC.

<sup>47</sup> As long as the second pillar has not yet been transferred to the first, there has to be a sentence stating that for this Article the provisions on the Community procedures do not (yet) apply, but that special procedures can be found in the implementation provisions.

<sup>48</sup> According to Art 30 and 32 TEU.

<sup>49</sup> According to Art 31 (a-d) and Art 32 TEU.

<sup>50</sup> According to Art 31 (e) TEU.



*ARTICLE 28 (ex- Article 17 (1, subparagraph 1) TEU)*

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

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<sup>51</sup> If the second pillar is not transferred into the first, there has to be a sentence here stating that for this title the provisions on the Community procedures and institutions do not (yet) apply, but special procedures and limitations can be found in the implementing provisions.

**FOURTH PART: PROVISIONS ON THE INSTITUTIONS AND COMMITTEES**

**INSTITUTIONS**

**Title I: General Conditions**

*ARTICLE 29 (ex- Article 3 TEU)*

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.

*The Dictates of Coherence*

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

*ARTICLE 30 (ex- Article 4 TEU)*

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

*European Council*

The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission.

The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

*ARTICLE 31 (ex- Article 7 TEC)<sup>52</sup>*

(1) The tasks entrusted to the Community shall be carried out by the following institutions:

- a EUROPEAN PARLIAMENT,
- a COUNCIL,
- a COMMISSION,
- a COURT OF JUSTICE,
- a COURT OF AUDITORS.

*Community Institutions*

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

(2) The Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

*ARTICLE 32 (ex- Article 289 TEC)*

The seat of the institutions of the Community shall be determined by common accord of the Governments of the Member States.

*Seat of the Institutions*

*ARTICLE 33 (ex- Article 290 TEC)*

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<sup>52</sup> The committees named in this part could also be listed here.

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously.

*The Question of Languages*

*ARTICLE 34 (ex- Article 287 and 288 TEC)*

(1) The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. *(ex- Article 287 TEC)*

*Obligation of Professional Secrecy and Liability*

(2) The contractual liability of the Community shall be governed by the law applicable to the contract in question. In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties. The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them. *(ex- Article 288 TEC)*

***Title II: The Institutions and Committees***

***Chapter 1: The European Parliament***

***European Parliament***

*ARTICLE 35 (ex- Article 189 TEC)*

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty. The number of Members of the European Parliament shall not exceed seven hundred.

*General Principles*

*ARTICLE 36 (ex- Article 190 TEC)*

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

*Election and Composition*

(2) The number of representatives elected in each Member State shall be as follows:

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

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

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

(4) The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

(5) The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.

*ARTICLE 37 (ex- Article 191 TEC)*

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

*European Parties*

*ARTICLE 38 (ex- Article 192 phrase 2 TEC)*

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

*Limited Right of Initiative*

*ARTICLE 39 (ex- Article 193 TEC)*

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings. The temporary Committee of Inquiry shall cease to exist on the submission of its report. The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

*Committees of Inquiry*

*ARTICLE 40 (ex- Article 195 sentence 1 TEC)<sup>53</sup>*

The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

*Ombudsman*

*ARTICLE 41 (ex- Article 196 TEC)*

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

*Session*

<sup>53</sup> Paragraph 1 sentence 2 and following as well as paragraphs 2-4 belong to the implementation treaty.

request of a majority of its Members or at the request of the Council or of the Commission.

*ARTICLE 42 (ex- Article 197 TEC)*

The European Parliament shall elect its President and its officers from among its Members.  
Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.  
The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.  
The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

*Officers*

*Relation to  
Commission and  
Council*

*ARTICLE 43 (ex- Article 198 TEC)*

Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast.  
The Rules of Procedure shall determine the quorum.

