

**NOTE**

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Subject: **IGC 2007**  
Draft Treaty amending the Treaty on European Union and the Treaty establishing the European Community – Protocols

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**DRAFT  
TREATY AMENDING  
THE TREATY ON EUROPEAN UNION AND  
THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

**PROTOCOLS**

- Protocols 1 to 10 to be annexed to the Treaty on European Union and/or to the Treaty on the Functioning of the Union
- Protocols 11 and 12 to be annexed to the Treaty amending the Treaty on European Union and the Treaty establishing the European Community

*N.B.:*

*This document is only a working document for examination by the IGC. The cross-references between Articles which appear in square brackets will, as usual, be corrected by the Legal/Linguistic experts when they finalise the text of the Reform Treaty before it is signed.*



**A. PROTOCOLS TO BE ANNEXED TO THE TREATY ON EUROPEAN UNION AND/OR TO THE TREATY ON THE FUNCTIONING OF THE UNION**

**PROTOCOL (No 1)**

**ON THE ROLE OF NATIONAL PARLIAMENTS  
IN THE EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

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

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

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

**TITLE I**

**INFORMATION FOR NATIONAL PARLIAMENTS**

**Article 1**

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

## Article 2

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

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

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

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

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

## Article 3

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

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

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

#### Article 4

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

#### Article 5

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

#### Article 6

When the European Council intends to make use of Article [IV-444](1) or (2) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

#### Article 7

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

#### Article 8

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

## TITLE II

### INTERPARLIAMENTARY COOPERATION

#### Article 9

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

#### Article 10

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

## **PROTOCOL (No 2)**

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

THE HIGH CONTRACTING PARTIES,

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

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article [I-11] of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

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

#### Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article [I-11] of the Treaty on European Union.

#### Article 2

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

#### Article 3

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

#### Article 4

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

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

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

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

#### Article 5

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

#### Article 6

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

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

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



## Article 7

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

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

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article [III-264] of the Treaty on the Functioning of the Union on the area of freedom, security and justice.

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

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

- (a) before concluding the first reading, the legislator (Council and European Parliament) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;
- (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

## Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [III-365] of the Treaty on the Functioning of the Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the Union provides that it be consulted.

## Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article [I-11] of the Treaty on European Union. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

**PROTOCOL (No 3)**  
**ON THE EURO GROUP**

THE HIGH CONTRACTING PARTIES,

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

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

HAVE AGREED UPON the following provisions, which are annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

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

Article 2

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



**PROTOCOL (No 4)**

**ON PERMANENT STRUCTURED COOPERATION  
ESTABLISHED BY ARTICLE [I-41] OF THE TREATY ON EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article [I-41(6)] and Article [III-312] of the Treaty on European Union,

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

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article [III-309] of the Treaty on European Union outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces;

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

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

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

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

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

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

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

RECALLING the importance of the High Representative of the Union for Foreign Affairs and Security Policy being fully involved in proceedings relating to permanent structured cooperation,

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

#### Article 1

The permanent structured cooperation referred to in Article [I-41(6)] of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, to:

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and
- (b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article [III-309] of the Treaty on European Union, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

#### Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;

- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- (d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";
- (e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

### Article 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, *inter alia*, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article [III-312] of the Treaty on European Union.





## **PROTOCOL (No 5)**

### **RELATING TO ARTICLE [I-9(2)] OF THE TREATY ON EUROPEAN UNION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

#### **THE HIGH CONTRACTING PARTIES**

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

#### **Article 1**

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article [I-9(2)] of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

#### **Article 2**

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

#### **Article 3**

Nothing in the agreement referred to in Article 1 shall affect Article [III-375(2)] of the Treaty on the Functioning of the Union.



**PROTOCOL (No 6)**  
**ON THE INTERNAL MARKET AND COMPETITION**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the internal market as set out in Article [I-3] of the Treaty on European Union includes a system ensuring that competition is not distorted,

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Sole Article

For the purposes of the first recital, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article [308] of the Treaty on the Functioning of the Union.



**PROTOCOL (No 7)**

**ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS  
TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article [I-9] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [I-9] and Title VII of the Charter itself;

Whereas the aforementioned Article [I-9] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally;

NOTING the wish of the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally,

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

#### Article 1

1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.

#### Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom.

**PROTOCOL (No 8)**  
**ON THE EXERCISE OF SHARED COMPETENCE**

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Sole Article

With reference to Article [I-12(2)] of the Treaty on the Functioning of the Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.





**PROTOCOL (No 9)**  
**ON SERVICES OF GENERAL INTEREST**

THE HIGH CONTRACTING PARTIES,

WISHING to emphasise the importance of services of general interest,

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

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article [III-122] of the Treaty on the Functioning of the Union include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.



**PROTOCOL (No 10)**  
**ON TRANSITIONAL PROVISIONS**

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the institutional provisions of the Treaties applicable prior to the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community to the provisions contained in that Treaty, it is necessary to lay down transitional provisions,

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

In this Protocol, the words "the Treaties" shall mean the Treaty on European Union, the Treaty on the Functioning of the Union and the Treaty establishing the European Atomic Energy Community.

**TITLE I**  
**PROVISIONS CONCERNING THE EUROPEAN PARLIAMENT**

Article 1

In accordance with [the second subparagraph of Article I-20(2)] of the Treaty on European Union, the European Council shall adopt a decision determining the composition of the European Parliament in good time before the 2009 European Parliament elections.

**TITLE II**  
**PROVISIONS CONCERNING THE QUALIFIED MAJORITY**

Article 2

1. In accordance with Article [I-25(1)], the provisions of Article [I-25(1), (2) and (3)] of the Treaty on European Union on the definition of a qualified majority in the European Council and the Council shall take effect on 1 November 2014.

2. Between 1 November 2014 and 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that it be adopted in accordance with the qualified majority as defined in paragraph 3. In that case, paragraph 3 shall apply.

3. Until 31 October 2014, the following provisions shall remain in force:

For acts of the European Council and of the Council requiring a qualified majority, members' votes shall be weighted as follows:

Belgium	12
Bulgaria	10
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Romania	14
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29

Acts shall be adopted if there are at least 255 votes in favour representing a majority of the members where, under the Treaties, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 255 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council may request that, where an act is adopted by the European Council or the Council by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62 % of the total population of the Union. If that proves not to be the case, the act shall not be adopted.

4. Until 31 October 2014, the qualified majority shall, in cases where not all the members of the Council participate in voting, namely in the cases where reference is made to the qualified majority as defined in Article 250(3) of the Treaty on the Functioning of the Union, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 3.

### TITLE III PROVISIONS CONCERNING THE CONFIGURATIONS OF THE COUNCIL

#### Article 3

Until the entry into force of the decision referred to in Article [I-24(4)] of the Treaty on European Union, the Council may meet in the configurations laid down in Article [I-24(2) and (3)] and in the other configurations on the list established by a decision of the General Affairs Council, acting by a simple majority.

