



Statewatch Analysis

EU Reform Treaty Analysis no. 3.4:

Revised text of Part Three, Titles VII to XVII of the Treaty establishing the European Community (TEC): Other internal EC policies

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Introduction

The following text sets out what will be the text of the provisions of the Treaty establishing the European Community (TEC) governing the internal policies of the EU, other than the internal market and competition policy provisions, following the amendments to be agreed by the planned Reform Treaty. This text is based on the draft Reform Treaty released on 23 July 2007, and incorporates the amendments which are proposed by this draft Treaty to the current TEC into the current TEC text. It is updated to include the version of the Treaty produced in October 2007, following review by legal experts, and also takes account, where relevant, of the final agreement on the Treaty reached at an informal EU summit on 18 October 2007.

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

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

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

Some further changes to the text are possible before the final signature of the Treaty - which is planned for 13 December. 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' - which no-one should confuse in future with the English Cricket Board!

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 amended here concern economic and monetary union, social and employment policy, environmental policy, and often-controversial 'flanking' policies such as public health, culture and education.

The substantive amendments which the draft Reform Treaty would make to these provisions of the Treaty are as follows:

- a) the Commission can warn a Member State that its economic policies are in breach of EU guidelines (Article 99);
- b) a Member State will not be able to vote in its own case as regards an alleged breach of EU guidelines (Article 99);
- c) the co-decision procedure will apply to the adoption of rules on EU economic guidelines (Article 99);
- d) the power to take emergency economic measures has been amended to address energy issues (Article 100);

- e) the EP's powers have been downgraded from 'co-operation' to 'consultation' in four Articles (Articles 101-103 and 106) and from 'assent' to 'consultation' in one Article (Article 105);
- f) the Commission has power to issue a warning, and to make a proposal instead of a recommendation, as regards aspects of possible sanctions against Member State for excessive deficits (Article 104);
- g) co-decision and (to an extent) QMV have been extended to measures amending aspects of the ECB Statute (Article 107);
- h) there is a wider power, now also subject to co-decision, to adopt legislation relating to the use of the euro as the single currency (new Article 111);
- i) there is a new power to adopt legislation concerning surveillance and excessive deficits for eurozone Member States only (new Article 114);
- j) there is a wider power to adopt measures concerning international aspects of monetary union (new Article 115a);
- k) the eurozone Member States can adopt a recommendation on whether a new Member State should join the eurozone (Article 117);
- l) the European Parliament (EP) will be informed of agreements between social partners (Article 139);
- m) there is a new 'legal base' on sport (Article 149);
- n) QMV will apply to cultural matters (Article 151);
- o) the EU's public health powers will apply to medical products and devices, and its incentive powers and overall competence as regards public health have been clarified (Article 152);
- p) the EP has the power of co-decision, instead of assent, over cohesion fund measures (Article 161);
- q) there is a new 'legal base' relating to the European research area (Article 166(5));
- r) there is a new 'legal base' concerning space policy (Article 172a);
- s) there is a reference to climate change in the environment Title (Article 174), although this not really a substantive amendment since existing EU environmental powers can address climate change issues;
- t) any extension of QMV to the environmental measures still subject to unanimous voting will entail an extension of co-decision as well (Article 175);
- u) there is a new 'legal base' on energy (Article 176a);
- v) there is a new 'legal base' on tourism (Article 176b);
- w) there is a new 'legal base' on civil protection (Article 176c);
- x) there is a new 'legal base' on administrative cooperation (Article 176d).

All of these amendments are in accordance with the Constitutional Treaty, except (d), (o), (r) and (s). Of these, (d) and (s) are entirely new in the draft Reform Treaty, while the amendments in points (o) and (r) and have been altered in the draft Reform Treaty as compared to the Constitutional Treaty, to provide for more limited EU powers as regards space and health.

It should be recalled that many of the amendments relating to monetary union apply only to the Member States which have adopted the euro (points (g) to (j) and part of point (e)).

I have not listed above amendments which confirm existing processes, ie the Eurogroup (new Article 115), the social partners (new Article 136a), and the 'open method of coordination' (Articles 140, 165, 176e and 176f).

It can be seen that, contrary to some of the discussion of the Constitutional Treaty/Reform Treaty, the amendments which would be made to these provisions are more limited than some imagine.

In particular, contrary to widespread press reports, there are **NO substantive amendments AT ALL to the provisions on social or employment policy.**

Also, there are very limited amendments to the environmental provisions. Amazingly, some press reports suggested that the Constitutional Treaty would create an EU environmental policy for the first time! This is obviously wholly false, as can be seen from the existence of the current Articles 174 and 175 TEC below. In fact, the EEC (as it then was) first developed an environmental policy in the 1970s, the Treaty has contained a Title on environment policy since the Single European Act entered into force in 1987, and environmental law has been largely subject to qualified majority voting since 1993, with the consequence that the EC has already adopted a lot of environmental legislation.

Several new 'legal bases' are created, but only one (energy) confers a power on the EU to harmonise national law; and the EU has already got (and used) powers in other areas (like the internal market and the environment) in order to regulate aspects of energy policy. The changes to the provisions on monetary union modestly strengthen the rules on governance of the Eurozone and give the Eurozone countries some additional powers to pursue policies distinctly from the Member States which have not adopted the euro.