*Passing of Resolutions*

*ARTICLE 44 (ex- Article 199 TEC)*

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.  
The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

*Rules of Procedure*

*Transparency*

*ARTICLE 45 (ex- Article 201 TEC)*

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.  
If the motion of censure is carried by a two thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body.  
They shall continue to deal with current business until they are replaced in accordance with *Article 56(1 and 2)(ex- Article 214)*. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

*Motion of Censure*

***Chapter 2: The Council of the European Union***

***Council of the EU***

*ARTICLE 46 (ex- Article 202 TEC)*

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

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

*Competences*

*ARTICLE 47 (ex- Article 203 TEC)*

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.  
The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.

*Composition and  
Office of President**ARTICLE 48 (ex- Article 204 TEC)*

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

*Summoning**ARTICLE 49 (ex- Article 205 and 206 TEC)*

(1) Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.

*Passing of Resolutions*

(2) Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:

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

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

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

(3) Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity. *(ex- Article 205 TEC)*

(4) Where a vote is taken, any member of the Council may also act on behalf of not more than one other member. *(ex- Article 206 TEC)*

*ARTICLE 50 (ex- Article 207 TEC)*

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

*Organisation*

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

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

(3) The Council shall adopt its Rules of Procedure. For the purpose of applying *Article 13 (ex- Article 255(3) TEC)*, the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time

preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

*ARTICLE 51 (ex- Article 208 TEC)*

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

*Limited Right of Initiative*

*ARTICLE 52 (ex- Article 209 TEC)*

The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.

*Rules Governing the Committees*

*ARTICLE 53 (ex- Article 210 and 283 TEC)*

(1) The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates General and Registrar of the Court of Justice. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration. (ex- Article 210 TEC)

*Determination of Salaries*

(2) The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of those Communities. (ex- Article 283 TEC)

**Chapter 3: The Commission**

**Commission**

*ARTICLE 54 (ex- Article 211 TEC)*

In order to ensure the proper functioning and development of the common market, the Commission shall:

*Tasks*

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

*ARTICLE 55 (ex- Article 213(1;2 phrase 1-5) TEC)<sup>54</sup>*

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

*Composition and Full Independence*

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

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

<sup>54</sup> Paragraph 2, sentence 6 and 7 can be mentioned in the Rules of Procedure or in the code of conduct.

(2) The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks. The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not.

*ARTICLE 56 (ex- Article 214, 217 and 218(2) TEC)*

(1) The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 45 (ex- Article 201 TEC). Their term of office shall be renewable.

*Tenure and Organisation*

(2) The governments of the Member States shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by common accord of the governments of the Member States. (ex- Article 214 TEC)

(3) The Commission may appoint a Vice-President or two Vice-Presidents from among its Members. (ex- Article 217 TEC)

(4) The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these rules are published. (ex- Article 218(2) TEC)

*ARTICLE 57 (ex- Article 215 TEC)*

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired. The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 56(2) (ex- Article 214(2) TEC) shall be applicable for the replacement of the President. Save in the case of compulsory retirement under Article 58 (ex- Article 216 TEC), Members of the Commission shall remain in office until they have been replaced.

*End of Tenure*

*ARTICLE 58 (ex- Article 216 TEC)*

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

*Dismissal from Office*

*ARTICLE 59 (ex- Article 219 TEC)<sup>55</sup>*

The Commission shall work under the political guidance of its

<sup>55</sup> Sentence 3 should be added to the Rules of Procedure.



President.  
The Commission shall act by a majority of the number of Members provided for in *Article 55 (ex- Article 213 TEC)*.

*Passing of Resolutions*

***Chapter 4: The European Court of Justice***

***European Court of Justice***

*ARTICLE 60 (ex- Article 220 TEC)*

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

*Task*

*ARTICLE 61 (ex- Article 221 TEC)*

The Court of Justice shall consist of 15 Judges. The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes. The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

*Composition and Chambers*

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs (...).<sup>56</sup>

*ARTICLE 62 (ex- Article 222 TEC)*<sup>57</sup>

The Court of Justice shall be assisted by eight Advocates-General. It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in *Article 60 (ex- Article 220 TEC)*.

