



Statewatch analysis

EU Reform Treaty Analysis no. 3.6:

Revised text of Part Five of the Treaty establishing the European Community (TEC): EU institutions

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2 August 2007

Introduction

The following text sets out what will be the text of the provisions of the Treaty establishing the European Community (TEC) governing the EU institutions (Part Five of the Treaty, to be renumbered Part Six) following the amendments proposed in the draft Reform Treaty released on 23 July 2007. The text 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 agreement upon it (planned for 18-19 October) and possibly even further changes could be made before signature of the Treaty - which is likely on 13 December (the planned date of an EU summit meeting), if the IGC concludes as planned in October. Such changes are likely because, as the commentary makes clear, there are several technical errors in this text.

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

The draft Reform Treaty confirms that the Treaty Articles will be renumbered, but does not yet include the new numbering. I have inserted the likely new numbering of the Treaty provisions in square brackets throughout.

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 the 'common market' will be replaced by references to the 'internal market';
- 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';
- references to the 'ecu' will be replaced by references to the 'euro' and references to the 'ECB' will be replaced by references to the 'European Central Bank'.

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

The Treaty provisions on the political institutions (Council, Commission, European Parliament and European Parliament) have to be read in conjunction with the new institutional Title of the Treaty on European Union (TEU), as also revised by the draft Reform Treaty. It is the TEU amendments which make the significant changes to the composition and functioning of the institutions: the seat numbers for the European Parliament, the change in voting weights in the Council (to be delayed following agreement on the Reform Treaty mandate), the number of and appointment process for Commissioners, the powers and appointment of the foreign policy High Representative, and the designation of the European Council as an institution with a long-term President. The provisions on the political institutions remaining in the TEC/TFEU are merely supplementary, although they are still of interest, in particular the additional rules on Council voting weights and the detailed rules on the criteria for rotating Commissioners between countries, the rotation of Council Presidencies and the selection of Council configurations. The biggest changes to the role of the Council and European Parliament in the Reform Treaty are the extension of qualified majority voting and co-decision - but these changes are provided for in the other Parts of the Treaty.

The revised Treaty provisions on the Court of Justice do not, in themselves, make any change to the judicial architecture of the EU or the composition of the EU courts, although they make limited changes to the Court's jurisdiction as regards the effectiveness of infringement proceedings and access to the Court to bring annulment proceedings. A significant change here is the move to qualified majority voting as regards the Court's Statute and the creation of specialized courts, which is likely to speed up future changes to the judicial architecture. However, again the biggest change is provided for (implicitly) in the other Parts of the Treaty - the removal of most of the limits on the Court's jurisdiction as regards justice and home affairs matters.

The provisions on the European Central Bank entail no substantive changes except for the extension of qualified majority voting for selection of the Bank's President and Vice-President. The rules EU's advisory institutions have been amended modestly.

There are detailed new rules on EU legal instruments, including a clear distinction (reflected throughout the rest of the Treaties) between legislative and non-legislative activities and new rules on 'delegated' acts (although there are parallel recent developments on this issue under the current Treaty framework). There are also revised rules on implementing acts ('comitology'), in particular extending qualified majority voting and co-decision powers for the EP to the adoption of general rules on 'comitology'. There are sundry other amendments to the general institutional rules, including in particular a formal legal base for the adoption of 'inter-institutional agreements'.

There are significant changes to the rules on EU finances. These entail a limited possibility of qualified majority voting in relation to rules on EU revenue, the inclusion in the Treaty of rules confirming the existing practice of multi-annual EU spending agreements, and an overhaul of the decision-making regarding the negotiation of the EU's annual budget.

Finally, this Part of the Treaty will now contain the detailed general rules concerning EU 'enhanced cooperation' or 'flexibility' - the process of adopting EU measures with the participation of only some Member States (leaving aside monetary union and JHA, where specific rules on flexibility are already being applied). The main changes here are: the distinct rules applying to third pillar flexibility have been abolished, with the first pillar rules applying instead; the European Parliament has more power to consent to the development of flexibility; there will be more scope for flexibility in the area of foreign policy, although it will be harder to obtain authorization for flexibility in this area; the Council will be able to circumvent the Commission's objections to Member States joining flexibility in progress; and it will be possible for the Member States participating in flexibility to change the decision-making rules applicable (for them) to a policy area.

PART FIVE SIX

~~INSTITUTIONS OF THE COMMUNITY~~

FUNCTIONING OF THE UNION

TITLE I

PROVISIONS GOVERNING THE INSTITUTIONS

CHAPTER 1

THE INSTITUTIONS

SECTION 1

THE EUROPEAN PARLIAMENT

Article 189
(1-20(1) and (2))

~~The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.~~

~~The number of Members of the European Parliament shall not exceed 736.~~

This Article has been moved, with amendments, to the new Article 9a TEU.

Article 190 [222]
(1-20(2) and (3) and III-330)

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

~~2. The number of representatives elected in each Member State shall be as follows:~~

~~———— Belgium 24~~
~~———— Czech Republic 24~~
~~Denmark 14~~
~~Germany 99~~
~~Estonia 6~~
~~Greece 24~~
~~Spain 54~~
~~France 78~~
~~Ireland 13~~
~~Italy 78~~
~~Cyprus 6~~
~~Latvia 9~~
~~Lithuania 13~~
~~Luxembourg 6~~

Hungary 24
Malta 5
Netherlands 27
Austria 18
Poland 54
Portugal 24
Slovenia 7
Slovakia 14
Finland 14
Sweden 19
United Kingdom 78

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

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

~~4. 1. The European Parliament shall draw up a proposal for elections of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.~~

The Council shall, acting in accordance with a special legislative procedure unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

~~5. 2. The European Parliament, acting on its own initiative in accordance with a special legislative procedure, after seeking an opinion from the Commission and with the approval of the Council ~~acting by a qualified majority~~, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.~~

Part of this Article has been moved, with amendments, to the new Article 9a TEU. There are no substantive amendments to the remaining provisions.

Article 191 [223]
(I-46 and III-331)

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

The Council, acting in accordance with the procedure referred to in Article 251, The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the regulations governing political parties at European level referred to in Article 8a(4) of the Treaty on European Union, and in particular the rules regarding their funding.

The first paragraph has been moved to the new Article 8a(4) TEU.

Article 192 [224]
(I-20(1) and III-332)

~~In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions.~~

The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community Union act is required for the purpose of implementing this Treaty *the Treaties*. **If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.**

The first paragraph has been moved, with amendments, to the new Article 9a TEU. The amendment to the remaining paragraph strengthens the EP's powers to request the Commission to propose legislation, but without limiting the discretion of the Commission. See also the amendments to Article 208.

Article 193 [225]
(III-333)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty *the Treaties* on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

~~The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.~~

The detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission.

The amendment is not a change in substance. This Article will, however, now apply to the current second and third pillars (foreign policy and policing/criminal law).

Article 194 [226]
(I-10(2)(d) and III-334)

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

This Article will now apply to the current second and third pillars (foreign policy and policing/criminal law).

Article 195 [227]
(I-10(2)(d), I-49 and III-335)

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

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the ~~institution~~ **institution, body, office or agency** concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the ~~institution~~ **institution, body, office or agency** concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be ~~appointed~~ **elected** after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice **of the European Union** at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any ~~body~~ **institution, body, office or agency**. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament **acting on its own initiative in accordance with a special legislative procedure,** shall, after seeking an opinion from the Commission and with the approval of the Council ~~acting by a qualified majority~~, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

These are technical amendments which do not change the substance. The Ombudsman's jurisdiction will, however, extend to maladministration as regards EU foreign policy.