TITLE VII

ECONOMIC AND MONETARY POLICY

Article 97b (ex-4) [119]
(III-177)

1. For the purposes set out in Article ~~2~~ **3 of the Treaty on European Union**, the activities of the Member States and the ~~Community~~ **Union** shall include, as provided in ~~this Treaty~~ **the Treaties** and ~~in accordance with the timetable set out therein,~~ the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

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

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

CHAPTER 1

ECONOMIC POLICY

Article 98 [120]
(III-178)

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the ~~Community~~ Union, as defined in Article 2 ***3 of the Treaty on European Union***, and in the context of the broad guidelines referred to in Article 99(2). The Member States and the ~~Community~~ Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 97a.

Article 99 [121]
(III-179)

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 98.

2. The Council shall, ~~acting by a qualified majority~~ on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the ~~Community~~ Union, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the ~~Community~~ Union.

On the basis of this conclusion, the Council shall, ~~acting by a qualified majority~~, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the ~~Community~~ Union as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. ~~Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper~~

~~functioning of economic and monetary union, the Council may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned.~~

Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned.

~~The Council may, acting by a qualified majority on a proposal from the Commission, decide to make its recommendations public.~~

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 205 (3) (a).

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

~~5.~~ 6. ~~The Council, acting in accordance with the procedure referred to in Article 252-~~ The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 of this Article.

The co-decision procedure is extended to this Article, in place of the ‘cooperation’ procedure (a halfway house between consultation and co-decision, which is to be abolished). The amendment to paragraph 4 gives the Commission a new power to address a warning to the Member State concerned, and the Member State which is the subject of a procedure may not vote.

Article 100 [122]
(III-180)

1. Without prejudice to any other procedures provided for in ~~this Treaty~~ the Treaties, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission, may grant, under certain conditions, ~~Community~~ Union financial

assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

The new wording in paragraph 1 has been inserted in accordance with the mandate for the Reform Treaty.

Article 101 [123]
(III-181)

1. Overdraft facilities or any other type of credit facility with the ECB European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of ~~Community~~ Union institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB European Central Bank as private credit institutions.

Article 102 [124]
(III-182)

~~4.— Any measure, not based on prudential considerations, establishing privileged access by ~~Community~~ Union institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.~~

~~2.— The Council, acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.~~

The legal base in paragraph 2 has been moved to Article 103(2), with amendments.

Article 103 [125]
(III-183)

1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

~~2. If necessary, The Council, acting in accordance with the procedure referred to in Article 252~~ on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Article 101 and 102 and in this Article.

The consultation procedure will apply to this Article (along with Articles 101 and 102), in place of the 'cooperation' procedure. The measures concerned shall not constitute legislative acts. This entails a downgrade of the EP's role here.

Article 104 [126]
(III-184)

1. Member States shall avoid excessive government deficits.
2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:
 - (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
 - either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,
 - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
 - (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to ~~this Treaty~~ **the Treaties**.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Committee provided for in Article 114 shall formulate an opinion on the report of the Commission.

~~5. If the Commission considers that an excessive deficit in a Member State exists or may occur, the Commission shall address an opinion to the Council.~~

If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly.

6. The Council shall, ~~acting by a qualified majority~~ on a **recommendation proposal** from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

~~7. Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period. Where the Council decides, in accordance with paragraph 6, that an excessive deficit exists, it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period.~~ Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 226 and 227 may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Community Union until the excessive deficit has, in the view of the Council, been corrected,
- to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions or recommendations referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

~~13. When taking the decisions referred to in paragraphs 7 to 9, 11 and 12, the Council shall act on a recommendation from the Commission by a majority of two thirds of the votes of its members weighted in accordance with Article 205(2), excluding the votes of the representative of the Member State concerned.~~

When taking the decisions referred to in paragraphs 8, 9, 11 and 12, the Council shall act on a recommendation from the Commission.

When the Council adopts the measures referred to in paragraphs 6 to 9 and 11 and 12, it shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 205 (3) (a).

14. Further provisions relating to the implementation of the procedure described in this article are set out in the Protocol on the excessive deficit procedure annexed to ~~this Treaty~~ the Treaties.

The Council shall, acting in accordance with a special legislative procedure, unanimously ~~on a proposal from the Commission~~ and after consulting the European Parliament and the ECB European Central Bank, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, ~~before 1 January 1994, acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

The Commission has enhanced power to give warnings and to make a proposal instead of a recommendation in one case (this makes it harder for the Council to change the Commission's proposal).

CHAPTER 2

MONETARY POLICY

Article 105 [127]
(III-185)

1. The primary objective of the ~~ESCB~~ European System of Central Banks, hereinafter referred to as "ESCB", shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the ~~Community~~ Union with a view to contributing to the achievement of the objectives of the ~~Community~~ Union as laid down in Article ~~2~~ 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article ~~97a~~.

2. The basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the ~~Community~~ Union,
- to conduct foreign-exchange operations consistent with the provisions of Article ~~411~~ 188o,
- to hold and manage the official foreign reserves of the Member States,
- to promote the smooth operation of payment systems.

3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

4. The ECB European Central Bank shall be consulted:

- on any proposed ~~Community~~ Union act in its fields of competence,
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 107(6).

The ECB European Central Bank may submit opinions to the appropriate ~~Community-Union~~ institutions or bodies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. ~~The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.~~

The Council may, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

The EP's role has been downgraded here, from consent to consultation. The Council must still vote unanimously.