### TITLE IV PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

#### Article 4

The members of the Commission in office on the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community shall remain in office until the end of their term of office. However, on the day of the appointment of the High Representative of the Union for Foreign Affairs and Security Policy, the term of office of the member having the same nationality as the High Representative shall end.

TITLE IV  
PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH  
REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND  
THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL

Article 5

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community. The Council shall appoint a Secretary-General in conformity with Article [III-344(2)] of the Treaty on the Functioning of the Union.

TITLE V  
PROVISIONS CONCERNING ADVISORY BODIES

Article 6

Until entry into force of the decision referred to in Article [III-386] of the Treaty on the Functioning of the Union, the allocation of members of the Committee of the Regions shall be as follows:

Belgium	12	Sweden	12
Bulgaria	12	Czech Republic	12
Denmark	9	Germany	24
Estonia	7	Greece	12
Spain	21	France	24
Ireland	9	Italy	24
Cyprus	6	Latvia	7
Lithuania	9	Luxembourg	6
Hungary	12	Malta	5
Netherlands	12	Austria	12
Poland	21	Portugal	12
Romania	15	Slovenia	7
Slovakia	9	Finland	9
		United Kingdom	24

## Article 7

Until entry into force of the decision referred to in Article [III-389] of the Treaty on the Functioning of the Union, the allocation of members of the Economic and Social Committee shall be as follows:

Belgium	12	Sweden	12
Bulgaria	12	Czech Republic	12
Denmark	9	Germany	24
Estonia	7	Greece	12
Spain	21	France	24
Ireland	9	Italy	24
Cyprus	6	Latvia	7
Lithuania	9	Luxembourg	6
Hungary	12	Malta	5
Netherlands	12	Austria	12
Poland	21	Portugal	12
Romania	15	Slovenia	7
Slovakia	9	Finland	9
		United Kingdom	24

## TITLE VI

TRANSITIONAL PROVISIONS CONCERNING ACTS ADOPTED ON THE BASIS OF  
TITLES V AND VI OF THE TREATY ON EUROPEAN UNION  
PRIOR TO THE ENTRY INTO FORCE OF THE TREATY AMENDING THE TREATY ON  
EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

## Article 8

The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of Titles V and VI of the Treaty on European Union prior to the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. The same shall apply to agreements concluded between Member States on the basis of those Titles.





**B. PROTOCOLS TO BE ANNEXED TO THE TREATY AMENDING THE TREATY ON EUROPEAN UNION AND THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

**PROTOCOL (No 11)**

**AMENDING THE PROTOCOLS ANNEXED TO THE TREATY ON EUROPEAN UNION,  
TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY  
AND/OR TO THE TREATY ESTABLISHING  
THE EUROPEAN ATOMIC ENERGY COMMUNITY**

THE HIGH CONTRACTING PARTIES,

DESIRING to amend the Protocols annexed to the Treaty on European Union, to the Treaty establishing the European Community and/or to the Treaty establishing the European Atomic Energy Community, in order to adapt them to the new rules laid down by the Treaty amending the Treaty on European Union and the Treaty establishing the European Community,

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

Sole Article

1) The protocols in force on the date of entry into force of this Treaty and annexed to the Treaty on European Union and/or to the Treaty establishing the European Community and/or to the Treaty establishing the European Atomic Energy Community shall be amended in accordance with the provisions of this Article.

2) No later than six months after the signing of this Treaty, the Council, acting unanimously and after consulting the Commission, shall make the necessary adjustments in the Protocols to the references in them to Articles of the Treaty on European Union and of the Treaty on the Functioning of the Union. The Council shall consult the Court of Justice and the European Central Bank on the respective protocols concerning them. These adjustments shall enter into force on the date of the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community.

## **A. HORIZONTAL AMENDMENTS**

- 3) The horizontal amendments laid down in Article 2(3) of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community shall apply to the Protocols referred to in this Article, with the exception of points (d), (e), (j) and (k).
- 4) In the Protocols referred to in point 1 of this Article:
- (a) the last recital of their respective preambles, referring to the Treaty or Treaties to which the Protocol in question is annexed, shall be replaced by "HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union".
- The Protocol on the Statute of the Court of Justice of the European Union, the Protocol on Article 40.3.3 of the Constitution of Ireland and the Protocol on the privileges and immunities of the European Union shall also be annexed to the Treaty establishing the European Atomic Energy Community;
- (b) the word "Communities" shall be replaced by "Union" and grammatical changes shall be made, where necessary.
- 5) In the following Protocols, the words "the Treaty" and "this Treaty" shall be replaced by "the Treaties" and "these Treaties" respectively, and references to the Treaty on European Union and/or to the Treaty establishing the European Community shall be replaced by a reference to the Treaties:
- (a) Protocol on the Statute of the Court of Justice of the European Union:
- Article 1
- (b) Protocol on the Statute of the European System of Central Banks and of the European Central Bank:
- Article 1.1, new second subparagraph;
  - Article 12.1, first subparagraph;
  - Article 14.1;
  - Article 14.2, second subparagraph;
  - Article 34.1, second indent;
  - Article 35.1;
- (c) Protocol on the excessive deficit procedure:
- Article 3, second sentence;
- (d) Protocol on certain provisions relating to Denmark:
- point 2, renumbered 1, second sentence;

- (e) Protocol on the Schengen *acquis*:
    - sixth recital;
    - Article 1;
  - (f) Protocol on asylum for nationals of Member States of the European Union:
    - seventh recital;
  - (g) Protocol on the acquisition of property in Denmark:
    - sole provision;
  - (h) Protocol on the system of public broadcasting in the Member States:
    - throughout the text;
  - (i) Protocol on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel:
    - Article 3.
- 6) In the following Protocols, the words "acting by a simple majority" shall be inserted after "the Council":
- (a) Protocol on the Statute of the Court of Justice:
    - Article 4, second paragraph;
    - Article 13, second paragraph;
  - (b) Protocol on the privileges and immunities of the European Union:
    - Article 7, renumbered 6, first paragraph, first sentence.
- 7) In the following Protocols, the words "Court of Justice of the European Communities", "Court of Justice" or "Court" shall be replaced by "Court of Justice of the European Union".
- (a) Protocol on the Statute of the Court of Justice of the European Union:
 

<ul style="list-style-type: none"> <li>- preamble, first recital</li> <li>- title of the Protocol</li> <li>- Article 1</li> <li>- Article 3, fourth paragraph</li> </ul>	<ul style="list-style-type: none"> <li>- Article 1 of the Annex</li> <li>- Article 5, first paragraph, of the Annex</li> <li>- Article 7(1) of the Annex;</li> </ul>
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  - (b) Protocol on the Statute of the European System of Central Banks and of the European Central Bank:
    - Article 35.1, 35.2, 35.4, 35.5 and 35.6;
    - Article 36.2;

- (c) Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union:
  - Sole Article, point (d);
- (d) Protocol on the privileges and immunities of the European Union:
  - Article 12, renumbered 11, point (a);
  - Article 21, renumbered 20;
- (e) Protocol on the position of Denmark:
  - Article 2, first sentence;
- (f) Protocol on asylum for nationals of Member States of the European Union:
  - third recital.