*Advocates-General*

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Advocates-General (...).<sup>58</sup>

*ARTICLE 63 (ex- Article 225(1 and 4) TEC)*

(1) A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined (...).<sup>59</sup> The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under *Article 69 (ex- Article 234 TEC)*.  
(2) The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council. (*ex- Article 225(4) TEC*)

*Court of First Instance*

*ARTICLE 64 (ex- Article 226, 227 and 292 TEC)*

(1) If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit

*Appeal to the Court*

<sup>56</sup> Cross-reference that an adaptation of Art 223(2) TEC will become necessary in the implementation provisions.

<sup>57</sup> Paragraph 1 sentence 2 can be dropped.

<sup>58</sup> Cross-reference that an adaptation of Art 223(3) TEC will become necessary in the implementation provisions.

<sup>59</sup> Cross-reference that a determination of classes according to Art 225(2) TEC will take place in the implementation provisions.

its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice. (*ex- Article 226 TEC*)

(2) A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice. Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

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

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice. (*ex- Article 227 TEC*)

(3) Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein. (*ex- Article 292 TEC*)

#### *ARTICLE 65 (ex- Article 228 and 244 TEC)*

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

*Obligations of the  
Member States*

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

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

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

This procedure shall be without prejudice to *Article 64(2) (ex- Article 227 TEC)*. (*ex- Article 228 TEC*)

(3) The judgments of the Court of Justice shall be enforceable under the conditions laid down in *the implementation provisions of the former Article 256 TEC*. (*ex- Article 244 TEC*)

#### *ARTICLE 66 (ex- Article 229 TEC)*

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

*Extension of  
Jurisdiction*

*ARTICLE 67 (ex- Article 230 TEC)*<sup>60</sup>

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

*Jurisdiction and Deadlines*

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

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

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

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

*ARTICLE 68 (ex- Article 231, 242 and 243 TEC)*

(1) Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended. (*ex- Article 242 TEC*)

*Effect*

(2) The Court of Justice may in any cases before it prescribe any necessary interim measures. (*ex- Article 243 TEC*)

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

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive. (*ex- Article 231 TEC*)

*ARTICLE 69 (ex- Article 234 TEC)*

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

*Preliminary Ruling and Relations to the Courts of the Member States*

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

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

<sup>60</sup> Art. 235-239 could be assigned to this catalogue (see Art 93 of German Grundgesetz), in order to provide a coherent catalogue; a cross-reference about the limited rights of the European Court of Justice regarding the policies of TEU according to Art 46 should also be added here.

**ARTICLE 70 (ex- Article 240 TEC)**

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

*Barrier***ARTICLE 71 (ex- Article 245 TEC)**

The Statute of the Court of Justice is laid down in a separate Protocol. The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute. The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council.

*Statute and Rules of Procedures***Chapter 5: The European Court of Auditors***Court of Auditors***ARTICLE 72 (ex- Article 246 TEC)**

The Court of Auditors shall carry out the audit.<sup>61</sup>

*Task***ARTICLE 73 (ex- Article 247(1-4) TEC)<sup>62</sup>**

(1) The Court of Auditors shall consist of 15 Members.

*Composition and Full Independence*

(2) The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

(3) The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament. The Members of the Court of Auditors shall be eligible for reappointment.

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

(4) The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

**Chapter 6: The Economic and Social Committee***ESC***ARTICLE 74 (ex- Article 257 TEC)**

An Economic and Social Committee is hereby established. It shall have advisory status. The Committee shall consist of representatives of the various

*Task*

<sup>61</sup> Here cross-reference to the implementation procedure according to Art 248 TEC is to be added.

<sup>62</sup> Paragraphs 5-9 to the Rules Procedure.

categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.