Article 106 [128]
(III-186)

1. The ECB European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the ~~Community-Union~~. The ECB European Central Bank and the national central banks may issue such notes. The banknotes issued by the ECB European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the ~~Community-Union~~.

2. Member States may issue euro coins subject to approval by the ECB European Central Bank of the volume of the issue. The Council, ~~may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may~~ adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the ~~Community-Union~~.

The consultation procedure shall apply to this Article, in place of the 'cooperation' procedure. These measures shall not constitute legislative acts. This entails a downgrade of the EP's role here.

Article 107 [129]
(III-187)

- ~~1. The ESCB shall be composed of the ECB and of the national central banks.~~
- ~~2. The ECB shall have legal personality.~~
- ~~3. 1. The ESCB shall be governed by the decision-making bodies of the ~~ECB~~ **European Central Bank** which shall be the Governing Council and the Executive Board.~~
- ~~4. 2. The Statute of the ESCB **European System of Central Banks and the European Central Bank**, hereinafter called the '**Statute of the ESCB and the ECB**', is laid down in a Protocol annexed to ~~this Treaty~~ **the Treaties**.~~
- ~~5. 3. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required.~~

Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the *the European Parliament and the Council, acting in accordance with the ordinary legislative procedure.* They shall act either on a recommendation from the European Central Bank and after consulting the Commission or on a proposal from the Commission and after consulting the European Central Bank.

- ~~6. 4. The Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ~~ECB~~ **European Central Bank** or on a recommendation from the ~~ECB~~ **European Central Bank** and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB **and the ECB**.~~

The first two paragraphs have been moved to the institutional Part of the Treaty (see Statewatch Analysis 3.6). The co-decision procedure has been extended to the current paragraph 5 (renumbered paragraph 3) in place of EP assent, and the requirement of unanimous voting where a proposal was made by the Commission in that paragraph has been dropped.

Article 108 [130]
(III-188)

When exercising the powers and carrying out the tasks and duties conferred upon them by ~~this Treaty~~ **the Treaties** and the Statute of the ESCB **and the ECB**, neither the ~~ECB~~ **European Central Bank**, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from ~~Community~~ **Union**

institutions or bodies, from any government of a Member State or from any other body. The ~~Community Union~~ institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB European Central Bank or of the national central banks in the performance of their tasks.

Article 109 [131]
(III-189)

Each Member State shall ensure, ~~at the latest at the date of the establishment of the ESCB,~~ that its national legislation including the statutes of its national central bank is compatible with ~~this Treaty~~ the Treaties and the Statute of the ESCB and the ECB.

Article 110 [132]
(III-190)

1. In order to carry out the tasks entrusted to the ESCB, the ECB European Central Bank shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB and the ECB:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and the ECB and in cases which shall be laid down in the acts of the Council referred to in Article 107(6),
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB and the ECB,
- make recommendations and deliver opinions.

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

~~Recommendations and opinions shall have no binding force.~~

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

~~Articles 253, 254 and 256 shall apply to regulations and decisions adopted by the ECB.~~

The ECB European Central Bank may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 107(6), the ECB European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 111 [133]

1. ~~By way of derogation from Article 300, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the~~

~~procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the ecu in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ecu within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ecu central rates.~~

~~2. In the absence of an exchange-rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.~~

~~3. By way of derogation from Article 300, where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the Community with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.~~

~~Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.~~

~~4. Subject to paragraph 1, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 and 105.~~

~~5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.~~

Paragraphs 1 to 3 and 5 have been moved to Article 188o in the new Part Five of the Treaty. Paragraph 4 has been moved, with amendments, to Article 115a.

*New Article 111 (ex 123(4))
(III-191)*

Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.

This provision replaces part of the current Article 123(4), which gives the Council power, by QMV with consultation of the EP, to 'take the other measures [besides currency conversion] necessary for the introduction of the ecu as the single

currency in the Member State concerned'. This new Article is wider in scope (although in practice the existing power is interpreted quite broadly) and is now subject to the co-decision procedure.

CHAPTER 3

INSTITUTIONAL PROVISIONS

Article 112

~~1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.~~

- ~~(a) - 2. 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, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.~~

~~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.~~

This Article has been moved, with amendments, to the institutional Part of the Treaty (Article 245b). See Statewatch analysis 3.6.

Article 112 (ex-114) [134] (III-192)

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, a ~~Monetary Committee with advisory status~~ **Economic and Financial Committee** is hereby set up.

~~It shall have the following tasks:~~

- ~~- to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission,~~
- ~~- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,~~
- ~~- without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 116(2), 117(6), 119, 120, 121(2) and 122(1),~~
- ~~- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.~~

~~The Member States and the Commission shall each appoint two members of the Monetary Committee.~~

~~2. At the start of the third stage, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 shall be dissolved.~~

The Economic and Financial Committee shall have the following tasks:

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

The Member States, the Commission and the ECB European Central Bank shall each appoint no more than two members of the Committee.

~~3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB European Central Bank and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.~~

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

The references to the Monetary Committee have been deleted, because they are redundant.

Article 113

~~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.~~

~~The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.~~

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

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

~~The President of the ECB 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 committees of the European Parliament.~~

This Article has been moved, without amendments, to the institutional Part of the Treaty (Article 245c). See Statewatch analysis 3.6.