## **B. SPECIFIC AMENDMENTS**

### **Protocols repealed**

- 8) The following Protocols shall be repealed:
- (a) Protocol on Italy (1957);
  - (b) Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State (1957);
  - (c) Protocol on the Statute of the European Monetary Institute (1992);
  - (d) Protocol on the transition to the third stage of economic and monetary union (1992);
  - (e) Protocol on Portugal (1992);
  - (f) Protocol on the role of national parliaments in the European Union (1997), which shall be replaced by a new Protocol with the same title;
  - (g) Protocol on the application of the principles of subsidiarity and proportionality (1997), which shall be replaced by a new Protocol with the same title;
  - (h) Protocol on protection and welfare of animals (1997), the text of which shall become Article [III-121] of the Treaty on the Functioning of the Union;
  - (i) Protocol on the enlargement of the European Union (2001);
  - (j) Protocol on Article 67 of the Treaty establishing the European Community (2001).

### **Statute of the Court of Justice of the European Union**

- 9) The Protocol on the Statute of the Court of Justice shall be amended as follows:
- (a) in the title, the words "of the European Union" shall be added;

- (b) in the following Articles, the word "Court", where it refers specifically to the Court of Justice, shall be replaced by "Court of Justice":
- Article 3, second paragraph, beginning of the sentence;
  - Article 4, fourth paragraph
  - Article 5, second paragraph;
  - Article 6, first paragraph;
  - Article 10 to 15;
  - Article 16, first paragraph;
  - Article 17, first paragraph;
  - Article 18, third paragraph;
  - Article 19, first paragraph;
  - Article 20, first paragraph;
  - Article 21, first paragraph;
  - Article 22, first paragraph;
  - Article 23, first paragraph, first sentence;
  - Article 24, first paragraph, beginning of the sentence;
  - Article 25 and 27;
  - Article 29, first paragraph;
  - Articles 30 to 32, 35, 38 to 41 and 43;
  - Article 44, first paragraph;
  - Article 46, first paragraph; \*
- (c) in Article 2, the words "in open court" shall be replaced by "before the Court of Justice sitting in open court";
- (d) in Article 3, second paragraph, and Article 4, fourth paragraph, the following sentence shall be added: "If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.";
- (e) in Article 6, first paragraph, the following sentence shall be added: "If the person concerned is a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.";
- (f) in the heading of Title II, the words "of the Court of Justice" shall be added;
- (g) in Article 13, first paragraph, first sentence, the words "On a proposal from" shall be replaced by "At the request of", and the words "the Council may, acting unanimously, provide for" shall be replaced by "the European Parliament and the Council may, acting in accordance with the ordinary legislative procedure, provide for";
- (h) in the heading of Title III, the words "before the Court of Justice" shall be added;

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\* Translator's note: the remaining Articles listed in the French version already refer to the "Court of Justice" in English.

- (i) Article 23 shall be amended as follows:
- (i) in the first paragraph, second sentence, the words "and also to the Council or to the European Central Bank if the act the validity or interpretation of which is in dispute originates from one of them, and to the European Parliament and the Council if the act the validity or interpretation of which is in dispute was adopted jointly by those two institutions" shall be replaced by "and to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute";
  - (ii) in the second paragraph, the words "and, where appropriate, the European Parliament, the Council and the European Central Bank, shall be entitled" shall be replaced by "and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled";
- (j) in Article 24, second paragraph, the words ", bodies, offices and agencies" shall be inserted after "institutions";
- (k) in Article 40, second paragraph, the words "The same right shall be open to any other person establishing an interest" shall be replaced by "The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest";
- (l) in Article 46, the following new paragraph shall be added: "This Article shall also apply to proceedings against the European Central Bank regarding non-contractual liability.";
- (m) the heading of Title IV shall be replaced by "GENERAL COURT";
- (n) in Article 47, the first paragraph shall be replaced by "The first paragraph of Article 9, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the General Court and its members" and, in the second paragraph, the words "The fourth paragraph of Article 3 and" shall be deleted;
- (o) in Article 51, second paragraph, the words "or by the European Central Bank" shall be deleted;
- (p) Article 64 shall be amended as follows:
- (i) the following new first paragraph shall be inserted:

"The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament."

- (ii) in the second paragraph, first sentence, the words "Until the rules governing the language arrangements applicable at the Court of Justice and the Court of First Instance have been adopted in this Statute" shall be replaced by "Until those rules have been adopted"; the second sentence shall be replaced by the following: "By way of derogation from Articles [III-335 and III-356], those provisions may only be amended or repealed with the unanimous consent of the Council.";
- (q) in Annex I to the Protocol, Article 3(1), second sentence, the words "Civil Service" shall be inserted before "Tribunal".

## **Statute of the ESCB and of the ECB**

10) The Protocol on the Statute of the European System of Central Banks and of the European Central Bank shall be amended as follows:

- (a) Article 1.1 shall be split at the semi-colon into two unnumbered paragraphs. The first paragraph shall be replaced by the following: "In accordance with Article [I-30] of the Treaty on European Union, the European Central Bank (ECB) and the national central banks shall constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem."; at the beginning of the second paragraph, the words "they shall perform" shall be replaced by "The ESCB and the ECB shall perform";
- (b) Article 1.2 shall be deleted;
- (c) in Article 4, point (b), the word "appropriate" shall be deleted;
- (d) Article 10 shall be amended as follows:
  - (i) in Article 10.1, the words "without a derogation as referred to in Article [III-197] of the Treaty" shall be inserted at the end;
  - (ii) in Article 10.2, first indent, at the end of the first sentence, the words "Member States which have adopted the euro" shall be replaced by "Member States whose currency is the euro";
  - (iii) Article 10.6 shall be deleted;
- (e) in Article 11.2, first subparagraph, the words "shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government" shall be replaced by "shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters";
- (f) in Article 14.1, the words ", at the latest at the date of the establishment of the ESCB," shall be deleted;



- (g) in Article 18.1, first indent, at the end of the first sentence, the words "whether in Community or non-Community currencies" shall be replaced by "whether in euro or other currencies";
- (h) in Article 28.1, the words ", which shall become operational upon its establishment," shall be deleted;
- (i) in Article 29.1, the introductory wording shall be replaced by the following: "The key for subscription of the ECB's capital, fixed for the first time in 1998 when the ESCB was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:"; the second subparagraph shall be replaced by the following: "The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.";
- (j) in Article 32.2, the words "Subject to Article 32.3," shall be deleted;
- (k) in Article 34.2, the first four subparagraphs shall be deleted.
- (l) in Article 35.6, first sentence, the words "the Treaties and" shall be inserted before "this Statute";
- (m) Article 37 shall be repealed and the remaining Articles shall be renumbered accordingly;
- (n) Article 41, renumbered 40, shall be amended as follows:
  - (i) in Article 41.1, renumbered 40.1, the words "may be amended by the Council, acting either" shall be replaced by "may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure either" and the last sentence shall be deleted;
  - (ii) the following new Article 40.2 shall be inserted: "40.2. Article 10(2) may be amended by a decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.";
- (o) in Article 42, renumbered 41, the words "immediately after the decision on the date for the beginning of the third stage," shall be deleted;
- (p) in Article 44, renumbered 43, at the end of the first paragraph, the words "in the third stage" shall be replaced by "after the introduction of the euro";