*ARTICLE 75 (ex- Article 258 TEC)*

The number of members of the Economic and Social Committee shall be as follows:

Belgium 12  
Denmark 9  
Germany 24  
Greece 12  
Spain 21  
France 24  
Ireland 9  
Italy 24  
Luxembourg 6  
Netherlands 12  
Austria 12  
Portugal 12  
Finland 9  
Sweden 12  
United Kingdom 24.

The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.

The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

*Composition and Full Independence*

*ARTICLE 76 (ex- Article 259 TEC)*

(1) For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals. The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

(2) The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

*Selection of the Members*

*ARTICLE 77 (ex- Article 260 TEC)*

The Committee shall elect its chairman and officers from among its members for a term of two years. It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

*Organisation*

*ARTICLE 78 (ex- Article 262 TEC)*

The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The Council or the Commission shall, if it considers it necessary, set

*Relation to Other Institutions*

the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

The Committee may be consulted by the European Parliament.

## ***Chapter 7: The Committee of the Regions***

### ***ARTICLE 79 (ex- Article 263 TEC)***

A Committee consisting of representatives of regional and local bodies, hereinafter referred to as "the Committee of the Regions", is hereby established with advisory status.

The number of members of the Committee of the Regions shall be as follows:

Belgium 12  
Denmark 9  
Germany 24  
Greece 12  
Spain 21  
France 24  
Ireland 9  
Italy 24  
Luxembourg 6  
Netherlands 12  
Austria 12  
Portugal 12  
Finland 9  
Sweden 12  
United Kingdom 24.

The members of the Committee and an equal number of alternate members shall be appointed for four years by the Council acting unanimously on proposals from the respective Member States. Their term of office shall be renewable. No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of Community.

### ***ARTICLE 80 (ex- Article 264 TEC)***

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years. It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

### ***ARTICLE 81 (ex- Article 265 TEC)***

The Committee of the Regions shall be consulted by the Council or by the Commission where this Treaty so provides and in all other cases, in particular those which concern cross-border co-operation, in which one of these two institutions considers it appropriate.

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to

## ***Committee of the Regions***

### ***Composition and Full Independence***

### ***Organisation***

### ***Relation to Other Institutions***

*Article 78 (ex- Article 262 TEC)*, the Committee of the Regions shall be informed by the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter. The Committee of the Regions may be consulted by the European Parliament. It may issue an opinion on its own initiative in cases in which it considers such action appropriate. The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

### **Chapter 8: The Employment Committee**

### ***Employment Committee***

#### **ARTICLE 82 (ex- Article 130 TEC)**

The Council, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote co-ordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

### ***Tasks and Composition***

- to monitor the employment situation and employment policies in the Member States and the Community;
- without prejudice to *Article 50 (ex- Article 207 TEC)*, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in *the implementation provisions of ex- Article 128 TEC*.

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

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

### **Chapter 9: The Economic and Financial Committee**

### ***EFC***

#### **ARTICLE 83 (ex- Article 114(2, phrase 2 etc) TEC)<sup>63</sup>**

(1) The Economic and Financial Committee shall have the following tasks:

### ***Tasks and Composition***

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;
- without prejudice to *Article 50 (ex- Article 207 TEC)*, to contribute to the preparation of the work of the Council referred to in *the implementation provisions of the former Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 105(6), 106(2), 107(5) and (6), 111, 119, 120(2) and (3), 122(2), 123(4) and (5) TEC*, and to carry out other advisory and preparatory tasks assigned to it by the Council;<sup>64</sup>
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the ECB shall each appoint

<sup>63</sup> Paragraph 1 and 2 (sentence 1) can be dropped.

<sup>64</sup> This enumeration could be replaced by a cross-reference to the implementation provisions.

no more than two members of the Committee.

(2) The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

(3) In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in *the implementation provisions of the former Articles 122 and 123*, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

#### **Chapter 10: The European System of Central Banks**

**ESCB**

##### *ARTICLE 84 (ex- Article 8 TEC)*<sup>65</sup>

A European System of Central Banks (hereinafter referred to as "ESCB") and a European Central Bank (hereinafter referred to as "ECB") shall be established in accordance with the procedures laid down in this Treaty; they shall act within the limits of the powers conferred upon them by *the implementation provisions* and by the Statute of the ESCB and of the ECB (hereinafter referred to as "Statute of the ESCB") annexed thereto.