Article 113 (ex-115) [135]
(III-193)

For matters within the scope of Articles 99(4), 104 with the exception of paragraph 14, 111, 121, 122 and 123(4) and (5), the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

CHAPTER 3a

PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO

Article 114 [136]
(III-194)

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 99 and 104, with the exception of the procedure set out in Article 104(14), adopt measures specific to those Member States whose currency is the euro:

- (a) to strengthen the coordination and surveillance of their budgetary discipline;
- (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in conformity with Article 205 (3)(a).

This is an entirely new provision. The existing Article 114 has been moved to Article 112.

Article 115 [137]
(III-195)

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.

This is an entirely new provision, and a new Protocol, although the Eurogroup already exists in practice. The existing Article 115 has been moved to Article 113.

Article 115a (ex-111(4)) [138]
(III-196)

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in conformity with Article 205 (3)(a).

This Article is wider in scope than Article 111(4) of the current TEC, which reads as follows: 'Subject to paragraph 1 [which refers to exchange-rate agreements], the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, shall decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and on its representation, in compliance with the allocation of powers laid down in Articles 99 and 105.' The current Article is already restricted in scope to Eurozone countries.

CHAPTER 4 5

TRANSITIONAL PROVISIONS

Article 116

~~1. The second stage for achieving economic and monetary union shall begin on 1 January 1994.~~

~~2. Before that date:~~

~~(a) - each Member State shall:~~

- ~~- - adopt, where necessary, appropriate measures to comply with the prohibitions laid down in Article 56 and in Articles 101 and 102(1),~~
- ~~- - adopt, if necessary, with a view to permitting the assessment provided for in subparagraph (b), multiannual programmes intended to ensure the lasting convergence necessary for the achievement of economic and monetary union, in particular with regard to price stability and sound public finances;~~

~~(b) - the Council shall, on the basis of a report from the Commission, assess the progress made with regard to economic and monetary convergence, in particular with regard to price stability and sound public finances, and the progress made with the implementation of Community law concerning the internal market.~~

~~3. The provisions of Articles 101, 102(1), 103(1) and 104 with the exception of paragraphs 1, 9, 11 and 14 shall apply from the beginning of the second stage.~~

~~The provisions of Articles 100(2), 104(1), (9) and (11), 105, 106, 108, 111, 112, 113 and 114(2) and (4) shall apply from the beginning of the third stage.~~

~~4. In the second stage, Member States shall endeavour to avoid excessive government deficits.~~

~~5. During the second stage, each Member State shall, as appropriate, start the process leading to the independence of its central bank, in accordance with Article 109.~~

This Article has been deleted because it is obsolete.

New Article 116 [139]
(III-197)

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as 'Member States with a derogation'.

2. The following provisions of the *Treaties* shall not apply to Member States with a derogation:

- (a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article 99(2));**
- (b) coercive means of remedying excessive deficits (Article 104(9) and (11));**
- (c) the objectives and tasks of the European System of Central Banks (Article 105(1), (2), (3) and (5));**
- (d) issue of the euro (Article 106);**
- (e) acts of the European Central Bank (Article 110);**
- (f) measures governing the use of the euro (Article 111);**
- (g) monetary agreements and other measures relating to exchange-rate policy (Article 188o);**
- (h) appointment of members of the Executive Board of the European Central Bank (Article 245b(2));**

- (i) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article 115a(1));
- (j) measures to ensure unified representation within the international financial institutions and conferences (Article 115a(2)).

In the Articles referred to in points (a) to (j), 'Member States' shall therefore mean Member States whose currency is the euro.

3. Under Chapter IX of the Statute of the European System of Central Banks and of the European Central Bank, Member States with a derogation and their national central banks are excluded from rights and obligations within the European System of Central Banks.

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, and in the following instances:

(a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article 99(4));

(b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article 104(6), (7), (8) and (11)).

A qualified majority of the other members of the Council shall be defined in accordance with Article 205 (3)(a).

This Article is nominally new, but in most cases listed in this Article, the current Article 122 TEC restricts voting rights to eurozone Member States already.

Article 117 (ex-121(1), 122(2) and 123(5)) [140]
(III-198)

~~1. At the start of the second stage, a European Monetary Institute (hereinafter referred to as "EMI") shall be established and take up its duties; it shall have legal personality and be directed and managed by a Council, consisting of a President and the Governors of the national central banks, one of whom shall be Vice-President.~~

~~The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognised standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President.~~

~~The Statute of the EMI is laid down in a Protocol annexed to this Treaty.~~

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ~~EMI~~ European Central Bank shall report to

the Council on ~~the progress made in the fulfilment by the Member States of their obligations~~ the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation ~~the national legislation of each of these Member States~~, including the statutes of its national central bank, and Articles 108 and 109 of this Treaty and the Statute of the ESCB and the ECB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

- the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,
- the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104(6),
- the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State euro,
- the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism of the European Monetary System being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to ~~this Treaty~~ the Treaties. The reports of the Commission and the EMI European Central Bank shall also take account of ~~the development of the ecu~~, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. ~~The EMI shall:~~

- ~~strengthen cooperation between the national central banks,~~
- ~~strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,~~
- ~~Monitor the functioning of the European Monetary System,~~
- ~~hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,~~
- ~~take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI,~~
- ~~facilitate the use of the ecu and oversee its development, including the smooth functioning of the ecu-clearing system.~~

2. After consulting the European Parliament and after discussion in ~~the Council, meeting in the composition of the Heads of State or Government~~ the European Council, the Council shall, acting by a qualified majority on a proposal from the

Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria ~~set out in Article 121(1)~~ laid down in paragraph 1, and abrogate the derogations of the Member States concerned.