Article 196 [228]
(III-336)

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

The European Parliament may meet in extraordinary part-session at the request of a majority of its component Members or at the request of the Council or of the Commission.

Article 197 [229]
(I-20(4) and III-337(1) and (2))

~~The European Parliament shall elect its President and its officers from among its Members.~~

~~Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.~~

The Commission may attend all meetings and shall, at its request, be heard.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

~~The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.~~

The European Council and the Council shall be heard by the European Parliament in accordance with the conditions laid down by them in the Rules of Procedure of the European Council and the Council.

The first paragraph has been moved to Article 9a of the TEU. The European Council has been added to the last paragraph.

Article 198 [230]
(III-338)

Save as otherwise provided in ~~this Treaty~~ **the Treaties**, the European Parliament shall act by an ~~absolute~~ majority of the votes cast.

The Rules of Procedure shall determine the quorum.

Article 199 [231]
(III-339)

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down **by the Treaties and** in its Rules of Procedure.

Article 200 [232]
(III-337(3))

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Article 201 [233]
(III-340)

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

~~If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 214. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.~~

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component members of the European Parliament, the members of the Commission shall resign as a body and the *High Representative of the Union for Foreign Affairs and Security Policy* shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Articles [9d and 9e] of the Treaty on the European Union. In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

This amendment takes account of the particular status of the High Representative.

SECTION 1a

The European Council

Article 201a [234]
(III-341)

1. Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member.

Article 9b(1) of the Treaty on European Union and Article 205(2) of this Treaty shall apply to the European Council when it votes by a qualified majority. Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote.

Abstentions by members present in person or represented shall not prevent the adoption by the European Council of acts which require unanimity.

2. The President of the European Parliament may be invited to be heard by the European Council.

3. The European Council shall act by a simple majority for procedural questions and for the adoption of its Rules of Procedure.

4. The European Council shall be assisted by the General Secretariat of the Council.

A new provision, necessary to reflect the new role of the European Council as an institution.

Article 201b [235]
(l-24(2), (3) and (7))

1. The European Council shall adopt, by a qualified majority:

a) a decision establishing the list of Council configurations other than those referred to in Article [9c(6)] of the Treaty on European Union;

b) a decision on the Presidency of Council configurations, other than that of Foreign Affairs, in accordance with Article [9c(9)] of the Treaty on European Union.

This is a new provision, governing the European Council's powers regarding the functioning of the Council. The first issue is today governed as part of the Council's Rules of Procedure (therefore by simple majority vote: Article 207(3) TEC), while the second issue is governed by unanimity (current Article 203 TEC).

SECTION 2

THE COUNCIL

Article 202
(l-23(1) and l-37(2) and (3))

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

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

The first two indents have been moved to Article 9c(1) of the TEU, with amendments; the third indent has been moved, with amendments, to the new Article 249c, on EU legal acts.

Article 203

~~(I-23(2) and I-24(7))~~

~~The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.~~

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

This Article has been moved to Article 9c(2) and (9) of the TEU, with amendments.

Article 204 [236]

~~(III-342)~~

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

Article 205 [237]

~~(I-25(2) and III-343(2) and (3))~~

~~1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its Members.~~

~~2. Where the Council is required to act by a qualified majority, the votes of its Members 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 of the Council shall require for their adoption at least 255 votes in favour cast by a majority of the members where this Treaty requires them to be adopted on a proposal from the Commission.~~

~~In other cases, for their adoption acts of the Council shall require at least 255 votes in favour, cast by at least two-thirds of the members.~~

1. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.

2. By way of derogation from Article 9c of the Treaty on European Union, as from 1 November 2014, and without prejudice to the transitional provisions set out in Article 9c(5) of the Treaty on European Union, where the Council does not act on a proposal from the Commission or from the *High Representative of the Union for Foreign Affairs and Security Policy*, the qualified majority shall be defined as at least 72% of the members of the Council, representing Member States comprising at least 65% of the population of the Union.

3. As from 1 November 2014, and without prejudice to the transitional provisions set out in Article 9c(5) of the Treaty on European Union, in cases where not all members of the Council participate in voting, a qualified majority shall be defined as follows:

a) A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

b) by way of derogation from point (a), where the Council does not act on a proposal from the Commission or the *High Representative of the Union for Foreign Affairs and Security Policy*, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% the population of those States.

~~3. 4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.~~

~~4. When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62 % of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted.~~

The existing paragraphs 1, 2 and 4 have been moved to Article 9c TEU, with amendments (see also the Protocol on transitional provisions). The new paragraphs set out the (obvious) rule concerning simple majority voting (which is not a change in substance) and the back-up voting rules when either not all

Member States participate in a vote, or where voting is not on the basis of a Commission proposal.

The first back-up rule (in paragraph 2) is simply a modified version of the (future) normal voting rule, and adapts that normal voting rule to situations where not all Member States participate.

*The second back-up rule (paragraph 3: actually two rules) is an amended version of the rule in the current paragraph 2, which requires two-thirds of the members to vote in favour (along with the other voting requirements) when **not** acting on a proposal from the Commission. The latter rule was repeated throughout the Constitutional Treaty (for instance, see Article I-44(3) of that Treaty), but the Reform Treaty states the rule only in one place.*

These amendments differ from the Constitutional Treaty, solely to take account of the delay in application of the new Council voting rules.

Article 206 [238]
(III-343(1))

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

Article 207 [239]
(III-344)

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

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

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

~~3. The Council shall adopt its Rules of Procedure.~~

~~For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.~~

1. A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The

Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council .

The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

A reference to acting by a simple majority has been added in paras 2 and 3, because this is no longer the default rule for Council decision-making; this is not a change in substance. It should be noted that several issues currently dealt with in the Council's rules of procedure (decisions on Council formations, on the functioning of the Council Presidency and on open meetings) would be dealt with by separate measures and/or as part of the Treaty if the Reform Treaty came into force. The reference to the High Representative has been deleted because the appointment of the High Representative (who will have a revised title and further powers) will be governed by Article 9e TEU. The sub-paragraph dealing with the openness of the Council has been moved (with amendments) to Article 21a TEC/TFEU.

Article 208 [240]
(III-345)

The Council may, by a simple majority, request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

A reference to acting by a simple majority has been added, because this is no longer the default rule for Council decision-making; this is not a change in substance. The second sentence is genuinely new; see also the parallel amendment to Article 192 TEC.

Article 209 [241]
(III-346)

The Council shall, by a simple majority, after ~~receiving an opinion from~~ consulting the Commission, determine the rules governing the committees provided for in ~~this Treaty~~ the Treaties.

A reference to acting by a simple majority has been added, because this is no longer the default rule for Council decision-making; this is not a change in substance.

Article 210 [242]
(III-400)

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the Members and Registrar of the ~~Court of First Instance~~ General Court. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

The Council shall determine the salaries, allowances and pensions of the President of the European Council, the President of the Commission, the *High Representative of the Union for Foreign Affairs and Security Policy*, the members of the Commission, the Presidents, members and Registrars of the Court of Justice of the European Union, and the Secretary-General of the Council. It shall also determine any payment to be made instead of remuneration.