*Tasks and  
Organisation*

#### **Chapter 11: The European Investment Bank**

**EIB**

##### *ARTICLE 85 (ex- Article 266 TEC)*

The European Investment Bank shall have legal personality. The members of the European Investment Bank shall be the Member States. The Statute of the European Investment Bank is laid down in a Protocol annexed to this Treaty.

*Organisation*

##### *ARTICLE 86 (ex- Article 267 TEC)*

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

*Tasks*

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

<sup>65</sup> In combination with Art 105-114 as well as Art 117 TEC – the central sections about composition, tasks and organisation should possibly also be added to the Basic Treaty.



In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Community financial instruments.

**FIFTH PART: LEGISLATION****LEGISLATION****ARTICLE 87 (ex- Article 249 TEC)**

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force.

*Legal Instruments***ARTICLE 88 (ex- Article 250 TEC)**

(1) Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to *Article 89 (4 and 5) (ex- Article 251(4 and 5) TEC)*.

*Changes*

(2) As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

**ARTICLE 89 (ex- Article 251 TEC)<sup>66</sup>**

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

*Co-decision  
Procedure*

(2) The Commission shall submit a proposal to the European Parliament and the Council. The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;
- if the European Parliament does not propose any amendments, may adopt the proposed act;
- shall otherwise adopt a common position and communicate it to the European Parliament.

The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
- (b) rejects, by an absolute majority of its component members, the

<sup>66</sup> Art 252 can be assigned to the implementation treaties as only a few sub-cases of the EMU are still decided on its basis. A cross-reference could be added here stating that decisions according to Art 67 TEC will only be subject to this procedure after a transitional period. The same is true for the procedures of the second and third pillar. => decisions according to Art 3 TEC are usually taken according to Art 251 TEC, the exceptions by unanimity are listed. Decisions in the second and third pillar are taken without right of initiative of the Commission, and only partially after hearing of the Parliament. Art 42 TEU could be used as general rule for the possible transfer of the second and third pillar issues into the procedures of the first pillar. Wording of Art 42 TEU: "The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements."

- common position, the proposed act shall be deemed not to have been adopted;
- (c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.
- (3) If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.
- (4) The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.
- (5) If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
- (6) Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
- (7) The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

*ARTICLE 90 (ex- Article 253 TEC)*

Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

*Obligation of Explanation*

*ARTICLE 91 (ex- Article 254 TEC)*

(1) Regulations, directives and decisions adopted in accordance with the procedure referred to in *Article 89 (ex- Article 251 TEC)* shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Communities. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

*Entering into Force*

(2) Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European Communities. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their

publication.

(3) Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.

## **SIXTH PART: PROVISIONS ON AN CLOSER COOPERATION FLEXIBILITY**

### **ARTICLE 92 (ex- Article 43 TEU)**

(1) Member States which intend to establish closer co-operation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the co-operation: *Conditions*

- (a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;
- (b) respects the principles of the said Treaties and the single institutional framework of the Union;
- (c) is only used as a last resort, where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein;
- (d) concerns at least a majority of Member States;
- (e) does not affect the "acquis communautaire" and the measures adopted under the other provisions of the said Treaties;
- (f) does not affect the competences, rights, obligations and interests of those Member States which do not participate therein;
- (g) is open to all Member States and allows them to become parties to the co-operation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;
- (h) complies with the specific additional criteria laid down in *Article 95 (ex- Article 11 TEC)* of the Treaty establishing the European Community and *the implementation provisions of the former Article 40 TEU (...)*, depending on the area concerned, and is authorised by the Council in accordance with the procedures laid down therein.

(2) Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the co-operation in which they participate. Member States not participating in such co-operation shall not impede the implementation thereof by the participating Member States.