The Council shall act having received a recommendation of a qualified majority of those among its members representing Member States whose currency is the euro. These members shall act within six months of the Council receiving the Commission's proposal.

A qualified majority of the said members, as referred to in the second subparagraph, shall be defined in conformity with Article 205 (3)(a).

~~3. For the preparation of the third stage, the EMI shall:~~

- ~~- - prepare the instruments and the procedures necessary for carrying out a single monetary policy in the third stage,~~
- ~~- - promote the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its field of competence,~~
- ~~- - prepare the rules for operations to be undertaken by the national central banks within the framework of the ESCB,~~
- ~~- - promote the efficiency of cross-border payments,~~
- ~~- - supervise the technical preparation of ecu banknotes.~~

~~At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in the third stage. This framework shall be submitted for decision to the ECB at the date of its establishment.~~

3. If it is decided, according to the procedure set out in Article 122(2) paragraph 2, to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB European Central Bank, adopt irrevocably fix the rate at which the ecu euro shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ecu euro as the single currency in the Member State concerned.

~~4. The EMI, acting by a majority of two thirds of the members of its Council, may:~~

- ~~- - formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State,~~
- ~~- - submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the European Monetary System,~~

- ~~make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.~~

~~5. The EMI, acting unanimously, may decide to publish its opinions and its recommendations.~~

~~6. The EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.~~

~~Within the limits and under the conditions set out by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence.~~

~~7. The Council may, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the EMI, confer upon the EMI other tasks for the preparation of the third stage.~~

~~8. Where this Treaty provides for a consultative role for the ECB, references to the ECB shall be read as referring to the EMI before the establishment of the ECB.~~

~~9. During the second stage, the term "ECB" used in Articles 230, 232, 233, 234, 237 and 288 shall be read as referring to the EMI.~~

This Article has been amended to take account of the establishment of monetary union. The new para. 1 is the current Article 121(1), with amendments. Most of the current para. 2 has been moved to Article 118(2), with amendments. The new para. 2 is the current Article 122(2), with amendments. The new para. 3 is the current Article 123(5) with amendments. The remaining paragraphs are obsolete. The only substantive change here is the power of the eurozone Member States to give a recommendation, separately from the rest of the Council, on whether a candidate for the eurozone is qualified to join it.

Article 118 (ex-123(3) and 117(2)) [141]
(III-199)

~~The currency composition of the ecu basket shall not be changed.~~

1. If and as long as there are Member States with a derogation, and without prejudice to Article 107(3) of this Treaty, the General Council of the ECB European Central Bank referred to in Article 45 of the Statute of the ESCB and the ECB shall be constituted as a third decision-making body of the ECB European Central Bank.

~~From the start of the third stage, the value of the ecu shall be irrevocably fixed in accordance with Article 123(4).~~

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

- strengthen cooperation between the national central banks,
- strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,
- monitor the functioning of the ~~European Monetary System~~ exchange rate

mechanism,

- hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,
- ~~take over the tasks of the European Monetary Cooperation Fund, which shall be dissolved; the modalities of dissolution are laid down in the Statute of the EMI,~~

carry out the former tasks of the European Monetary Cooperation Fund which had subsequently been taken over by the European Monetary Institute.

The existing text of Article 118 has been replaced by parts of two other Articles. This is not a substantive amendment, but a technical update in light of the establishment of monetary union.

Article **118a** (ex-124(1)) [142]
(III-200)

~~Until the beginning of the third stage, Each Member State with a derogation shall~~ treat its exchange-rate policy as a matter of common interest. In so doing, ~~Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field~~ of the exchange-rate mechanism.

This is not a substantive amendment, but a technical update in light of the establishment of monetary union, except for the clearer reference to the exchange-rate mechanism.

Article 119 [143]
(III-201)

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the common internal market or the progressive implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of ~~this Treaty~~ the Treaties. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Committee referred to in Article 114, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council, ~~acting by a qualified majority~~, shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:

- (a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;
- (b) measures needed to avoid deflection of trade where ~~the State which is in difficulties~~ the Member State with a derogation which is in difficulties maintains or reintroduces quantitative restrictions against third countries;
- (c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation which is in difficulties, to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council ~~acting by a qualified majority~~.

~~4. Subject to Article 122(6), this article shall cease to apply from the beginning of the third stage.~~

This is a technical update to take account of the fact that monetary union has now been set up. The limitation to Member States with a derogation was already provided for in the former paragraph 4 and the former Article 122(6).

Article 120 [144]
(III-202)

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) is not immediately taken, ~~the Member State concerned~~ a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the ~~common~~ internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 119.

3. After the Commission has delivered an ~~opinion~~ a recommendation and the Committee referred to in Article 114 has been consulted, the Council may, ~~acting by a qualified majority~~, decide that the State concerned shall amend, suspend or abolish the protective measures referred to above.

~~4. Subject to Article 122(6), this article shall cease to apply from the beginning of the third stage.~~

This is a technical update to take account of the fact that monetary union has now been set up. The limitation to Member States with a derogation was already provided for in the former paragraph 4 and the former Article 122(6).