- (q) in Article 47.3, renumbered 46.3, the words "against the currencies, or the single currency, of the Member States without a derogation," shall be replaced by "against the euro";
- (r) Article 50 shall be repealed and the remaining Articles shall be renumbered accordingly;
- (s) in Article 52, renumbered 50, the words "in accordance with Article [III-198(3)] of the Treaty on the Functioning of the Union" shall be inserted after the words "Following the irrevocable fixing of exchange rates".

## **Statute of the EIB**

11) The Protocol on the Statute of the European Investment Bank shall be amended as follows:

- (a) throughout the Protocol, references to an Article of "the Treaty" shall be replaced by references to an Article of "the Treaty on the Functioning of the Union";
- (b) at the end of the preamble, the words "to this Treaty" shall be replaced by "to the Treaty on European Union and to the Treaty on the Functioning of the Union";
- (c) in Article 1, the second paragraph shall be deleted;
- (d) in Article 3, the introductory phrase shall be replaced by "In accordance with Article [266] of the Treaty on the Functioning of the Union, the Bank's members shall be the Member States" and the list of States shall be deleted;
- (e) in Article 4(1), the second subparagraph shall be deleted;
- (f) Article 5 shall be amended as follows:
  - (i) in paragraph 2, the following new sentence shall be added: "Cash payments shall be made exclusively in euro.";
  - (ii) in paragraph 3, first subparagraph, the words "towards those who have made loans to it" shall be deleted, and in the second subparagraph the words "in the currencies required by the Bank to meet these obligations" shall be deleted;
- (g) Articles 6 and 7 shall be repealed and the remaining Articles shall be renumbered accordingly;

- (h) Article 9, renumbered 7, shall be amended as follows:
- (i) in paragraph 2, the words "with particular reference to the objectives to be pursued as progress is made in the attainment of the common market" shall be replaced by "in accordance with the Union's objectives";
  - (ii) in paragraph 3, the text of point (b) shall be replaced by "for the purposes of Article [9(1)], determine the principles applicable to financing operations undertaken within the framework of the Bank's task;", the text of point (d) shall be replaced by "take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article [16(1)];" and, in point (g), the words "provided in Articles 4, 7, 14, 17, 26 and 27" shall be replaced by "conferred by this Statute";
- (i) Article 10, renumbered 8, shall be amended as follows:
- (i) the third sentence shall be deleted;
  - (ii) the following two new paragraphs shall be inserted:

"A qualified majority shall require eighteen votes in favour and 68 % of the subscribed capital.

Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity."
- (j) Article 11, renumbered 9, shall be amended as follows:
- (i) paragraph 1, first subparagraph, shall be replaced by the following:

"1. The Board of Directors shall take decisions in respect of granting finance, in particular in the form of loans and guarantees, and raising loans; it shall fix the interest rates on loans granted and the commission and other charges. It may, on the basis of a decision taken by a qualified majority, delegate some of its functions to the Management Committee. It shall determine the terms and conditions for such delegation and shall supervise its execution.

The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of the Treaty and of this Statute and with the general directives laid down by the Board of Governors.";
  - (ii) in paragraph 2, the sixth subparagraph shall be replaced by the following:

"The Rules of Procedure shall lay down the arrangements for participating in the meetings of the Board of Directors and the provisions applicable to alternates and co-opted experts."

- (iii) in paragraph 5, second sentence, the words ", acting unanimously," shall be deleted.
- (k) Article 13, renumbered 11, shall be amended as follows:
- (i) in paragraph 3, second subparagraph, the words "the granting of loans" shall be replaced by "the granting of finance, in particular in the form of loans";
  - (ii) in paragraph 4, the words "on proposals for raising loans or granting loans and guarantees" shall be replaced by "on proposals for raising loans or granting finance, in particular in the form of loans and guarantees";
  - (iii) in paragraph 7, first sentence, the words "officials and other employees" shall be replaced by "staff". The following sentence shall be added at the end: "The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.";
- (l) Article 14, renumbered 12, shall be amended as follows:
- (i) in paragraph 1, the words "shall annually verify that the operations of the Bank have been conducted and its books kept in a proper manner" shall be replaced by "shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts.";
  - (ii) paragraph 2 shall be replaced by the following three new paragraphs:
    - "2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.
    - 3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review.
    - 4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity."
- (m) in Article 15, renumbered 13, the words "the bank of issue" shall be replaced by "the national central bank";

(n) Article 18, renumbered 16, shall be amended as follows:

(i) in the first subparagraph of paragraph 1, the words "shall grant loans" shall be replaced by "shall grant finance, in particular in the form of loans and guarantees"; in the second subparagraph, the words "by way of derogation authorised by the Board of Governors, acting unanimously" shall be replaced by "by decision of the Board of Governors, acting by a qualified majority", and the words "loans for investment projects" shall be replaced by "financing for investment";

(ii) at the end of paragraph 3, the following shall be added: ", or on the financial strength of the debtor" and the following new second subparagraph shall be inserted:

"Furthermore, in accordance with the principles established by the Board of Governors pursuant to Article [7(3)(b)], and where the implementation of projects provided for in Article [III-394] of the Treaty on the Functioning of the Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions of any financing operation presenting a specific risk profile and thus considered to be a special activity."

(iii) paragraph 5 shall be replaced by the following:

"5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount shall be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.

The amount of the Bank's disbursed equity participations shall not exceed at any time an amount corresponding to the total of its paid-in subscribed capital, reserves, non-allocated provisions and profit and loss account surplus.

By way of exception, the special activities of the Bank, as decided by the Board of Governors and the Board of Directors in accordance with paragraph 3, will have a specific allocation of reserve.

This paragraph shall also apply to the consolidated accounts of the Bank."

(o) in paragraph 1 of Article 19, renumbered 17 the words "commission on guarantees" shall be replaced by "commission and other charges" and the words "and risks" shall be inserted after "to cover its expenses";

(p) Article 20, renumbered 18, shall be amended as follows:

- (i) in paragraph 1, point (a), the words "projects carried out by" shall be replaced by "investments by", the words "in which the project is carried out" shall be replaced by "in which the investment is made" and the words "in other cases" shall be replaced by "in the case of other investments"; in point (b), the words "of the project" shall be replaced by "of the investment";
- (ii) in paragraph 2, the following new second subparagraph shall be inserted:

"However, in accordance with the principles determined by the Board of Governors pursuant to Article [7(3)(b)], and where the implementation of operations provided for in Article [III-394] of the Treaty on the Functioning of the Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, insofar as this is required to finance an investment or programme."

