



## Statewatch Analysis

### EU Reform Treaty Analysis no. 3.1:

### Revised text of Part One of the Treaty establishing the European Community (TEC)

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#### *Introduction*

The following text sets out what will be the text of the new Part One of the Treaty establishing the European Community (TEC) following the amendments to be agreed by the planned Reform Treaty. This text is based on the draft Reform Treaty released on 23 July 2007, as revised by legal experts in the later draft of October 5 2007 and in light of any changes made as part of the final agreement on the text at the informal EU summit meeting on 18 October 2007. It incorporates the amendments which are proposed by this draft Treaty to the current TEC into the current TEC text.

I have indicated by ~~strikeout~~ which provisions of the current TEC would be deleted, and by **bold** and underline which provisions would be added to the TEC. The provisions in *italics* are amendments following from the Reform Treaty mandate for an intergovernmental conference (IGC) as agreed at the EU leaders' summit on 23 June 2007, which amend what was agreed as part of the Constitutional Treaty.

It should be recalled that the TEC will be renamed the 'Treaty on the Functioning of the European Union' (TFEU) by the Reform Treaty.

The commentary on the Articles gives more detail on which Treaty provisions would be amended. Unless indicated otherwise, all of the amendments which the draft Reform Treaty would make to the text of the existing Treaty are essentially identical to the text of the Constitutional Treaty (OJ 2004 C 310), to the extent that the Constitutional Treaty was different from the existing Treaty. The changes which would be made by the draft Reform Treaty mandate to the Constitutional Treaty text are clearly indicated.

Some further changes to the text are possible before the final signature of the Treaty - which is planned for 13 December 2007.

This analysis will be updated in the event of any changes to the text.

The draft Reform Treaty confirms that the Treaty Articles will be renumbered, but does not yet include the new numbering. However, the renumbering does not affect Part One of the Treaty.

The Reform Treaty will make a number of standardized changes to the TEC/TFEU, such as the following:

- the word 'Community' will be replaced with 'Union' throughout;
- references to 'this Treaty' will be replaced by references to 'the Treaties', ie including the Treaty on European Union (TEU) together with the TEC/TFEU;
- references to the Council voting by qualified majority (QMV) will be deleted, since this will be the default method by which the Council votes;
- the references to the co-decision procedure (currently variants of, 'The Council, acting in accordance with the procedure referred to in Article 251') will be replaced by references to the 'ordinary legislative procedure';
- the adoption of legislation other than by means of the co-decision procedure will be referred to as a 'special legislative procedure'; and
- references to the 'euro' as the single currency will be inserted.

I have amended the current Treaty to reflect all of these changes, but since they do not amount to changes to the substance of the existing text, I have not commented on them. I have, however, pointed out all cases where QMV and/or the co-decision procedure would be extended, or where the decision-making procedure would otherwise be altered, or where the competence of the EU would be changed in some way.

#### *General comments*

Presently the first Part of the TEC contains a mixture of general provisions on the EU's institutions and the EU's action, including legal bases concerning non-discrimination.

The draft Reform Treaty would radically alter the text of Part One. Nearly every provision would be deleted or moved elsewhere into the TEC/TFEU or (in effect) into the Treaty on European Union (TEU), usually with major amendments.

In their place, there would be a new Article 1 on the relationship between the two Treaties, and then two Titles: a first Title setting out the detailed rules on EU competence, and second Title setting out 'horizontal provisions': principles which the EU should take account of in the entirety of its activity. These latter provisions would include a new 'legal base' for the adoption of legislation affecting public services, and amended rules concerning data protection and transparency.

The Reform Treaty takes forward the text of the Constitutional Treaty on all these issues, except that a) the Articles on EU competence have been amended in several respects (including by the addition of a new Protocol) to clarify the scope of EU competence, b) there is a further new Protocol which sets out in detail rules concerning public services and c) foreign policy aspects of data protection will be addressed in a separate Article in the foreign policy Title of the TEU.

## PART ONE

### PRINCIPLES

#### *Article 1*

~~By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.~~

**1. This Treaty organises the functioning of the Union and determines the areas, delimitation of and the arrangements for exercising its competences.**

**2. This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as ‘the Treaties’.**

*This is a new clause, inserted in accordance with the IGC Reform Treaty mandate, and not found in the current Treaties or (obviously) in the Constitutional Treaty (because it constituted a single Treaty). Para. 2 is nearly identical to the new third paragraph of Article 1 TEU.*

*The current Article 1 TEC had to be repealed because the EC has legally been subsumed into the EU (see again Article 1 TEU, new third paragraph).*

### TITLE I

#### CATEGORIES AND AREAS OF UNION COMPETENCE

*Part One of the TEC will now be divided between two Titles.*

#### *Article 2*

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

#### *Article 3*

~~1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:~~

- ~~(a) - the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;~~
- ~~(b) - a common commercial policy;~~
- ~~(c) - an internal market characterised by the abolition, as between Member~~