The President of the European Council and the High Representative have been added.

SECTION 3

THE COMMISSION

Article 211 [243]
(1-26(6))

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

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

In accordance with Article 9d(5) of the Treaty on European Union, the members of the Commission shall be selected from among the nationals of the Member States on the basis of a system of equal rotation between the Member States, established unanimously by the European Council and on the basis of the following principles:

- (a) Member states shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;
- (b) subject to point (a), each successive Commission shall be so composed as to reflect satisfactorily the demographic and geographical range of all the

Member States.

The current Article 211 TEC has been moved to Article 9d(1) of the TEU, with amendments. The text of the new Article 211 has taken from the Constitutional Treaty. It should be recalled that as set out in the Protocol on transitional issues, and as originally agreed as part of the Constitutional Treaty, the new system of rotating Commissioners will not take effect until November 2014.

Article 212 (III-352(2))

~~The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.~~

This Article has been moved to Article 218(2).

Article 213 [244] (III-347)

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

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

~~Only nationals of Member States may be Members of the Commission.~~

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

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

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

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect this principle and shall not to seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the

circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.

Para 1 and part of para. 2 of this Article have been moved to Article 9d(3) to (5) of the TEU, with amendments in conformity with the Constitutional Treaty (to reduce the number of Commissioners from 2014). The remaining text has not been substantively amended.

Article 214

~~(1-26(3), (4) and (6), 1-27(1) and (2))~~

~~1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.~~

~~Their term of office shall be renewable.~~

~~2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.~~

~~The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.~~

~~The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.~~

These provisions have been moved, with amendments in conformity with the Constitutional Treaty, to Article 9d(3), sub-paragraph 1, and Article 9d(8) of the TEU.

Article 215 [245]

~~(III-348)~~

~~Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.~~

~~A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member appointed by the Council, acting by a qualified majority. The Council may, acting unanimously, decide that such a vacancy need not be filled.~~

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the member's term of office by a new member of the same nationality appointed by the Council, in common accord with the President of the Commission, after consulting the European Parliament and in accordance with the criteria set out in Article [9(d)3] of the Treaty on European Union.

The Council may, acting unanimously on a proposal from the President of the Commission, decide that such a vacancy need not be filled, in particular when the remainder of the member's term of office is short.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article [214(2)] shall be applicable for the replacement of the President.

In the event of resignation, compulsory retirement or death, the *High Representative of the Union for Foreign Affairs and Security Policy* shall be replaced, for the remainder of his or her term of office, in accordance with Article [9e(1) of the Treaty on European Union].

~~Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced or until the Council has decided that the vacancy need not be filled, as provided for in the second paragraph of this Article.~~

In the case of the resignation of all the members of the Commission, they shall remain in office and continue to deal with current business until they have been replaced in accordance with Article [9d and 9e of the Treaty on European Union].

All the amendments are in accordance with the Constitutional Treaty. The first two amendments give greater power to the Commission President over replacement appointments, and ensure that replacement appointments do not upset the new principle of the rotation of the nationality of Commissioners. The third amendment provides for replacement of the High Representative. The fourth amendment provides for a procedure in the event of mass resignation of the Commission, as was the case in 1999.

Article 216 [246]
(III-349)

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

Article 217 [247]
(I-27(3) and III-350)

~~1. The Commission shall work under the political guidance of its President, who shall decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.~~

~~2. The responsibilities incumbent upon the Commission shall be structured and allocated among its Members by its President. Without prejudice to Article 9d(7) of the Treaty on European Union, the responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article 9e(4) of that Treaty. The President may reshuffle the allocation of those responsibilities during the Commission's term of~~

office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

~~3. After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members.~~

~~4. A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College.~~

Three paragraphs have been moved to Article 9d(7) of the TEU, with amendments to reflect the role of the High Representative and to give the President the power to sack individual Commissioners without the consent of the rest of the College of Commissioners.

Article 218 [248]
(III-352)

~~1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.~~

~~2.—1. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these Rules are published.~~

2. The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community Union.

The current para. 1 has been moved to Article 252, with amendments. The new paragraph 2 is the current Article 212, moved here, in accordance with the Constitutional Treaty, with no amendments.

Article 219 [249]
(III-351)

The Commission shall act by a majority ~~of the number of Members provided for in Article 213~~ **of its members.**

~~A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.~~

Its Rules of Procedure shall determine the quorum.

The amendments, which are not substantive, are in accordance with the Constitutional Treaty.

SECTION 4

THE COURT OF JUSTICE OF THE EUROPEAN UNION

Article 220

(I-29)

~~The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.~~

~~In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in Article 225a in order to exercise, in certain specific areas, the judicial competence laid down in this Treaty.~~

This Article has been moved, with amendments, to Article 9f TEU.

Article 221 [250]
(I-29 and III-353)

~~The Court of Justice shall consist of one judge per Member State.~~

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice of the European Union.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

This Article has been partly moved, with no amendments, to Article 9f TEU.

Article 222 [251]
(III-354)

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.

Article 223 [252]
(III-355)

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years after consultation of the panel provided for in Article 224a.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

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

Retiring Judges and Advocates-General may be reappointed.

~~The Court of Justice shall appoint its Registrar and lay down the rules governing his service.~~

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, ~~acting by a qualified majority.~~

A cross-reference to a new appointments committee has been added; see further below.

*Article 224 [253]
(III-356)*

The ~~Court of First Instance~~ **General Court** shall comprise at least one judge per Member State. The number of Judges **of the Court** shall be determined by the Statute of the Court of Justice **of the European Union**. The Statute may provide for the ~~Court of First Instance~~ **General Court** to be assisted by Advocates-General.

The members of the ~~Court of First Instance~~ **General Court** shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years **after consultation of the panel provided for in Article 224a**. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the ~~Court of First Instance~~ **General Court** from among their number for a term of three years. He may be re-elected.

~~The Court of First Instance shall appoint its Registrar and lay down the rules governing his service.~~

The ~~Court of First Instance~~ **General Court** shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, ~~acting by a qualified majority.~~

Unless the Statute of the Court of Justice provides otherwise, the provisions of ~~this Treaty~~ **the Treaties** relating to the Court of Justice shall apply to the ~~Court of First Instance~~ **General Court**.

The name of the Court of First Instance is changed to 'General Court', in accordance with the Constitutional Treaty. A cross-reference to a new appointments committee has been added; see further below.

*Article 224a [254]
(III-357)*

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 223 and 224.

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

This entirely new Article provides for the involvement of an advisory appointments panel before the appointment of judges to the Court of Justice or [Court of First Instance].

Article 225 [255]
(III-358)

1. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a ~~judicial panel specialised court set up under Article 225a~~ and those reserved in the Statute for the Court of Justice of the European Union. The Statute may provide for the ~~Court of First Instance~~ General Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the ~~Court of First Instance~~ General Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the ~~judicial panels specialised courts set up under Article 225a~~.

Decisions given by the ~~Court of First Instance~~ General Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community Union law being affected.

3. The ~~Court of First Instance~~ General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.

Where the ~~Court of First Instance~~ General Court considers that the case requires a decision of principle likely to affect the unity or consistency of Community Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the ~~Court of First Instance~~ General Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community Union law being affected.

Article 225a [256]
(III-359)

~~The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act on a proposal from the Commission and after consulting the Court of Justice or at the request of the Court of Justice and after consulting the Commission.