- (iii) the following new paragraph 7 shall be added:

"7. As a complement to its lending activity, the Bank may provide technical assistance services in accordance with the terms and conditions laid down by the Board of Governors, acting by a qualified majority, and in compliance with this Statute."

(q) Article 21, renumbered 19, shall be amended as follows:

- (i) paragraph 1 shall be replaced by the following:

"1. Any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State on whose territory the investment will be carried out."

- (ii) in paragraph 3 and in the first sentence of paragraph 4, the words "applications for loans or guarantees" shall be replaced by "financing operations";
- (iii) in paragraph 4, second sentence, the words "granting the loan or guarantee" shall be replaced by "the financing operation" and the words "draft contract" shall be replaced by "corresponding proposal"; in the last sentence, the words "loan or guarantee" shall be replaced by "finance";
- (iv) in paragraphs 5, 6 and 7, the words "loan or guarantee" shall be replaced by "finance";

(v) the following new paragraph 8 shall be added:

"8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors."

(r) in Article 22, renumbered 20, paragraph 2 shall be replaced by the following:

"2. The Bank may borrow on the capital markets of the Member States in accordance with the legal provisions applying to those markets.

The competent authorities of a Member State with a derogation within the meaning of Article [III-197(1)] of the Treaty on the Functioning of the Union may oppose this only if there is reason to fear serious disturbances on the capital market of that State.";

(s) in paragraph 1(b) of Article 23, renumbered 21, the words "issued by itself or by those who have borrowed from it" shall be deleted and in paragraph 3, the words "the bank of issue" shall be replaced by "the national central bank";

(t) in Article 25, renumbered 23, the words "a Member State whose currency is not the euro" shall be inserted to replace "one Member State" in paragraph 1, first sentence and "a Member State" in paragraph 2; in paragraph 1, first sentence, the words "into the currency of another Member State" shall be deleted and in paragraph 4 the word "projects" shall be replaced by "investment";

(u) in Article 26, renumbered 24, the words ", to grant its special loans" shall be deleted;

(v) in paragraph 2 of Article 27, renumbered 25, the following sentence shall be added at the end: "It shall ensure that the rights of the members of staff are safeguarded.";

(w) in the first paragraph of Article 29, renumbered 27, the words "of the European Union" shall be added at the end and in the second paragraph, the words "or provide for arbitration" shall be deleted;

(x) Article 30, renumbered 28, shall be replaced by the following:

"1. The Board of Governors may, acting unanimously, decide to establish subsidiaries or other entities, which shall have legal personality and financial autonomy.

2. The Board of Governors, acting unanimously, shall establish the Statutes of the bodies referred to in paragraph 1. The Statutes shall define, in particular, their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank.

3. The Bank shall be entitled to participate in the management of these bodies and contribute to their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

4. The Protocol on the privileges and immunities of the European Union shall apply to the bodies referred to in paragraph 1 insofar as they are incorporated under Union law, to the members of their organs in the performance of their duties as such and to their staff, under the same terms and conditions as those applicable to the Bank.

Those dividends, capital gains or other forms of revenue stemming from such bodies to which the members, other than the European Union and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of a body incorporated under Union law. Proceedings against such measures may be instituted by any member of such a body in its capacity as such or by Member States under the conditions laid down in Article [230] of the Treaty on the Functioning of the Union.

6. The Board of Governors may, acting unanimously, decide to admit the staff of bodies incorporated under Union law to joint schemes with the Bank, in compliance with the respective internal procedures."

## **Protocol on the location of seats**

- 12) The Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol shall be amended as follows:
- (a) in the title of the Protocol, the words ", offices, agencies" shall be inserted before "and departments" and the words "and of Europol" shall be deleted;
  - (b) in the citation in the preamble, the reference to the Treaty establishing the European Community shall be replaced by a reference to the Treaty on the Functioning of the Union and the reference to Article 77 of the Treaty establishing the European Coal and Steel Community shall be deleted;



- (c) in point (d), the reference to the Court of First Instance shall be deleted and the words "their seat" shall be replaced by "its seat";
- (d) in point (i), the reference to the European Monetary Institute shall be deleted and the words "their seat" shall be replaced by "its seat";

### **Protocol on the privileges and immunities of the Union**

- 13) The Protocol on the privileges and immunities of the European Union shall be amended as follows:
- (a) in the first recital in the preamble, the reference to Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities shall be replaced by a reference to Article [III-434] of the Treaty on the Functioning of the Union and to Article 191 of the Treaty establishing the European Atomic Energy Community, abbreviated as the EAEC, and the words "these Communities and the European Investment Bank" shall be replaced by "the European Union and the EAEC";
  - (b) Article 5 shall be repealed and the remaining Articles shall be renumbered accordingly;
  - (c) in Article 13, renumbered 12, the words "in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission" shall be replaced by "in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consultation of the institutions concerned";
  - (d) in Article 15, renumbered 14, the opening phrase "The Council shall, acting unanimously on a proposal from the Commission, lay down" shall be replaced by "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down";
  - (e) in Article 16, renumbered 15, the opening phrase "The Council shall, acting on a proposal from the Commission" shall be replaced by "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall";
  - (f) in Article 21, renumbered 20, the words "and to the Members and Registrar of the Court of First Instance" shall be deleted;
  - (g) in Article 23, renumbered 22, the last paragraph shall be deleted;
  - (h) the closing formula, "IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol", the date and the list of signatories shall be deleted.

## **Protocol on the convergence criteria**

- 14) The Protocol on the convergence criteria referred to in Article 121 of the Treaty establishing the European Community shall be amended as follows:
- (a) in the title of the Protocol, the words "referred to in Article 121 of the Treaty establishing the European Community" shall be deleted;
  - (b) in the first recital, the words "in taking decisions on the passage to the third stage of economic and monetary union" shall be replaced by "in taking decisions to end the derogations of those Member States with a derogation";
  - (c) in Article 3, second sentence, the words "against another Member State's currency" shall be replaced by "against the euro";

## **Protocol on certain provisions relating to the United Kingdom**

- 15) The Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland shall be amended as follows:
- (a) throughout the Protocol, the words "to move to the third stage of economic and monetary union" and "to move to the third stage" shall be replaced by "to adopt the euro"; the words "moves to the third stage" shall be replaced by "adopts the euro"; the words "in the third stage" shall be replaced by "after the introduction of the euro";
  - (b) in the preamble, the following new second recital shall be inserted:

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union,";
  - (c) in paragraph 1, the first and third subparagraphs shall be deleted;
  - (d) paragraph 2 shall be replaced by the following:

"2. In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, paragraphs 3 to 9 shall apply to the United Kingdom."