### **ARTICLE 93 (ex- Article 44 TEU)**

(1) For the purposes of the adoption of the acts and decisions necessary for the implementation of the co-operation referred to in *Article 92 (ex- Article 43 TEU)*, the relevant institutional provisions of this Treaty and of the Treaty establishing the European Community shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing participating Member States shall take part in the adoption of decisions. The qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in *Article 49(2) (ex- Article 205(2) TEC)* of the Treaty establishing the European Community. Unanimity shall be constituted by only those Council members concerned. *Passing of Resolutions and Financing*

(2) Expenditure resulting from implementation of the co-operation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless the Council, acting unanimously, decides otherwise.

### **ARTICLE 94 (ex- Article 45 TEU)**

The Council and the Commission shall regularly inform the European Parliament of the development of closer co-operation established on the basis of this Title. *Information of the EP*

*ARTICLE 95 (ex- Article 11 TEC)*

(1) Member States which intend to establish closer co-operation between themselves may be authorised, subject to *Article 92 (ex- Article 43 TEU)* and *93 (ex- Article 44 TEU)* of the Treaty on European Union, to make use of the institutions, procedures and mechanisms laid down by this Treaty, provided that the co-operation proposed:

*Regulations for the Policies Laid Down in Article 20*

- (a) does not concern areas which fall within the exclusive competence of the Community;
  - (b) does not affect Community policies, actions or programmes;
  - (c) does not concern the citizenship of the Union or discriminate between nationals of Member States;
  - (d) remains within the limits of the powers conferred upon the Community by this Treaty;
- and
- (e) does not constitute a discrimination or a restriction of trade between Member States and does not distort the conditions of competition between the latter.

(2) The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the Council, meeting in the composition of the Heads of State or Government, for decision by unanimity.

Member States which intend to establish closer co-operation as referred to in paragraph 1 may address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

(3) Any Member State which wishes to become a party to co-operation set up in accordance with this Article shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of receipt of that notification. Within four months of the date of that notification, the Commission shall decide on it and on such specific arrangements as it may deem necessary.

(4) The acts and decisions necessary for the implementation of co-operation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided for in this Article and in *Article 92 (ex- Article 43 TEU)* and *93 (ex- Article 44 TEU)* of the Treaty on European Union.

(5) This Article is without prejudice to the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union.

*ARTICLE 96 (ex- Article 40 TEU)*

(1) Member States which intend to establish closer co-operation between themselves may be authorised, subject to *Article 92 (ex- Article 43 TEU)* and *93 (ex- Article 44 TEU)*, to make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the co-operation proposed:

*Regulations for the Policies Laid Down in Article 26*

- (a) respects the powers of the European Community, and the objectives laid down by this *part*;
- (b) has the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice.

(2) The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority at the request of the Member States concerned and after inviting the Commission to present its opinion; the request shall also be forwarded to the European Parliament.

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<sup>67</sup> This paragraph should be replaced by an updated cross-reference.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity. The votes of the members of the Council shall be weighted in accordance with *Article 49(2) (ex- Article 205(2))* of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

(3) Any Member State which wishes to become a party to co-operation set up in accordance with this Article shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the co-operation in question. Within four months of the date of that notification, the Council shall decide on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority, decides to hold it in abeyance; in this case, the Council shall state the reasons for its decision and set a deadline for reexamining it. For the purposes of this paragraph, the Council shall act under the conditions set out in *Article 93 (ex- Article 44 TEU)*.

(4) The *implementation provisions of the former Articles 29 to 41 TEU* shall apply to the closer co-operation provided for by this Article, save as otherwise provided for in this Article and in *Articles 92 (ex- Article 43 TEU)* and *Article 93 (ex- Article 44 TEU)*. The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply to paragraphs 1, 2 and 3.<sup>67</sup>

(5) This Article is without prejudice to the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union.