The decision establishing a ~~judicial panel~~ specialised court shall lay down the rules on the organisation of the ~~panel~~ court and the extent of the jurisdiction conferred upon it.

Decisions given by ~~judicial panels~~ specialised courts may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the ~~judicial panel~~ court, a right of appeal also on matters of fact, before the ~~Court of First Instance~~ General Court.

The members of the ~~judicial panel~~ specialised court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The ~~judicial panels~~ specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, ~~acting by a qualified majority.~~

Unless the decision establishing the ~~judicial panel~~ specialised court provides otherwise, the provisions of ~~this Treaty~~ the Treaties relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the judicial panels. Title I and Article 64 of the Statute shall in any case apply to the specialised courts.

The name of the 'judicial panels' has been changed to 'specialised courts' (as in the Constitutional Treaty). However, the change in name is not a change in the substance of these bodies' powers, status or jurisdiction. Equally, the obligations to apply Title I and Article 64 of the Court's Statute (concerning the basic rules and the language rules of the Court) confirm the status quo. The shift in decision-making from unanimity and consultation to QMV and co-decision will likely mean that more such bodies will be created. At present the only such body is a 'European Civil Service Tribunal', established in 2004.

Article 226 [257]
(III-360)

If the Commission considers that a Member State has failed to fulfil an obligation under ~~this Treaty~~ the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

There are no substantive amendments to this Article, but see the new Article 228(3).

Article 227 [258]
(III-361)

A Member State which considers that another Member State has failed to fulfil an obligation under ~~this Treaty~~ the Treaties may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under ~~this Treaty~~ the Treaties, it shall bring the matter before the Commission.

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

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

Article 228 [259]
(III-362)

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

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

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

If the Commission considers that the Member State concerned has not taken the necessary measures to comply with judgment of the Court, it may bring the case before the Court of Justice of the European Union after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

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

This procedure shall be without prejudice to Article 227.

3. When the Commission brings a case before the Court of Justice of the European Union pursuant to Article 226 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

The amendments to this Article first of all drop the 'reasoned opinion' stage in the proceedings, speeding up the process of suing a Member State for failing to comply with a previous judgment, and secondly allow for fines to be imposed where a Member State has failed to adopt measures to transpose a Directive, even without a prior Court judgment establishing a breach of the Treaties. The latter case is very common and so this amendment could have a significant impact on Member States' compliance with the obligation to transpose Directives.

Article 229 [260]
(III-363)

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

Article 229a [261]
(III-364)

Without prejudice to the other provisions of ~~this Treaty~~ **the Treaties**, the Council, ~~acting unanimously on a proposal from the Commission~~ **acting in accordance with a special legislative procedure** and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice **of the European Union** in disputes relating to the application of acts adopted on the basis of this Treaty which create ~~Community industrial~~ **European intellectual** property rights. The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements.

*The amendments to this Article appear to change the decision-making rule from unanimity to QMV. This can be compared to the Constitutional Treaty, which provided for a shift to QMV and co-decision when adopting measures on this issue. However, the Reform Treaty IGC mandate agreed instead that the decision-making rules will **not** be amended, so the draft Reform Treaty appears to be inconsistent with the mandate. This Article has not yet been applied in practice.*

Article 230 [262]
(III-365)

The Court of Justice of the European Union shall review the legality of ~~acts adopted jointly by the European Parliament and the Council~~ **legislative acts**, of acts of the Council, of the Commission and of the ~~ECB~~ **European Central Bank**, other than recommendations and opinions, and of acts of the European Parliament **and the European Council** intended to produce legal effects ~~vis-à-vis~~ **as regards** third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-a-vis third parties.

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

The Court of Justice of the European Union shall have jurisdiction under the same conditions in actions brought by the Court of Auditors and by the ~~ECB~~ **European Central Bank and by the Committee of the Regions** for the purpose of protecting their prerogatives.

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

Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

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

The amendments to this Article: a) provide for annulment actions against acts of the European Council; b) confirm that annulment actions can be brought against acts of EU bodies other than institutions and the Central Bank, but that this may be subject to conditions (this confirms the status quo); c) give the Committee of the Regions the power to bring actions to protect its prerogatives; and d) widens the standing of natural and legal persons to bring annulment actions against regulatory acts which do not provide for implementing measures.

Article 231 [263]
(III-366)

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

~~In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.~~

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

*This amendment confirms the case law of the Court of Justice, which holds that the Court can declare that the effects of **any** EU measure, not just a Regulation, shall remain definitive notwithstanding a successful annulment action.*

Article 232 [264]
(III-367)

Should the European Parliament, the European Council, the Council, ~~or the Commission or the European Central Bank~~, in infringement of ~~this Treaty~~ the Treaties, fail to act, the Member States and the other institutions of the ~~Community~~ Union may bring an action before the Court of Justice of the European Union to have the infringement established. **This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.**

The action shall be admissible only if the ~~institution~~ institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the ~~institution~~ institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution or a body, office or agency of the ~~Community~~ Union has failed to address to that person any act other than a recommendation or an opinion.

~~The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.~~

The amendments to this Article apply it to the European Council (which as an 'institution', can also bring an action as a plaintiff), as well as non-institutional bodies of the EU.

Article 233 [265]
(III-368)

The ~~institution~~ institution, body, office or agency ~~or institutions~~ whose act has been declared void or whose failure to act has been declared contrary to ~~this Treaty~~ the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 288.

~~This article shall also apply to the ECB.~~

Article 234 [266]
(III-369)

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

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

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

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

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

The only substantive amendment here is the addition of a requirement to act more quickly where a person is in custody.

Article 235 [267]
(III-370)

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288.

Article 235a [268]
(III-371)

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

This Article, restricting the Court's jurisdiction over a Member State's suspension from the Union, has been moved here from the current Article 46(e) TEU, and so is not a new jurisdiction.

Article 236 [269]
(III-372)

The Court of Justice of the European Union shall have jurisdiction in any dispute between the ~~Community~~ Union and its servants within the limits and under the conditions laid down in the ~~Staff Regulations or the Conditions of employment~~ Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

Article 237 [270]
(III-373)

The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 226;
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 230;
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 230, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under ~~this Treaty~~ the Treaties and the Statute of the ESCB and the ECB. In this connection the powers of the Council of Governors of the ~~ECB~~ European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 226. If the Court of Justice of the European Union finds that a national central bank has failed to fulfil an obligation under ~~this Treaty~~ the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court ~~of Justice~~.

Article 238 [271]
(III-374)

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ~~Community~~ Union, whether that contract be governed by public or private law.

Article 239 [272]

(III-375(3))

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of ~~this Treaty~~ the Treaties if the dispute is submitted to it under a special agreement between the parties.

Article 240 [273]
(III-375(1))

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

The Constitutional Treaty would have moved the current Article 292 TEC here, to become Article III-375(2), but the draft Reform Treaty leaves that Article alone.

Article 240a [274]
(III-376)

The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions of Chapter II of Title V of the Treaty on European Union concerning the common foreign and security policy and [Article 10a] of that Treaty insofar as it concerns the common foreign and security policy.

However, the Court shall have jurisdiction to monitor compliance with Article [25] of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in Article 230 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter II of Title V of the Treaty on European Union.