Article 121

~~1. The Commission and the EMI shall report to the Council on the progress made in the fulfilment by the Member States of their obligations regarding the achievement of economic and monetary union. These reports shall include an examination of the compatibility between each Member State's national legislation, including the statutes of its national central bank, and Articles 108 and 109 of this Treaty and the Statute of the ESCB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:~~

- ~~- the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability;~~
- ~~- the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 104(6);~~
- ~~- the observance of the normal fluctuation margins provided for by the exchange rate mechanism of the European Monetary System, for at least two years, without devaluing against the currency of any other Member State;~~
- ~~- the durability of convergence achieved by the Member State and of its participation in the exchange rate mechanism of the European Monetary System being reflected in the long-term interest rate levels.~~

~~The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to this Treaty. The reports of the Commission and the EMI shall also take account of the development of the ecu, the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.~~

~~2. On the basis of these reports, the Council, acting by a qualified majority on a recommendation from the Commission, shall assess:~~

- ~~- for each Member State, whether it fulfils the necessary conditions for the adoption of a single currency;~~
- ~~- whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency;~~

~~and recommend its findings to the Council, meeting in the composition of the Heads of State or Government. The European Parliament shall be consulted and forward its opinion to the Council, meeting in the composition of the Heads of State or Government.~~

~~3. Taking due account of the reports referred to in paragraph 1 and the opinion of the European Parliament referred to in paragraph 2, the Council, meeting in the composition of the Heads of State or Government, shall, acting by a qualified majority, not later than 31 December 1996:~~

- ~~decide, on the basis of the recommendations of the Council referred to in paragraph 2, whether a majority of the Member States fulfils the necessary conditions for the adoption of a single currency,~~
- ~~decide whether it is appropriate for the Community to enter the third stage,~~

and if so:

- ~~set the date for the beginning of the third stage.~~

~~4. If, by the end of 1997, the date for the beginning of the third stage has not been set, the third stage shall start on 1 January 1999. Before 1 July 1998, the Council, meeting in the composition of the Heads of State or Government, after a repetition of the procedure provided for in paragraphs 1 and 2, with the exception of the second indent of paragraph 2, taking into account the reports referred to in paragraph 1 and the opinion of the European Parliament, shall, acting by a qualified majority and on the basis of the recommendations of the Council referred to in paragraph 2, confirm which Member States fulfil the necessary conditions for the adoption of a single currency.~~

Para. 1 has been moved, with amendments, to Article 117(1). The rest of the Article has been repealed, since it is clearly obsolete.

Article 122

~~1. If the decision has been taken to set the date in accordance with Article 121(3), the Council shall, on the basis of its recommendations referred to in Article 121(2), acting by a qualified majority on a recommendation from the Commission, decide whether any, and if so which, Member States shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as "Member States with a derogation".~~

~~If the Council has confirmed which Member States fulfil the necessary conditions for the adoption of a single currency, in accordance with Article 121(4), those Member States which do not fulfil the conditions shall have a derogation as defined in paragraph 3 of this Article. Such Member States shall in this Treaty be referred to as "Member States with a derogation".~~

~~2. At least once every two years, or at the request of a Member State with a derogation, the Commission and the ECB European Central Bank shall report to the Council in accordance with the procedure laid down in Article 121(1). After consulting the European Parliament and after discussion in the Council, meeting in the composition of the Heads of State or Government, the Council shall, acting by a qualified majority on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in Article 121(1), and abrogate the derogations of the Member States concerned.~~

~~3. A derogation referred to in paragraph 1 shall entail that the following articles do not apply to the Member State concerned: Articles 104(9) and (11), 105(1), (2), (3) and (5), 106, 110, 111, and 112(2)(b). The exclusion of such a Member State and its national central bank from rights and obligations within the ESCB is laid down in Chapter IX of the Statute of the ESCB.~~

~~4. In Articles 105(1), (2) and (3), 106, 110, 111 and 112(2)(b), "Member States" shall be read as "Member States without a derogation".~~

~~5. The voting rights of Member States with a derogation shall be suspended for the Council decisions referred to in the articles of this Treaty mentioned in paragraph 3. In that case, by way of derogation from Articles 205 and 250(1), a qualified majority shall be defined as two thirds of the votes of the representatives of the Member States without a derogation weighted in accordance with Article 205(2), and unanimity of those Member States shall be required for an act requiring unanimity.~~

~~6. Articles 119 and 120 shall continue to apply to a Member State with a derogation.~~

The second sentence of para. 2 has been moved, with amendments, to Article 117(2). The rest of the Article has been repealed, but is implicitly incorporated into Articles 116, 119 and 120, which govern the position of Member States with a derogation.