- ~~States, of obstacles to the free movement of goods, persons, services and capital;~~
- ~~(d) - measures concerning the entry and movement of persons as provided for in Title IV;~~
  - ~~(e) - a common policy in the sphere of agriculture and fisheries;~~
  - ~~(f) - a common policy in the sphere of transport;~~
  - ~~(g) - a system ensuring that competition in the internal market is not distorted;~~
  - ~~(h) - the approximation of the laws of Member States to the extent required for the functioning of the common market;~~
  - ~~(i) - the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;~~
  - ~~(j) - a policy in the social sphere comprising a European Social Fund;~~
  - ~~(k) - the strengthening of economic and social cohesion;~~
  - ~~(l) - a policy in the sphere of the environment;~~
  - ~~(m) - the strengthening of the competitiveness of Community industry;~~
  - ~~(n) - the promotion of research and technological development;~~
  - ~~(o) - encouragement for the establishment and development of trans-European networks;~~
  - ~~(p) - a contribution to the attainment of a high level of health protection;~~
  - ~~(q) - a contribution to education and training of quality and to the flowering of the cultures of the Member States;~~
  - ~~(r) - a policy in the sphere of development cooperation;~~
  - ~~(s) - the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;~~
  - ~~(t) - a contribution to the strengthening of consumer protection;~~
  - ~~(u) - measures in the spheres of energy, civil protection and tourism.~~

~~2. In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.~~

~~Articles 2 and 3(1) TEC, on the tasks and activities of the Community, have been repealed entirely. Their content could be regarded as subsumed within the clause on the objectives of the EU, as amended, which will appear in Article 3 TEU.~~

~~Article 3(2) TEC has been moved to become Article 8 TEC/TFEU (see below).~~

#### ~~Article 4 (III-177)~~

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

~~2. Concurrently with the foregoing, and as provided in this Treaty and in accordance with the timetable and the procedures set out therein, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the ecu, and the definition and conduct of a single monetary policy and exchange rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.~~

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

*Article 4 TEC will be moved to become Article 97b, in the economic and monetary provisions of the Treaty (Title VII of Part Three). See Statewatch Reform Treaty analysis 3.4.*

#### *Article 5*

~~The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.~~

~~In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.~~

~~Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.~~

*Article 5 TEC is repealed, but it has in effect been moved, with amendments, to become Article 5 TEU.*

#### *Article 6*

~~Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.~~

*Article 6 TEC has been moved to become Article 11 TEC.*

#### Article 2

(1-12)

1. When the *Treaties* confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the *Treaties* confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. *The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.*

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions in the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

*This Article, concerning the categories of EU competences, is a new Article that has been adapted from the text of the Constitutional Treaty to fit the framework of the Reform Treaty as an 'amending Treaty' (ie a Treaty which amends the existing Treaties, rather than replaces them). The draft Reform Treaty also includes the text of a Protocol concerning this Article, as agreed as part of the Reform Treaty mandate.*

*Paragraph 2 has been amended, in accordance with the Reform Treaty mandate, to emphasise that Member States can regain competence if the EU stops acting. The second sentence of Article 1-12(2) of the Constitutional Treaty read instead: 'The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence'.*

### Article 3

(1-13)

1. The Union shall have exclusive competence in the following areas:

(a) customs union;

(b) the establishing of the competition rules necessary for the functioning of the internal market;

(c) monetary policy for the Member States whose currency is the euro;

(d) the conservation of marine biological resources under the common fisheries policy;

(e) common commercial policy.

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

*This Article, which concerns areas of exclusive competence, is a new Article that has been taken from the text of the Constitutional Treaty. It reflects existing practice and case law, except as regards competition and the extension of scope of the exclusive aspects of the common commercial policy.*

#### Article 4

(I-14)

1. The Union shall share competence with the Member States where the *Treaties* confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

(a) internal market;

(b) social policy, for the aspects defined in *this Treaty*;

(c) economic, social and territorial cohesion;

(d) agriculture and fisheries, excluding the conservation of marine biological resources;

(e) environment;

(f) consumer protection;

(g) transport;

(h) trans-European networks;

(i) energy;

(j) area of freedom, security and justice;

(k) common safety concerns in public health matters, for the aspects defined in *this Treaty*.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

*This Article, which concerns areas of shared competence, is a new Article that has been adapted from the text of the Constitutional Treaty. It reflects existing practice and case law.*

#### Article 5

(I-15)

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

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

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

### **3. The Union may take initiatives to ensure coordination of Member States' social policies.**

*This Article, which concerns the coordination of economic and employment policies, is a new Article that has been taken from the text of the Constitutional Treaty. It reflects existing practice.*