- (e) paragraph 3 shall be deleted and the remaining paragraphs shall be renumbered accordingly;
- (f) paragraph 5, renumbered 4, shall be amended as follows:
  - (i) in the first sentence, the list of Articles shall be replaced by "Articles I-30(2), with the exception of the first and last sentences thereof, I-30(5), III-177, second paragraph, III-184(1), (9) and (10), III-185(1) to (5), III-186, III-188, III-189, III-190, III-191, III-196, III-198(3), III-326 and III-382";
  - (ii) The following new second sentence shall be inserted: "The same applies to Article [III-179(2)] of this Treaty as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally.";
- (g) in paragraph 6, renumbered 5, the following new first subparagraph shall be inserted: "The United Kingdom shall endeavour to avoid an excessive government deficit.";
- (h) paragraph 7, renumbered 6, shall be replaced by the following: "6. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 4 and in the instances referred to in [the first subparagraph of Article III-197(4)] of the Treaty. For this purpose [the second and third subparagraphs of Article III-197(4)] of the Treaty shall apply.";
- (i) in point (a) of paragraph 9, renumbered 8, the words "move to that stage" shall be replaced by "adopt the euro";
- (j) in paragraph 10, renumbered 9, the introductory subparagraph shall be replaced by "The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:";
- (k) at the end of paragraph 11, renumbered 10, the words "does not move to the third stage" shall be replaced by "does not adopt the euro".

## **Protocol on certain provisions relating to Denmark**

- 16) The Protocol on certain provisions relating to Denmark shall be amended as follows:
- (a) in the preamble, the first recital shall be deleted, in the second recital the words "Danish participation in the third stage of economic and monetary union" shall be replaced by "Denmark renouncing its exemption", and the following new third recital shall be inserted: "GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union,";
  - (b) points 1 and 3 shall be deleted and the remaining points shall be renumbered accordingly;
  - (c) in point 2, renumbered 1, the first sentence shall be replaced by "In view of the notice given to the Council by the Danish Government on 3 November 1993, Denmark shall have an exemption."

## **Schengen Protocol**

- 17) The Protocol integrating the Schengen *acquis* into the framework of the European Union shall be amended as follows:
- (a) in the title of the Protocol, the words "integrating the Schengen *acquis* into" shall be replaced by "on the Schengen *acquis* integrated into";
  - (b) the preamble shall be amended as follows:
    - (i) at the end of the first recital, the words "are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice" shall be replaced by "have been integrated into the framework of the European Union by the Treaty of Amsterdam of 2 October 1997;"
    - (ii) the second recital shall be replaced by the following:

"DESIRING to preserve the Schengen *acquis*, as developed since the entry into force of the Treaty of Amsterdam, and to develop this *acquis* in order to contribute towards achieving the objective of offering citizens of the Union an area of freedom, security and justice without internal borders";

- (iii) the third recital shall be deleted;
  - (iv) in the fifth recital, now the fourth recital, the words "are not parties to and have not signed the aforementioned agreements" shall be replaced by "do not participate in all the provisions of the Schengen *acquis*" and, at the end, the words "to accept some or all of the provisions thereof" shall be replaced by "to accept other provisions of this *acquis* in full or in part";
  - (v) at the end of the sixth recital, now the fifth recital, the words "and that those provisions should only be used as a last resort" shall be deleted;
  - (vi) at the end of the seventh recital, now the sixth recital, the words "both States having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996" shall be replaced by "both States being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the European Union";
- (c) in Article 1, the first sentence shall be replaced by the following:

"The Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden shall be authorised to establish closer cooperation among themselves in areas covered by provisions defined by the Council which constitute the Schengen *acquis*."

- (d) Article 2 shall be replaced by the following:

"The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Act of Accession of 16 April 2003 or to Article 4 of the Act of Accession of 25 April 2005. The Council will substitute itself for the Executive Committee established by the Schengen agreements."

- (e) Article 3 shall be replaced by the following:

"The participation of Denmark in the adoption of measures constituting a development of the Schengen *acquis*, as well as the implementation of these measures and their application to Denmark, shall be governed by the relevant provisions of the Protocol on the position of Denmark."

- (f) in Article 4, first paragraph, the words "which are not bound by the Schengen *acquis*," shall be deleted;
- (g) at the end of the first subparagraph of Article 5(1), the words "of the Treaties" shall be added; in the second subparagraph, the reference to two articles in the Treaties shall be replaced by a reference to Article [III-419] of the Treaty on the Functioning of the Union; paragraph 2 shall be deleted and paragraph 1 shall not be numbered;
- (h) at the end of the first sentence of the first paragraph of Article 6, the words "on the basis of the Agreement signed in Luxembourg on 19 December 1996" shall be deleted;
- (i) Article 7 shall be repealed and Article 8 shall be renumbered 7;
- (j) the Annex shall be repealed.

### **Protocol on the application of Article [III-130] to the United Kingdom and to Ireland**

- 18)** The Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland shall be amended as follows:
- (a) in the title of the Protocol, the reference to Article 14 shall be replaced by a reference to Article [III-130] of the Treaty on the Functioning of the Union;
  - (b) in Article 1, first paragraph, point (a), the words "States which are Contracting Parties to the Agreement on the European Economic Area" shall be replaced by "Member States";
  - (c) in Article 1, first and second paragraphs, Article 2 and Article 3, second paragraph, the reference to Article 14 shall be replaced by a reference to Articles [III-130 and III-265] of the Treaty on the Functioning of the Union.

### **Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice**

- 19)** The Protocol on the position of the United Kingdom and Ireland shall be amended as follows:
- (a) at the end of the title of the Protocol, the words "in respect of the area of freedom, security and justice" shall be added;
  - (b) in the second recital of the preamble, the reference to Article 14 shall be replaced by a reference to Article [III-130] of the Treaty on the Functioning of the Union;

- (c) in Article 1, first sentence, the words "pursuant to Title IV of the Treaty establishing the European Community" shall be replaced by "pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union"; the second sentence shall be deleted and the following paragraph shall be added:

"For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) of the Treaty on the Functioning of the Union.";

- (d) at the beginning of Article 2 the words "provisions of Title IV of the Treaty establishing the European Community" shall be replaced by "provisions of Title IV of Part Three of the Treaty on the Functioning of the Union"; at the end of the Article, the words "*acquis communautaire*" shall be replaced by "Community or Union *acquis*";

- (e) Article 3(1) shall be amended as follows:

- (i) in the first sentence of the first subparagraph, the words "pursuant to Title IV of the Treaty establishing the European Community" shall be replaced by "pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union" and the second sentence shall be deleted;

- (ii) the following new subparagraphs shall be added after the second subparagraph:

"Measures adopted pursuant to Article [III-260] of the Treaty on the Functioning of the Union shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Title IV of Part Three of that Treaty.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) of the Treaty on the Functioning of the Union."