Article 123

~~1. Immediately after the decision on the date for the beginning of the third stage has been taken in accordance with Article 121(3), or, as the case may be, immediately after 1 July 1998:~~

- ~~- the Council shall adopt the provisions referred to in Article 107(6),~~
- ~~- the governments of the Member States without a derogation shall appoint, in accordance with the procedure set out in Article 50 of the Statute of the ESCB, the President, the Vice-President and the other members of the Executive Board of the ECB. If there are Member States with a derogation, the number of members of the Executive Board may be smaller than provided for in Article 11.1 of the Statute of the ESCB, but in no circumstances shall it be less than four.~~

~~As soon as the Executive Board is appointed, the ESCB and the ECB shall be established and shall prepare for their full operation as described in this Treaty and the Statute of the ESCB. The full exercise of their powers shall start from the first day of the third stage.~~

~~2. As soon as the ECB is established, it shall, if necessary, take over tasks of the EMI. The EMI shall go into liquidation upon the establishment of the ECB; the modalities of liquidation are laid down in the Statute of the EMI.~~

~~3. If and as long as there are Member States with a derogation, and without prejudice to Article 107(3) of this Treaty, the General Council of the ECB referred to in Article 45 of the Statute of the ESCB shall be constituted as a third decision-making body of the ECB.~~

~~4. At the starting date of the third stage, the Council shall, acting with the unanimity of the Member States without a derogation, on a proposal from the Commission and after consulting the ECB, adopt the conversion rates at which their currencies shall be irrevocably fixed and at which irrevocably fixed rate the ecu~~

~~shall be substituted for these currencies, and the ecu will become a currency in its own right. This measure shall by itself not modify the external value of the ecu. The Council, acting by a qualified majority of the said Member States, on a proposal from the Commission and after consulting the ECB, shall take the other measures necessary for the rapid introduction of the ecu as the single currency of those Member States. The second sentence of Article 122(5) shall apply.~~

~~5. If it is decided, according to the procedure set out in Article 122(2), to abrogate a derogation, the Council shall, acting with the unanimity of the Member States without a derogation and the Member State concerned, on a proposal from the Commission and after consulting the ECB, adopt the rate at which the ecu shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the ecu as the single currency in the Member State concerned.~~

Paragraph 3 has been moved to Article 117(1), and paragraph 5 has been moved to Article 118(3); the rest of the Article has been repealed. This is a technical update to take account of the fact that monetary union has now been set up. The power to adopt rules on the introduction of the euro (the third sentence of paragraph 4) has implicitly been moved, with amendments, to Article 111.

~~Article 124~~

~~1. Until the beginning of the third stage, each Member State shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ecu, and shall respect existing powers in this field.~~

~~2. From the beginning of the third stage and for as long as a Member State has a derogation, paragraph 1 shall apply by analogy to the exchange-rate policy of that Member State.~~

The first paragraph has been moved to Article 118a; the second paragraph has been repealed. This is a technical update to take account of the fact that monetary union has now been established.

TITLE VIII

EMPLOYMENT

Article 125 [145] (III-203)

Member States and the ~~Community~~ **Union** shall, in accordance with this title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 2 ~~3~~ of the Treaty on European Union and in Article 2 of this Treaty.

Article 126 [146] (III-204)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 125 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community Union adopted pursuant to Article 99(2).

2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 128.

Article 127 [147]
(III-205)

1. The Community Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community Union policies and activities.

Article 128 [148]
(III-206)

1. The European Council shall each year consider the employment situation in the Community Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, ~~acting by a qualified majority~~ on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2).

3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, ~~acting by a qualified majority~~ on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community Union and on the implementation of the guidelines for employment.

Article 129 [149]
(III-207)

~~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, and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

Article 130 [150]
(III-208)

The Council, acting by a simple majority, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

- to monitor the employment situation and employment policies in the Member States and the ~~Community~~ Union,
- without prejudice to Article 207, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 128.

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

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

~~TITLE IX~~

~~COMMON COMMERCIAL POLICY~~

~~*Article 131*~~

~~By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.~~

~~The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.~~

~~*Article 132*~~

~~1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.~~

~~On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.~~

~~2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.~~

~~Article 133~~

~~1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.~~

~~2. The Commission shall submit proposals to the Council for implementing the common commercial policy.~~

~~3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.~~

~~The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.~~

~~The relevant provisions of Article 300 shall apply.~~

~~4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.~~

~~5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.~~

~~By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which~~

~~the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.~~

~~The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.~~

~~This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.~~

~~6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.~~

~~In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.~~

~~The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.~~

~~7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.~~

Article 134

~~In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.~~

~~In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.~~

~~In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.~~

These provisions have been moved, with amendments, to the new Part Five on external action (see Articles 188b and 188c).

~~TITLE X~~

~~CUSTOMS COOPERATION~~

*Article 135
(III-152)*

~~Within the scope of application of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.~~

In accordance with the Constitutional Treaty, this Article has been moved, with amendments, to become Article 27a in the internal market provisions.

~~TITLE XI~~

~~SOCIAL POLICY, EDUCATION, VOCATIONAL TRAINING AND YOUTH~~

~~CHAPTER 1~~

~~SOCIAL PROVISIONS~~

TITLE IX

SOCIAL POLICY

*Article 136 [151]
(III-209)*

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

To this end the ~~Community~~ Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the ~~Community~~ Union economy.

They believe that such a development will ensue not only from the functioning of the ~~common~~ internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in ~~this Treaty~~ the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.

Article 136a [152]

(I-48)

The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.

This new clause from Part I of the Constitutional Treaty (where it had been part of Title VI, on 'The democratic life of the Union') has been inserted into the social policy provisions of the TEC/TFEU. It will now be subject to the simplified revision procedure in Article 33 TEU. In the Constitutional Treaty, this Article had a title: 'The social partners and autonomous social dialogue'.

Article 137 [153]

(III-210)

1. With a view to achieving the objectives of Article 136, the ~~Community~~ **Union** shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) Social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in ~~Community~~ **Union** territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the ~~Council~~ **the European Parliament and the Council**:

- (a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
- (b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of

small and medium-sized undertakings.