*Article I-16 of the Constitutional Treaty, on EU competence regarding the common foreign and security policy, has not been inserted here. This clause could be regarded as subsumed within the provisions on foreign policy in Title V of the TEU, as amended by the Reform Treaty. This clause read as follows:*

- 1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.*
- 2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.*

### **Article 6** (I-17)

**The Union shall have competence to take action to support, coordinate or complement the actions of the Member States. The areas of such action shall, at European level, be:**

- (a) protection and improvement of human health;**
- (b) industry;**
- (c) culture;**
- (d) tourism;**
- (e) education, vocational training, youth and sport;**
- (f) civil protection;**
- (g) administrative cooperation.**

*This Article, which concerns areas of supporting, coordinating or complementary action, is a new Article that has been taken from the text of the Constitutional Treaty, with an amendment. The amendment, in accordance with the Reform Treaty mandate, makes it clearer that the Union is only supporting Member States' actions. Originally the Article provided that the Union could 'carry out supporting, coordinating or complementary action'. This Article reflects existing practice, although the Treaty Articles in Part Three of the Treaty concerning several of these areas are new or revised.*

*Article I-18 of the Constitutional Treaty, the 'flexibility clause' does not appear here. Instead, the draft Reform Treaty amends Article 308 TEC, the current 'flexibility clause'.*

### **Title II**



## PROVISIONS HAVING GENERAL APPLICATION

*This is a new Title, although as noted below, some of its provisions can be found in the current Treaties.*

### *Article 7*

~~1. The tasks entrusted to the Community shall be carried out by the following institutions:~~

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

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

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

*This Article would be repealed because its essential content has been moved to the TEU. In particular, the new Article 9(1) TEU is an amended version of paragraph 1.*

### *Article 7 (III-115)*

**The Union shall ensure consistency between all of its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.**

*This is a new provision, adapted from the Constitutional Treaty. The principle of consistency can also be found in the current Article 3 TEU, which will be repealed.*

### *Article 8*

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

*The current Article 8 has been replaced with a text dealing with a different issue. However, its content has effectively been transferred to the provisions on the institutions and on monetary union.*

### *Article 8 (ex-3(2)) (III-116)*

In all ~~its~~ the activities referred to in this Article, the ~~Community~~ **Union** shall aim to eliminate inequalities, and to promote equality, between women and men.

*This provision has been moved here from Article 3(2) TEC. Its scope is now broader, as it also now covers activities previously subject to the TEU (ie the second and third pillars).*

#### ~~Article 9~~

~~A European Investment Bank is hereby established, which shall act within the limits of the powers conferred upon it by this Treaty and the Statute annexed thereto.~~

*The current Article 9 has been replaced with a text dealing with a different issue. Presumably it was considered that the Article added nothing to Articles 266 and 267 TEC, which set out the role and powers of this Bank in more detail (for these Articles, see Statewatch Reform Treaty analysis 3.6).*

#### Article 9 (III-117)

**In defining and implementing its policies and actions, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.**

*This is a new provision, adapted from the Constitutional Treaty.*

#### ~~Article 10~~

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

~~They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.~~

*This Article would be replaced by a text dealing with a different subject matter. Effectively it has been moved, with amendments, to Article 4(3) TEU.*

#### ~~Article 10~~ (III-118)

**In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.**

*This is a new provision, adapted from the Constitutional Treaty.*

#### ~~Article 11~~

~~1. Member States which intend to establish enhanced cooperation between themselves in one of the areas referred to in this Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the~~

~~event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.~~

~~2. Authorisation to establish enhanced cooperation as referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. When enhanced cooperation relates to an area covered by the procedure referred to in Article 251 of this Treaty, the assent of the European Parliament shall be required.~~

~~A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.~~

~~3. The acts and decisions necessary for the implementation of enhanced cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided in this Article and in Articles 43 to 45 of the Treaty on European Union.~~

*This Article would be moved, with amendments, to a new Title III in Part Five of this Treaty (Articles 280a to 280g), in accordance with the IGC mandate (see Statewatch Reform Treaty analysis 3.6).*

#### Article 11a

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 11 shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Commission shall take a decision on it, and on such specific arrangements as it may deem necessary.~~

*This Article would be moved, with amendments, to a new Title III in Part Five of this Treaty (Articles 280a to 280g), in accordance with the IGC mandate.*

#### Article 11 (ex-6) (III-119)

Environmental protection requirements must be integrated into the definition and implementation of the ~~Community~~ Union policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

*This Article has been moved here, without amendments.*

#### Article 12

~~Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.~~

~~The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.~~

*This Article would be moved to become Article 17 in Part Two of the Treaty, which will concern non-discrimination and citizenship (see Statewatch Reform Treaty analysis 3.2). This will be the fourth Article number for this provision.*

**Article 12** (ex-153(2))  
(III-120)

Consumer protection requirements shall be taken into account in defining and implementing other **Community Union** policies and activities.