- (f) in Articles 4, 5 and 6, the words "pursuant to Title IV" shall be replaced by "pursuant to Title IV of Part Three";
- (g) in the second sentence of Article 4, the reference to Article 11(3) shall be replaced by a reference to Article [III-240(1)] of the Treaty on the Functioning of the Union;
- (h) at the end of Article 5, the following shall be added: ", unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise";
- (i) In Article 6, the words "the relevant provisions of that Treaty, including Article 68," shall be replaced by "the relevant provisions of the Treaties";

- (j) in Article 7, the words "Protocol integrating the Schengen *acquis* into" shall be replaced by "Protocol on the Schengen *acquis* integrated into".

## **Protocol on the position of Denmark**

20) The Protocol on the position of Denmark shall be amended as follows:

(a) the preamble shall be amended as follows:

(i) the following three new recitals shall be inserted after the second recital:

"CONSCIOUS of the fact that a continuation under the Treaties of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice;

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Title IV of Part Three of the Treaty on the Functioning of the Union and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements;

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark;"

(ii) in the penultimate recital, the words "Protocol integrating the Schengen *acquis* into" shall be replaced by "Protocol on the Schengen *acquis* integrated into";

(b) the heading "PART I" shall be inserted before Article 1;

(c) in Article 1, first sentence, and Article 2, first sentence, the words "Title IV of the Treaty establishing the European Community" shall be replaced by "Title IV of Part Three of the Treaty on the Functioning of the Union";

(c) in Article 1, the second sentence of the first paragraph shall be deleted and the following new paragraph shall be added:

"For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) of the Treaty on the Functioning of the Union."



- (d) at the end of Article 2, the words "*acquis communautaire*" shall be replaced by "Community or Union *acquis*";
- (e) the following new Article 2a shall be inserted:

"Article 2a

Article 2 of this Protocol shall also apply in respect of those rules laid down on the basis of Article [I-51] of the Treaty on the Functioning of the Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title IV of Part Three of that Treaty."

- (f) Article 4 shall become Article 6;
- (g) Article 5, renumbered 4, shall be amended as follows:
  - (i) throughout the Article, the word "decision" shall be replaced by "measure";
  - (ii) in paragraph 1, the words "under the provisions of Title IV of the Treaty establishing the European Community" shall be replaced by "covered by this Part" and the words "Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union as well as Ireland or the United Kingdom if those Member States take part in the areas of cooperation in question" shall be replaced by "Member States bound by the measure";
  - (iii) in paragraph 2, the word "decision" shall be replaced by "measure" and the words "the Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union will consider" shall be replaced by "the Member States bound by that measure and Denmark will consider";
- (h) the heading "PART II" shall be inserted before Article 6, renumbered 5;
- (i) Article 6, renumbered 5, shall be amended as follows:
  - (i) in the first sentence, the words "in the field of Articles 13(1) and 17 of the Treaty on European Union" shall be replaced by "pursuant to Article [I-41], Article [III-295] and Articles [III-309 to III-313] of the Treaty on the Functioning of the Union" and the last phrase ", but will not prevent the development of closer cooperation between Member States in this area" shall be deleted;

- (ii) the following new second sentence shall be inserted: "Denmark will not prevent the other Member States from further developing their cooperation in this area.";
- (iii) at the end of the third sentence, the following shall be added: ", nor to make military capabilities available to the Union";
- (iv) the following two new paragraphs shall be added:

"The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) of the Treaty on the Functioning of the Union."

- (j) the heading "PART III" shall be inserted after Article 6, renumbered 5;
- (k) an Article 6 shall be inserted, with the wording of Article 4;
- (l) the heading "PART IV" shall be inserted before Article 7;
- (m) the following new Article 8 shall be inserted:

#### "Article 8

1. At any time and without prejudice to Article 7, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 8 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law."

- (n) the following new Annex shall be added to the Protocol:

"ANNEX

Article 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 205(3) of the Treaty on the Functioning of the Union.

Article 2

Pursuant to Article 1 and subject to Articles 3, 4 and 6, none of the provisions in Title IV of Part Three of the Treaty on the Functioning of the Union, no measure adopted pursuant to that Title, no provision of any international agreements concluded by the Union pursuant to that Title, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

Article 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt that measure referred to in paragraph 1 in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.

#### Article 4

Denmark may at any time after the adoption of a measure pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article [III-420(1)] of that Treaty shall apply *mutatis mutandis*.

#### Article 5

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

#### Article 5a

Denmark shall be bound by the rules laid down on the basis of Article [I-51] of the Treaty on the Functioning of the Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title IV of Part Three of that Treaty only to the extent that it is bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article [I-51].

#### Article 6

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union, the relevant provisions of that Treaty shall apply to Denmark in relation to that measure.

#### Article 7

Where Denmark is not bound by a measure adopted pursuant to Title IV of Part Three of the Treaty on the Functioning of the Union, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, acting unanimously after consulting the European Parliament, decides otherwise."

## **Protocol on asylum for nationals of the Union**

21) The Protocol on asylum for nationals of Member States of the European Union shall be amended as follows:

(a) the preamble shall be amended as follows:

(i) the first recital shall be replaced by the following:

"WHEREAS, in accordance with Article [I-9(1)] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;"

(ii) the following new second recital shall be inserted:

"WHEREAS pursuant to Article [I-9(3)] of the Treaty on European Union, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitute part of the Union's law as general principles;"

(iii) in the third and fourth recitals, now the fourth and fifth recitals, the word "principles" shall be replaced by "values";

(iv) the seventh recital, now the eighth recital, shall be deleted;

(b) in point (b) of the Sole Article, the words ", or, where appropriate, the European Council," shall be inserted after "the Council" and the words "with regard to the Member State of which the applicant is a national" shall be added at the end;

(c) point (c) shall be replaced by the following:

"(c) if the Council has adopted a decision in accordance with Article [I-59(1)] of the Treaty on European Union in respect of the Member State of which the applicant is a national or if the European Council has adopted a decision in accordance with Article [I-59(2)] of that Treaty in respect of the Member State of which the applicant is a national;"

## **Protocol on economic, social and territorial cohesion**

22) The Protocol on economic and social cohesion shall be amended as follows:

(a) throughout the Protocol, the words "economic and social cohesion" shall be replaced by "economic, social and territorial cohesion";

(b) the preamble shall be amended as follows:

(i) the first two recitals shall be replaced by following new first recital:

"RECALLING that [Article I-3] of the Treaty on European Union includes the objective of promoting economic, social and territorial cohesion and solidarity between Member States and that the said cohesion figures among the areas of shared competence of the Union listed in Article [I-14(2)(c)] of that Treaty;"

(ii) the fourth recital, now the third recital, shall be replaced by the following:

"RECALLING that the provisions of Article [III-223] of the Treaty on the Functioning of the Union envisage setting up a Cohesion Fund;"

(iii) the fifth, sixth and fourteenth recitals shall be deleted;

(iv) at the end of the eleventh recital, now the eighth recital, the words ", and underline the importance of the inclusion of economic and social cohesion in Articles 2 and 3 of this Treaty" shall be deleted;

(v) in the fifteenth recital, now the new eleventh recital, the words "to be set up before 31 December 1993" shall be deleted.