This Article continues to exclude the Court's jurisdiction in principle from the foreign policy provisions of the TEU, consistently with the current Article 46 TEU, which will be repealed. The Court will however, have new jurisdiction over the legality of foreign policy sanctions measures, and its jurisdiction to rule on the borderline between foreign policy and other measures (which exists already at present: see the pending Case C-91/05 Commission v Council) would be confirmed.

Article 240b [275]
(III-377)

In exercising its powers regarding the provisions of Chapters 4 and 5 of Title IV of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

This provision retains a restriction on the Court's jurisdiction over policing and criminal law matters currently found in Article 35(5) TEU. The other restrictions on the Court's jurisdiction over such matters have been removed.

Article 241 [276]
(III-378)

~~Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 230, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 230 in order to invoke before the Court of Justice the inapplicability of that regulation.~~

Notwithstanding the expiry of the period laid down in [Article 230], any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in Article 230 in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

The amendment widens jurisdiction so that it is not restricted to 'Regulations' or to measures adopted by EU institutions and the Central Bank.

Article 242 [277]
(III-379(1))

Actions brought before the Court of Justice **of the European Union** shall not have suspensory effect. The Court ~~of Justice~~ may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 243 [278]
(III-379(2))

The Court of Justice **of the European Union** may in any cases before it prescribe any necessary interim measures.

The draft Reform Treaty, unlike the Constitutional Treaty, does not merge Articles 242 and 243 TEC.

Article 244 [279]
(III-380)

The judgments of the Court of Justice **of the European Union** shall be enforceable under the conditions laid down in Article 256.

Article 245 [280]
(III-381)

The Statute of the Court of Justice **of the European Union** shall be laid down in a separate Protocol.

~~The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, may amend the provisions of the Statute, with the exception of Title I.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act at the request of the Court of Justice and after consulting the Commission, or on a proposal from the Commission and after consulting the Court of Justice,

The amendment extends QMV and co-decision to this Article, in place of unanimity in Council and consultation of the EP. Articles 221 to 225 refer to several issues (such as the division of jurisdiction between the General Court and the Court of Justice, and the number of judges on the Court of Justice, which are dealt with in the State.

SECTION 4a

THE EUROPEAN CENTRAL BANK

Article 245a [281]
(I-30)

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks. The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

3. The European Central Bank is an institution. It shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.

4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with [Articles III-185 to III-191 and Article III-196], and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.

5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

This is a new provision, but is essentially a summary of the status quo. It includes the text of the current Articles 107(1) and (2) TEC, which would be repealed.

Article 245b (ex-112) [282]
(III-382)

1. The Governing Council of the ECB **European Central Bank** shall comprise the members of the Executive Board of the ECB **European Central Bank** and the Governors of the national central banks of the Member States **without a derogation as referred to in [Article III-197]**.

2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.

(b) The President, the Vice-President and the other members of the Executive Board 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,~~ **by the European Council, acting by a qualified majority,** on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

The amendment changes the voting procedure for appointment of the Executive Board from unanimity (common accord of the Heads of State or Government) to QMV of the European Council.

Article 245c (ex-113) [283]
(III-383)

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB **European Central Bank**.

The President of the Council may submit a motion for deliberation to the Governing Council of the ECB **European Central Bank**.

2. The President of the ECB **European Central Bank** shall be invited to participate in meetings of the Council when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The ECB **European Central Bank** shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB **European Central Bank** shall present this report to the Council and the European Parliament, which may hold a general debate on that basis.

The President of the ~~ECB~~ **European Central Bank** and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent bodies of the European Parliament.

SECTION 5

THE COURT OF AUDITORS

Article 246 [284]
(I-31(1))

The Court of Auditors shall carry out the audit of the European Union.

It shall examine the accounts of all Union revenue and expenditure, and shall ensure good financial management.

It shall consist of one national of each Member State. Its members shall be completely independent in the performance of their duties, in the Union's general interest.

These amendments are not a change in substance, as these new clauses have been transferred from the current Article 247.

Article 247 [285]
(I-31(2) and (3), and III-385)

~~1. The Court of Auditors shall consist of one national from each Member State.~~

~~2.~~ 1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective ~~countries~~ **States** to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

~~3.~~ 2. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, ~~acting by a qualified majority~~ after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable.

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

~~4.~~ 3. ~~The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.~~

In the performance of these duties, ~~they~~ the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

~~5.~~ 4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in

particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

~~6.~~ 5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph ~~7~~ 6.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

~~7.~~ 6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice of the European Union, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

~~8.~~ 7. The Council, ~~acting by a qualified majority~~, shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

~~9.~~ 8. The provisions of the Protocol on the privileges and immunities of the European ~~Communities~~ Union applicable to the Judges of the Court of Justice of the European Union shall also apply to the Members of the Court of Auditors.

These amendments are not a change in substance, as the deleted clauses have been transferred to the current Article 246.

Article 248 [286]
(III-384)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the ~~Community~~ Union. It shall also examine the accounts of all revenue and expenditure of all ~~bodies~~ bodies, offices and agencies set up by the ~~Community~~ Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of ~~Community~~ Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the ~~Community~~ Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the ~~Community~~Union, on the premises of any body which manages revenue or expenditure on behalf of the ~~Community~~Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the ~~Community~~Union, any bodies managing revenue or expenditure on behalf of the ~~Community~~Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing ~~Community~~Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of ~~Community~~Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the ~~Community~~Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the ~~Community~~Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council, ~~acting by a qualified majority~~.

CHAPTER 2

PROVISIONS COMMON TO SEVERAL INSTITUTIONS

Section 1

THE LEGAL ACTS OF THE UNION

*Article 249 [287]
(I-33)*

~~In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.~~

To exercise the Union's competences the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

~~A decision shall be binding in its entirety upon those to whom it is addressed.~~

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

In accordance with the Reform Treaty mandate, the idea of renaming and restructuring the legal instruments of the EU has been dropped, except for redefining a 'decision' along the lines of the Constitutional Treaty. The name of a legal instrument will therefore (as at present) not indicate whether it is a legislative act. However, as in the Constitutional Treaty, the specific types of legal acts adopted in the current second and third pillars have been abolished, and foreign policy acts will take the form of 'decisions' adopted pursuant to Article 249.

The revised Article 249 should be compared to Article I-33(1) of the Constitutional Treaty, which read as follows:

1. To exercise the Union's competences the institutions shall use as legal instruments, in accordance with Part III, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

Article I-33(2) of the Constitutional Treaty has been inserted into Article 253 TEC (see below).

Article 249a [288]
(I-34)

1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 251.

2. A special legislative procedure shall consist in the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament.

3. Legal acts adopted by legislative procedure shall constitute legislative acts.

A new clause, which is quite similar to Article I-34 of the Constitutional Treaty, which is differently worded in several respects:

1. European laws and framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council under the ordinary legislative procedure as set out in Article III-396. If the two institutions cannot reach agreement on an act, it shall not be adopted.

2. In the specific cases provided for in the Constitution, European laws and framework laws shall be adopted by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, in accordance with special legislative procedures.

3. In the specific cases provided for in the Constitution, European laws and framework laws may be adopted at the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

The co-decision procedure is already in very wide use, although it is not defined as the 'ordinary' procedure as such. The draft Reform Treaty would extend its use much further, mostly in accordance with the Constitutional Treaty. There is no current concept of 'legislative acts', although in accordance with the current Article 207(3), the Council's rules of procedure define when it is acting in a 'legislative capacity' and EC 'legislation' is referred to in the current Article 67(5) and the current Protocols on subsidiarity and national parliaments.