*This Article has been moved here, with no substantive amendment.*

**Article 13**

~~1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.~~

~~2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.~~

*This Article would be moved, with amendments, to become Article 17a in Part Two of the Treaty, which will concern non-discrimination and citizenship (see Statewatch Reform Treaty analysis 3.2).*

**Article 13** (ex-animal welfare Protocol)  
(III-121)

In formulating and implementing the Union's agriculture, **fisheries**, transport, internal market, research **and technological development and space** policies, the Union and the Member States shall, **since animals are sentient beings**, pay full regard to the requirements of animal welfare, while respecting the legislative or administrative provisions and customs of Member States relating in particular to religious rites, cultural traditions and regional heritage.

*This clause has been moved from a Protocol (which will be repealed) into the TEC/TFEU. It can be seen that a reference to fisheries policies has been added, the reference to research policies has been updated, and a reference to animals as 'sentient beings' has been added.*

**Article 14**

~~1. The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to the other provisions of this Treaty.~~

~~2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.~~

~~3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.~~

*This Article is moved, with amendments, to become Article 22a in Part Three of the Treaty, concerning EU policies (see Statewatch Reform Treaty analysis 3.3).*

**Article 14 (ex-16)**  
(III-122)

Without prejudice to **Article 4 of the Treaty on European Union** and Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the ~~Community~~ **Union** and the Member States, each within their respective powers and within the scope of application of ~~this Treaty~~ **the Treaties**, shall take care that such services operate on the basis of principles and conditions, **particularly economic and financial conditions**, which enable them to fulfil their missions. **The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.**

*A 'legal base' for legislation on this issue has been added, entailed qualified majority voting in the Council and co-decision for the European Parliament (EP). In accordance with the IGC mandate, the draft Reform Treaty includes a Protocol addressing the role of public services in more detail.*

*The words '...of this Treaty' should be added after '...Articles 73, 86 and 87...'*

**Article 15**

~~When drawing up its proposals with a view to achieving the objectives set out in Article 14, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.~~

~~If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.~~

*This Article would be moved, with amendments, to become Article 22b in Part Three of the Treaty, concerning EU policies (see Statewatch Reform Treaty analysis 3.2).*

**Article 15 (ex-255)**

(I-50 and III-399)

**1. In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.**

**2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.**

~~4.~~ **3.** Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, **documents of the Union institutions, bodies, offices and agencies, whatever their medium,** subject to the principles and the conditions to be defined in accordance with paragraphs ~~2 and 3~~ **this paragraph.**

~~2.~~—General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by ~~the Council, acting in accordance with the procedure referred to in Article 254~~ **the European Parliament and the Council, by means of regulations acting in accordance with the ordinary legislative procedure** within two years of the entry into force of the Treaty of Amsterdam.

~~3.~~—Each institution **shall ensure that its proceedings are transparent and** shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents **in accordance with the legislative act referred to in the second subparagraph.**

**The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to the provisions of this paragraph only when exercising their administrative tasks.**

**The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulation referred to in the second subparagraph.**

*This Article, which has been moved here from the institutional Title of the Treaty, has been amended to extend access to documents to all EU entities and to include further provisions on open meetings. This will entail a considerable increase in the openness of the Council. In practice, most EU bodies have already adopted rules on access to documents, except for the Court of Justice and the European Council.*

*The concept of a legislative act, which is relevant as regards both access to documents and open meetings of the Council, is further defined in the new Article 249a TEC. Essentially, whenever the Treaty refers to acts being adopted by means of a legislative procedure (whether an ‘ordinary’ or a ‘special’ procedure), this will mean that legislative acts are being adopted. A glance at the relevant Treaty Article which is the ‘legal base’ for the adoption of a measure will indicate whether an act is legislative or not.*

**Article 15a** (ex-286) [16]

(I-51)

**1. Everyone has the right to the protection of personal data concerning him or her.**

**2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.**

**3. The rules adopted pursuant to this Article shall be without prejudice to the specific rules referred to in Article 24 of the Treaty on European Union.**

*Article 286 TEC has officially been repealed, but in effect has been moved here, and amended to cover third pillar acts and data protection by the Member States within the scope of first or third pillar law. In fact, a Directive harmonizing national data protection law within the scope of the first pillar exists already (Directive 95/46), and a proposed third pillar Framework Decision on this issue is under discussion.*

*The paragraph excluding data protection within the scope of EU foreign policy from the scope of this Article was agreed as part of the Reform Treaty IGC mandate.*

*For the sake of comparison, Article 286 TEC provides as follows:*

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

*2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.*

**Article 15b [17]**  
(I-52)

**1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.**

**2. The Union equally respects the status under national law of philosophical and non-confessional organisations.**

**3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.**

*The IGC mandate agreed on the placement of this Article here.*