*ARTICLE 97 (ex- Article 307 sentence 1 TEC)*

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

*Rights and  
Obligations Arising  
from Other  
Agreements*

**SEVENTH PART: FINANCIAL PROVISIONS<sup>68</sup>****FINANCING***ARTICLE 98 (ex- Article 6(4) TEU)*

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

*Objective**ARTICLE 99 (ex- Article 268 TEC)*

All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

*Budget*

Administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to common foreign and security policy and to co-operation in the fields of justice and home affairs shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.<sup>69</sup>

The revenue and expenditure shown in the budget shall be in balance.

*ARTICLE 100 (ex- Article 269 TEC)*

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

*System of Own*

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

*Resources*


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<sup>68</sup> In combination with Art 270-280 TEC:

<sup>69</sup> Here a cross-reference is missing to the special regulations concerning the financing of CFSP (Art 28 TEU), Justice and Home Affairs (Art 41 TEU) and Closer Co-operation (Art 44(2) TEU).



**EIGHTH PART: FINAL PROVISIONS****FINAL  
PROVISIONS****ARTICLE 101 (ex- Article 281 and 282 TEC)**

(1) The *Union* shall have legal personality.<sup>70</sup> (ex- Article 281 TEC)

*Legal Personality*

(2) In each of the Member States, the *Union* shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the *Union* shall be represented by the Commission. (ex- Article 282 TEC)

**ARTICLE 102 (ex- Article 48 TEU)**

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

*Revision of the Treaty*

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

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

**ARTICLE 103 (ex- Article 49 TEU)**

Any European State which respects the principles set out in *Article 3(1)* (ex- *Article 6(1) TEU*) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

*Accession***ARTICLE 104 (ex- Article 310 TEC)**

The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

*Association***ARTICLE 105 (ex- Article 52(1) TEU)<sup>71</sup>**

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

*Obligation of  
Ratification*

<sup>70</sup> In case of unification of TEU and TEC the European Union should of course (also) be granted legal personality.

*ARTICLE 106 (ex- Article 182 and 299 TEC)<sup>72</sup>*

(1) This Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland. *(ex- Article 299(1) TEC)*

*Area of Application*

(2) The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands. *(ex- Article 299 (2, sentence 1) TEC)*

(3) The Member States agree to associate with the Community the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the "countries and territories") are listed in *the implementation provisions* to this Treaty. The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the Preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire. *(ex- Article 182 TEC)*

*ARTICLE 107 (ex- Article 51 TEU)*

This Treaty is concluded for an unlimited period.

*Duration of the Treaty*

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<sup>71</sup> The former Art 53 TEU could in an updated version be added here as paragraph 2.

<sup>72</sup> The remaining paragraphs are to be assigned to the implementation provisions.

Members of the workgroup “Division of the Treaties” of the Bertelsmann Group for Policy Research at the Center for Applied Policy Research are:

**Algieri, Franco** – is dealing with questions related to the Common Foreign and Security Policy, with the development of a European Security and Defence Identity and the respective defence capabilities, as well as with relations between Europe and Asia.

**Giering, Claus** – is mainly dealing with institutional and structural reforms of the European Union, with concepts of differentiated integration, the debate on the EU’s final shape as well as the different integration theories.

**Hillenbrand, Olaf** – is Deputy Director of the Bertelsmann Group for Policy Research and does research on the European Economic and Monetary Union, the Single Market, immigration policy, environmental policy as well as questions related to the processes of transformation.

**Janning, Josef** – is Deputy Director of the C•A•P and has already worked and published on all questions of European integration, on German Foreign and European Policy, on Security Policy and transatlantic relations.

**Metz, Wolfgang** – is responsible for the *Sommer Akademie Europa* (Summer Academy on Europe) of the C•A•P and deals with the reform process as well as institutional and procedural questions of the European Union.

**Schley, Nicole** – is dealing with the transatlantic relations; she has also just recently published a study on the allocation of competences between the EU, member states and regions and was the editor of the Yearbook on European integration.

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