The importance of designating a measure as a 'legislative act' is not just that a type of legislative procedure will apply to it. Also, delegated powers can only be granted to the Commission (Article 249b) in respect of legislative acts, and there should be greater openness and transparency when legislative acts are being adopted (see Article 21a of the TEC/TFEU and Article 9c of the TEU).

Article 249b [289]
(I-36)

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective 'delegated' shall be inserted in the title of delegated acts.

This is a new clause, which is quite similar to Article I-35 of the Constitutional Treaty, but which has been adjusted because the current names of EC acts have been retained. The new paragraph 3 (added in the draft Reform Treaty) will help in identifying 'delegated' acts.

While there is no current procedure for adopting 'delegated' acts as such, the EU's current 'comitology' rules (see the next Article) recognize, as from 2006, a separate category of implementing acts which are 'measures of general scope designed to amend non-essential elements of the [legislative act], inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements' (OJ 2006 L 200). A different procedure (the 'regulatory procedure with scrutiny'), which gives extra powers to the EP (as well as control powers for Member States/the Council), applies in such cases. It is

possible that this procedure could be relevant for the implementation and interpretation of this new Article.

Article 249c [290]

(I-37)

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in [foreign policy Article], on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

This is a new clause. It enshrines the existing practice that it is generally up to Member States to implement EU measures, and also takes over aspects of the current Article 202 TEC concerning implementing measures (the 'comitology' process). General rules on comitology will now be adopted by QMV and co-decision, while the current rule is unanimity and consultation. Paragraph 4 has been adjusted by the draft Reform treaty, due to the change in naming EU acts. In the Constitutional Treaty, this paragraph read: 'Union implementing acts shall take the form of European implementing regulations or European implementing decisions'.

Article 249d [291]

(I-35(3))

The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the *Treaties* provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. The Commission, and the European Central Bank in the specific cases provided for in the *Treaties*, shall adopt recommendations.

This new clause, retained from the Constitutional Treaty, is a statement of the blindingly obvious. The first two paragraphs of Article I-35, which made similarly obvious statements, have not been retained:

1. *The European Council shall adopt European decisions in the cases provided for in the Constitution.*

2. *The Council and the Commission, in particular in the cases referred to in articles I-36 and I-37, and the European Central Bank in the specific cases provided for in the constitution, shall adopt European regulations and decisions.*

Section 2

PROCEDURES FOR THE ADOPTION OF ACTS AND OTHER PROVISIONS

Article 250 [292]
(III-395)

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

1. Where, pursuant to the *Treaties*, the Council acts on a proposal from the Commission, it may amend that proposal only by acting unanimously, except in the cases referred to in Articles [I-55, I-56, III-396(10) and (13), III-404 and III-405(2)].

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

The amended paragraph, in conformity with the Constitutional Treaty, simply revises the list of the exceptions from this principle.

Article 251 [293]
(III-396)

1. Where reference is made in this Treaty the *Treaties* to this Article the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

~~The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:~~

- ~~- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended,~~
- ~~- if the European Parliament does not propose any amendments, may adopt the proposed act,~~
- ~~- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.~~

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

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

~~(c) - proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.~~

~~3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.~~

~~4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.~~

~~5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.~~

~~6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.~~

~~7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.~~

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

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

(a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

(b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Special provisions

15. Where, in the cases provided for in the *Treaties*, a *legislative act* is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

The amendments to this Article are simply clarifications which do not alter the substance of the procedure. The important change which the draft Reform Treaty would bring about, like the Constitutional Treaty, is the major expansion in the scope of this procedure.

Article 252

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

- (a) - ~~The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.~~
- (b) - ~~The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.~~

~~If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.~~

- (c) - ~~The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.~~

~~If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.~~

- (d) - ~~The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.~~

~~The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.~~

- (e) - ~~The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.~~

~~Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.~~

- (f) - ~~In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.~~

~~(g) - The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.~~

In accordance with the Constitutional Treaty, the 'cooperation procedure' is abolished.

New Article 252 [294]
(III-397)

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.

This is a new provision, in accordance with the Constitutional Treaty, although it can be regarded as an amendment to the current Article 218(1) TEC (repealed by the draft Reform Treaty), which provides for cooperation between the Council and the Commission. 'Inter-institutional agreements' have long been agreed in practice between the EU institutions, so this provision simply provides for a 'legal base' to that end. It should be noted that there will be a specific legal base in the 'financial provisions' chapter of this Title for measures concerning the multi-annual financial framework, which has previously been the subject of inter-institutional agreements. So the new Article 252 will not apply to the multi-annual financial framework.

Article 253 [295]
(I-38 and I-33(2))

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

Where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.

Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties.

When considering draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the relevant legislative procedure in the area in question.

The second paragraph simply expands upon the existing Article, but the first and third paragraphs are new. The new first paragraph simply states the obvious, however.

Article 254 [296]
(I-39)

~~1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the President of the European Parliament and by the President of the Council and published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.~~

~~2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication.~~

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

1. Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council.

Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them.

Legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication.

2. Non-legislative acts adopted in the form of regulations, directives and decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union* and shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

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

This clause has been amended, to widen the publication requirement. There are certain amendments compared to the Constitutional Treaty, to take account of the renaming of acts in the draft Reform Treaty.

Article 254a [297]
(III-398)

1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 283, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish provisions to that end.

This is an entirely new provision.

Article 255

~~1. 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, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.~~

~~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 251 within two years of the entry into force of the Treaty of Amsterdam.~~

~~3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.~~

This Article has been moved, in accordance with the IGC mandate, with amendments as set out in Articles I-50 and III-399 of the Constitutional Treaty, to Part Two of the Treaty, dealing with citizenship.

Article 256 [298] (III-401)

~~Decisions~~ **Acts** of the Council or of the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

The Union's advisory bodies

Article 256a [299]

(I-32)

1. The European Parliament, the Council and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.

2. The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.

3. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas.

4. The members of the Committee of the Regions and the Economic and Social Committee shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest.

5. Rules governing the composition of these Committees, the designation of their members, their powers and their operations are set out in Articles 258 to 265.

The rules referred to in paragraphs 2 and 3 governing the nature of their composition shall be reviewed at regular intervals by the Council to take account of economic, social and demographic developments within the Union. The Council, on a proposal from the Commission, shall adopt decisions to that end.

The definition of the Economic and Social Committee is different from the current definition (see the current Article 257 TEC). The power of the Council to amend the rules governing the committees is also new.

SECTION 1

THE ECONOMIC AND SOCIAL COMMITTEE

Article 257

~~An Economic and Social Committee is hereby established. It shall have advisory status.~~

~~The Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest.~~

This Article has been moved, with amendments, to Article 256a.

Article 258 [300]
(I-32 and III-389)

The number of members of the Economic and Social Committee shall not exceed 350.

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

~~—— Belgium 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
Sweden 12
United Kingdom 24~~

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

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

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

In place of rules set out in the Treaty, the Council will have the power, acting unanimously, to determine the distribution of members between Member States. The rule on the independence of members has been moved to Article 256a.

Article 259 [301]
(III-390)

1. ~~The members of the Committee shall be appointed for four years, on proposals from the Member States.~~ **The members of the Committee shall be appointed for five years.** The Council, ~~acting by a qualified majority,~~ shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable.