## **Other Protocols**

23) In the Protocol on France, the words "in its overseas territories" shall be replaced by "in New Caledonia, French Polynesia and Wallis and Futuna".

- 24)** The Protocol on Article 17 of the Treaty on European Union shall be amended as follows:
- (a) in the title of the Protocol, the reference to Article 17 shall be replaced by a reference to Article [I-41(2)];
  - (b) in the enacting terms, the final clause ", within a year from the entry into force of the Treaty of Amsterdam" shall be deleted.
- 25)** In the second sentence of Article 3(3) of the Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles, the words "by a decision taken by a qualified majority" shall be deleted.
- 26)** Article 2 of the Protocol on special arrangements for Greenland shall be deleted.
- 27)** The Protocol annexed to the Treaty on European Union and to the Treaties establishing the European Communities shall be amended as follows:
- (a) the title of the Protocol shall be replaced by "Protocol on Article 40.3.3 of the Constitution of Ireland";
  - (b) the words "Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities" shall be replaced by "Nothing in the Treaties, or in the Treaty establishing the European Atomic Energy Community".
- 28)** The Protocol on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel shall be amended as follows:
- (a) in the preamble, the first two recitals shall be replaced by following new first recital:  
  
"RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the European Community on 24 July 2002;"
  - (b) Article 1(1) shall be deleted and the two remaining paragraphs shall be renumbered accordingly;

- (c) Article 2 shall be split into two paragraphs, the first of which shall end with the words "including essential principles.". Furthermore, this Article shall be amended as follows:
- (i) in the first paragraph, the words "acting unanimously on a proposal from the Commission" shall be replaced by "acting in accordance with a special legislative procedure" and the word "consulting" shall be replaced by "obtaining the consent of";
  - (ii) in the second paragraph, the words "and proper decision-making procedures, in particular for the adoption of" shall be replaced by "The Council shall adopt, on a proposal from the Commission and after consulting the European Parliament, measures establishing";
- (d) Article 4 shall be repealed.



**PROTOCOL (No 12)**  
**AMENDING THE TREATY ESTABLISHING**  
**THE EUROPEAN ATOMIC ENERGY COMMUNITY**

THE HIGH CONTRACTING PARTIES,

RECALLING the necessity that the provisions of the Treaty establishing the European Atomic Energy Community should continue to have full legal effect;

DESIRING to adapt that Treaty to the new rules laid down by the Treaty on European Union and by the Treaty on the Functioning of the Union, in particular in the institutional and financial fields,

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

Article 1

This Protocol shall amend the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the "EAEC Treaty") in its version in force at the time of entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community.

Article 2

The heading of Title III of the EAEC Treaty "Institutional provisions" shall be replaced by the heading: "Institutional and financial provisions".

### Article 3

The following chapter shall be inserted at the beginning of Title III of the EAEC Treaty:

#### "CHAPTER I

#### APPLICATION OF CERTAIN PROVISIONS OF THE TREATY ON EUROPEAN UNION AND OF THE TREATY ON THE FUNCTIONING OF THE UNION

#### Article 106a

1. Articles [I-19 to I-29] of the Treaty on European Union, Articles [I-31 to I-39], Articles [I-49 and I-50] and Articles [I-53 to I-56] of the Treaty on the Functioning of the Union, Articles [I-58 to I-60] of the Treaty on European Union, Articles [III-330 to III-372, Articles III-374 and III-375, Articles III-378 to III-381, Articles III-384 and III-385, Articles III-389 to III-392, Articles III-395 to III-410, Articles III-412 to III-415 and Articles III-427 and III-433] of the Treaty on the Functioning of the Union and Article [IV-443] of the Treaty on European Union and the Protocol on transitional provisions shall apply to this Treaty.
2. Within the framework of this Treaty, the references to the Union, to the "Treaty on European Union", to the "Treaty on the Functioning of the Union" or to the "Treaties" in the provisions referred to in paragraph 1 and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.
3. The provisions of the Treaties of the European Union shall not derogate from the provisions of this Treaty."

#### Article 4

Chapters I, II and III of Title III of the EAEC Treaty shall be renumbered II, III and IV.

#### Article 5

Article 3, Articles 107 to 132, Articles 136 to 143, Articles 146 to 156, Articles 158 to 163, Articles 165 to 170, Articles 173 and 173A, Article 175, Articles 177 to 179a, and Articles 180b, 181, 183, 183A, 190 and 204 of the EAEC Treaty shall be repealed.

## Article 6

The heading of Title IV of the EAEC Treaty "Financial provisions" shall be replaced by the heading: "Specific financial provisions".

## Article 7

1. In the third paragraph of Article 38 and the third paragraph of Article 82 of the EAEC Treaty the references to Articles 141 and 142 shall be replaced by references to Articles [III-360 and III-361] respectively of the Treaty on the Functioning of the Union.

2. In Article 171(2) and Article 176(3) of the EAEC Treaty the references to Article 183 shall be replaced by references to Article [III-412] of the Treaty on the Functioning of the Union.

3. In Article 172(4) of the EAEC Treaty the reference to Article 177(5) shall be replaced by a reference to Article [III-404] of the Treaty on the Functioning of the Union.

4. In the EAEC Treaty the words "Court of Justice" shall be replaced by "Court of Justice of the European Union".

## Article 8

Article 191 of the EAEC Treaty shall be replaced by the following:

### "Article 191

The Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union."

## Article 9

Article 198 of the EAEC Treaty shall be replaced by the following:

### "Article 198

Save as otherwise provided, the provisions of this Treaty shall apply to the European territories of the Member States and to the non-European territories under their jurisdiction.

They shall also apply to the European territories for whose external relations a Member State is responsible.

The provisions of this Treaty shall apply to the Åland Islands with the derogations which were originally set out in the Treaty referred to in Article IV-437(2)(d) of the Treaty establishing a Constitution for Europe and which have been incorporated in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Notwithstanding the first, second and third paragraphs:

- (a) this Treaty shall not apply to the Faroe Islands or to Greenland;
- (b) this Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) this Treaty shall not apply to the overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not mentioned in the list in Annex II to the Treaty establishing a Constitution for Europe;
- (d) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands originally set out in the Treaty referred to in Article IV-437(2)(a) of the Treaty establishing a Constitution for Europe and which have been incorporated in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden."

## Article 10

Article 206 of the EAEC Treaty shall be replaced by the following:

### "Article 206

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 procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article [IV-443] of the Treaty on European Union."

## Article 11

In Article 225 of the EAEC Treaty, the second paragraph shall be replaced by the following:

"The Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish versions of the Treaty shall also be authentic."

## Article 12

The revenue and expenditure of the European Atomic Energy Community, except for those of the Supply Agency and Joint Undertakings, shall be shown in the budget of the Union.

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