2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors **and of civil society** to which the activities of the ~~Community~~ **Union** are of concern.

The amendments shift the term of office from four to five years, and add a reference to civil society.

Article 260 [302]
(III-391)

The Committee shall elect its chairman and officers from among its members for a term of ~~two years~~ **two and a half years.**

It shall adopt its Rules of Procedure.

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

Article 261

~~The Committee shall include specialised sections for the principal fields covered by this Treaty.~~

~~These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.~~

~~Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.~~

~~The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.~~

The deletion of this Article means that the Council will have greater flexibility to set rules concerning the functioning of the Committee (see Articles 256 and 258).

Article 262 [303]
(III-392)

The Committee must be consulted by the Council, **the European Parliament** or by the Commission where ~~this Treaty~~ **the Treaties** so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

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

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

~~The Committee may be consulted by the European Parliament.~~

CHAPTER 4

THE COMMITTEE OF THE REGIONS

Article 263 [304]
(I-32 and III-386)

~~A committee, hereinafter referred to as "the Committee of the Regions", consisting of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly, is hereby established with advisory status.~~

The number of members of the Committee of the Regions shall not exceed 350.

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

~~——— Belgium 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
Sweden 12
United Kingdom 24

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for ~~four~~ **five** years, ~~on proposals from the respective Member States.~~ Their term of office shall be renewable. The Council, ~~acting by a qualified majority,~~ shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in ~~the first paragraph~~ **Article 256a(2)** on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

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

The first sub-paragraph has been moved, without amendment, to Article 256a(2). The power to determine the number of members per Member State has been given to the Council, acting unanimously. The term of office has been extended.

Article 264 [305]
(III-387)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two **and a half** years.

It shall adopt its Rules of Procedure.

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

Article 265 [306]
(III-388)

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

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

Where the Economic and Social Committee is consulted pursuant to Article 262, the Committee of the Regions shall be informed by the Council, the European Parliament or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

~~The Committee of the Regions may be consulted by the European Parliament.~~

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the Council, the European Parliament and to the Commission.

CHAPTER 5

THE EUROPEAN INVESTMENT BANK

Article 266 [307]
(III-393)

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to ~~this Treaty~~ the Treaties. The Council acting unanimously in a special legislative procedure, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or ~~at the request of~~ on the proposal of the Commission and after consulting the European Parliament and the European Investment Bank, may amend ~~Articles 4, 11 and 12 and Article 18(5) of the Statute of the Bank.~~

There will be wider scope to amend the Statute of the Bank without Treaty amendment, in accordance with the Constitutional Treaty.

Article 267 [308]
(III-394)

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

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the ~~progressive~~ establishment or functioning of the ~~common~~ internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the

- individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

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

TITLE II

FINANCIAL PROVISIONS

Article 268 [309]
(I-53)

~~1. All items of revenue and expenditure of the Community Union, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.~~

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

The Union's annual budget will be established by the European Parliament and the Council in accordance with Article 272.

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

2. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the regulation referred to in Article 279.

3. The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure in accordance with the regulation referred to in Article 279, except in cases for which that law provides.

4. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework referred to in Article 270a.

5. The budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with this principle.

6. The Union and the Member States, in accordance with Article 280, shall counter fraud and any other illegal activities affecting the financial interests of the Union.

The amendments are in accordance with the Constitutional Treaty; much of this is the status quo.

Chapter 1

The Union's own resources

*Article 269 [310]
(1-54)*

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

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

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

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, adopt a regulation laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That regulation shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The Council, acting in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system insofar as this is provided for in the European law adopted on the basis of the first paragraph. The Council shall act after obtaining the consent of the European Parliament.

This Article has been amended in accordance with the Constitutional Treaty. The first paragraph has been transferred here from the current Article 6(4) TEU. The prospect of adopting implementing measures by a qualified majority is new. The last sub-paragraph is another (third) case of QMV for legislation without co-decision for the EP. The reference to the 'first paragraph' here is a technical error.

Article 270

~~With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is~~

~~capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.~~

Effectively, this clause has been moved to Article 268(4), with amendments.

Chapter 2

The multiannual financial framework

Article 270a [311]

(I-55 and III-402)

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. It shall determine the amounts of the annual ceilings of appropriations for commitments by category of expenditure.

It shall be established for a period of at least five years.

The annual budget of the Union shall comply with the multiannual financial framework.

2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

The European Council may, unanimously, adopt a decision authorising the Council to act by a qualified majority when adopting the regulation referred to in the first paragraph.

3. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity.

The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.

4. Where no act of the Council determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted.

5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate the successful completion of the procedure.

These new provisions insert into the TEC/TFEU the provisions of the Constitutional Treaty concerning the multi-annual financial framework. These are entirely new provisions of the Treaty, although in fact the multi-annual financial framework has been a basic feature of EU finance since 1988. These provisions of these

Articles essentially reflect current practice. Again, there is a technical error in the cross-reference in paragraph 2.

Chapter 3

THE UNION'S ANNUAL BUDGET

*Article 270b (ex-272(1)) [312]
(III-403)*

The financial year shall run from 1 January to 31 December.

*Article 272 [313]
(III-404)*

~~2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.~~

~~The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.~~

~~3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.~~

~~The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.~~

~~The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.~~

~~4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.~~

~~The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.~~

~~If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.~~

~~If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.~~

~~5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:~~

- ~~(a) - the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;~~
- ~~(b) - with regard to the proposed modifications:
 - ~~- where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted,~~
 - ~~- where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected,~~
 - ~~- where, pursuant to one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.~~~~

~~The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.~~

~~If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.~~

~~If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.~~

~~6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.~~

~~7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.~~

~~8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.~~

~~9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.~~

~~The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:~~

- ~~- the trend, in terms of volume, of the gross national product within the Community,~~
 - ~~- the average variation in the budgets of the Member States,~~
- ~~and~~
- ~~- the trend of the cost of living during the preceding financial year.~~

~~The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.~~

~~If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.~~

~~Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three fifths of the votes cast.~~

~~10. Each institution shall exercise the powers conferred upon it by this article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.~~

The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions:

1. Each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the

European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.
4. If, within forty-two days of such communication, the European Parliament:
 - (a) approves the position of the Council, the budget shall be adopted;
 - (b) has not taken a decision, the budget shall be deemed to have been adopted;
 - (c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.
5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.
7. If, within the period of fourteen days referred to in paragraph 6:
 - (a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text, or
 - (b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission, or
 - (c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission, or
 - (d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c).

Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted.

10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

These amendments alter the annual budget procedure for the first time since 1975, and confer substantial additional power on the European Parliament, particularly as regards what the current Treaty calls 'compulsory' spending (ie spending on the common agricultural policy).

Article 273 [314]
(III-405)

If, at the beginning of a financial year, the budget has not yet been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter ~~or other subdivision~~ of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; ~~this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation. that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.~~

The Council may, ~~acting by a qualified majority~~ on a proposal by the Commission, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one twelfth. in accordance with the regulations referred to in Article 279. The Council shall forward the decision immediately to the European Parliament.

~~If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.~~

~~The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.~~

The decision referred to in the second paragraph shall lay down the necessary measures relating to resources to ensure application of this Article, in accordance with the acts referred to in Article 269.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

These are modest amendments governing the 'one-twelfth' rule, which applies where an annual budget has not been adopted before a new financial year starts.

Article 273a (ex-271) [315]
(III-406)

~~The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.~~

In accordance with conditions to be laid down pursuant to Article 279, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, ~~as far as may be necessary,~~ in accordance with the regulations made pursuant to Article 279.

The expenditure of the European Parliament, the Council, the European Council, the Commission and the Court of Justice of the European Union shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

The European Council has been added, due to its new status as an institution.

Chapter 4

IMPLEMENTATION OF THE BUDGET AND DISCHARGE

Article 274 [316]
(III-407)

~~The Commission shall implement the budget,~~ The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

~~The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.~~

The regulations shall establish the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

The amendments place responsibilities upon the Member States.

Article 275 [317]
(III-408)

The Commission shall submit annually to the European Parliament and to the Council ~~and to the European Parliament~~ the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the ~~Community~~ Union.

This amendment is not substantive. However, the draft Reform Treaty has omitted to add the following text, which appears in the Constitutional Treaty:

The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 276.

Article 276 [318]
(III-409)

1. The European Parliament, acting on a recommendation from the Council ~~which shall act by a qualified majority~~, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the ~~accounts and the financial statement~~ accounts, the financial statement and the evaluation report referred to in Article 275, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1), second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

This amendment is in accordance with the Constitutional Treaty. Note that the draft Reform Treaty omits to amend Article 275 to refer to this evaluation report.

Chapter 5

COMMON PROVISIONS

*Article 277 [319]
(III-410)*

~~The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279.~~

The multiannual financial framework and the annual budget shall be drawn up in euro.

This provision is amended to refer explicitly to the euro, and to refer to the multi-annual framework. The practice is to draw up these measures in euro already.

*Article 278 [320]
(III-411)*

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of ~~this Treaty~~ **the Treaties**. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

*Article 279 [321]
(III-412)*

~~1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:~~

- ~~(a) - make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;~~
- ~~(b) - lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate~~

~~arrangements for inspection.~~

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall:

- (a) adopt Financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

2. The Council, acting ~~unanimously~~ on a proposal from the Commission and after consulting the European Parliament and obtaining the ~~opinion~~ of the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the ~~Community's~~ Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

Co-decision is extended to paragraph 1, and QMV is extended to paragraph 2. There is a technical error in the latter paragraph: the words 'obtaining the...' and '...of' also need to be deleted.

Article 279a [322]
(III-413)

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

This is an entirely new provision.

Article 279b [323]
(III-414)

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened, on the initiative of the Commission, under the budgetary procedures referred to in this Chapter. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the positions of the institutions over which they preside in order to facilitate the implementation of this Title.

This is an entirely new provision, although of course such meetings already take place in practice.

Chapter 6

COMBATING FRAUD

Article 280 [324]
(III-415)

1. The ~~Community~~Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the ~~Community~~Union through measures to be taken in accordance with this article, which shall act as a deterrent and be such as to afford effective protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the ~~Community~~Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of ~~this Treaty~~ the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the ~~Community~~Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. ~~The Council, acting in accordance with the procedure referred to in Article 251,~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the ~~Community~~Union with a view to affording effective and equivalent protection in the Member States. ~~[These measures shall not concern the application of national criminal law or the national administration of justice.]~~

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this article.

The two amendments are in accordance with the Constitutional Treaty. The extension of this Article to EU institutions simply confirms existing case law (judgments in Cases C-11/00 and C-15/00, Commission v ECB and EIB), while the removal of the criminal law exception means that criminal law measures on this issue can be adopted in accordance with the rules in the JHA Title - entailing a UK, Irish and Danish opt-out and the possible use of an 'emergency brake'.

TITLE III

ENHANCED COOPERATION

The detailed provisions on enhanced cooperation, as revised by the Constitutional Treaty, are inserted into this part of the TEC/TFEU, in accordance with the Reform Treaty mandate. These provisions replace the current Articles 11 and 11a TEC, 27a to 27e TEU and 40 to 40b TEU. They also incorporate much of the current Title VII of the TEU, concerning general rules for flexibility (Articles 43 to 45 TEU).

Article 280a [325]
(III-416)

Any enhanced cooperation shall comply with the *Treaties* and the law of the Union.

Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

The first paragraph reflects (but is not identical to) the current Article 43(b) to (d) TEU, while the second paragraph is the current Article 43(e) and (f) TEU.

Article 280b [326]
(III-417)

Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

The first line is the current Article 43(h) TEU. The second line is taken from the current Article 44(2) TEU.

Article 280c [327]
(III-418)

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to any such conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible.

2. The Commission and, where appropriate, the *High Representative of the Union for Foreign Affairs and Security Policy*, shall keep the European Parliament and the Council regularly informed regarding developments in enhanced cooperation.

Paragraph 1 is the current Article 43b TEU. Paragraph 2 is adapted from the current Article 27d TEU, which only applies to foreign policy.

Article 280d [328]
(III-419)

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the *Treaties*, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission 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.

Authorisation to proceed with the enhanced cooperation referred to in paragraph 1 shall be granted by a decision of the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.

The rules for setting up 'flexibility' may currently be found in Articles 27c and 40a TEU, and Article 11 TEC.

As for paragraph 1, for the third pillar, the current rules provide for the possibility of a proposal by Member States, as well as an 'emergency brake' applied to decision-making. The EP is only consulted. In the first pillar, the EP has assent power wherever the proposed flexibility is within the scope of the co-decision process, plus there is an emergency brake.

In the draft Reform treaty, the first pillar rules apply to the third pillar, the emergency brake is abolished, and the EP has consent powers over all decisions.

As for foreign policy, the current rules apply the normal foreign policy voting rules to a decision to apply flexibility: this will normally mean qualified majority voting, with an emergency brake, as foreign policy flexibility must always concern implementation of a foreign policy measure. Under the draft Reform Treaty, that limit on the scope of foreign policy flexibility has been dropped, but a requirement of unanimous voting is imposed instead.

Article 280e [329]
(I-44(3))

All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.

Unanimity shall be constituted by the votes of the representatives of the participating Member States only.

A qualified majority shall be defined in accordance with Article 205 (3).

Compared to the Constitutional Treaty, this decision-making rule has been moved from the general flexibility Article (which will be inserted into Article 10 TEU) into the detailed flexibility provisions. The special voting rules which will apply to qualified majority voting will now appear in a single Article of the Treaty, referred to in the third paragraph.

Article 280f [330]
(III-420)

1. Any Member State which wishes to participate in enhanced cooperation in progress in one of the areas referred to in Article [III-419(1)] shall notify its intention to the Council and the Commission. The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request. The Council shall act in accordance with Article [I-44(3)]. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the *High Representative of the Union for Foreign Affairs and Security Policy*, and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the *High Representative*, and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the *High Representative*, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act unanimously and in accordance with Article [I-44(3)].

Article 280g [331]
(III-421)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

This is the current Article 44a TEU.

Article 280h [332]
(III-422)

1. Where a provision of the *Treaties* which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article [I-44(3)], may adopt a decision stipulating that it will act by a qualified majority.

2. Where a provision of the *Treaties* which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt acts under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article [I-44(3)], may adopt a decision stipulating that it will act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.

3. Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.

This provision, which allows the Member States participating in flexibility to change the decision-making rules applicable to them, was introduced by the Constitutional Treaty.

Article 280i [333]
(III-423)

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

This is the current Article 45 TEU.

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