~~The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees.~~

The European Parliament and the Council shall act in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions.

In the fields referred to in paragraph 1(c), (d), (f) and (g) of this Article, the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.

The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this article.

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, **or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 139.**

In this case, it shall ensure that, no later than the date on which a ~~directive must be transposed in accordance with Article 249,~~ **directive or decision must be transposed or implemented,** management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive **or that decision.**

4. The provisions adopted pursuant to this article:

- shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,
- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with ~~this Treaty~~ **the Treaties.**

5. The provisions of this article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

The amendments to this Article are not substantive.

Article 138 [154]
(III-211)

1. The Commission shall have the task of promoting the consultation of management and labour at ~~Community~~ **Union** level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community Union action.

3. If, after such consultation, the Commission considers Community Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. ~~On the occasion of such consultation,~~ On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of ~~the procedure~~ this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 139 [155]
(III-212)

1. Should management and labour so desire, the dialogue between them at Community Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Community Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.

~~The Council shall act by qualified majority, except~~ The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 137(2). ~~In that case, it shall act unanimously.~~

The amendments do not extend qualified majority voting here. The role of the EP has increased marginally.

Article 140 [156]
(III-213)

With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of ~~this Treaty~~ the Treaties, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organizations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Before delivering the opinions provided for in this article, the Commission shall consult the Economic and Social Committee.

This Article is clarified, in common with several similar articles, to summarise the Commission's supplementary role.

*Article 141 [157]
(III-214)*

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

3. ~~The Council, acting in accordance with the procedure referred to in Article 254,~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

*Article 142 [158]
(III-215)*

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

*Article 143 [159]
(III-216)*

The Commission shall draw up a report each year on progress in achieving the objectives of Article 136, including the demographic situation in the ~~Community~~ Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

~~The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.~~

Article 144 [160]
(III-217)

The Council, after consulting the European Parliament, shall by a simple majority establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The tasks of the Committee shall be:

- to monitor the social situation and the development of social protection policies in the Member States and the ~~Community~~ Union,
- to promote exchanges of information, experience and good practice between Member States and with the Commission,
- without prejudice to Article 207, to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

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

Article 145 [161]
(III-218)

The Commission shall include a separate chapter on social developments within the ~~Community~~ Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

CHAPTER 2 TITLE X

THE EUROPEAN SOCIAL FUND

Article 146 [162]
(III-219)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the ~~Community~~ Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article 147 [163]
(III-219)

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

Article 148 [164]
(III-219)

~~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, and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing ~~decisions~~
regulations relating to the European Social Fund.

The Constitutional Treaty merged these three Articles; the draft Reform Treaty would not.

CHAPTER 3-TITLE XI

EDUCATION, VOCATIONAL TRAINING, AND YOUTH AND SPORT

Article 149 [165]
(III-282)

1. The ~~Community~~**Union** shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. ~~Community~~**Union** action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socioeducational instructors **and encouraging the participation of young people in democratic life in Europe**,
- encouraging the development of distance education;

- **developing the European dimension in sport, by promoting fairness and**

openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The ~~Community~~ Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article, ~~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 Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, acting ~~by a qualified majority~~ on a proposal from the Commission, shall adopt recommendations.

New provisions on sport have been added. It should be noted that it is not possible to harmonise national laws in this area (see para. 4).

Article 150 [166]
(III-283)

1. The ~~Community~~ Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

2. ~~Community~~ Union action shall aim to:

- facilitate adaptation to industrial changes, in particular through vocational training and retraining,
- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,
- facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people,
- stimulate cooperation on training between educational or training establishments and firms,
- develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The ~~Community~~ Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

4. ~~The Council, acting in accordance with the procedure referred to in Article 251~~ and **The European Parliament and the Council, acting in accordance with the ordinary legislative procedure**, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this article, excluding any harmonisation of the laws and regulations of the Member States, **and the Council, on a proposal from the Commission, shall adopt recommendations.**

TITLE XII

CULTURE

Article 151 [167]
(III-280)

1. The ~~Community~~-**Union** shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the ~~Community~~-**Union** shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples,
- conservation and safeguarding of cultural heritage of European significance,
- non-commercial cultural exchanges,
- artistic and literary creation, including in the audiovisual sector.

3. The ~~Community~~-**Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The ~~Community~~-**Union** shall take cultural aspects into account in its action under other provisions of ~~this Treaty~~ **the Treaties**, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article, ~~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**, and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. ~~The Council shall act unanimously throughout the procedure referred to in Article 251,~~
- **the Council**, acting ~~unanimously~~ on a proposal from the Commission, shall adopt recommendations.

Unanimity in the Council has been dropped here.

TITLE XIII

PUBLIC HEALTH

Article 152 [168]
(III-278)

1. A high level of human health protection shall be ensured in the definition and implementation of all ~~Community~~ **Union** policies and activities.

~~Community~~ **Union** action, which shall complement national policies, shall be directed towards improving public health, preventing human **physical and mental** illness and diseases, and obviating sources of danger to human **physical and mental** health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, **and monitoring, early warning of and combating serious cross-border threats to health.**

The ~~Community~~ **Union** shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The ~~Community~~ **Union** shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. **It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.**

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, **in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.**

3. The ~~Community~~ **Union** and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. **By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) The Council, acting in accordance with the procedure referred to in Article 254 the European Parliament and the Council, acting in accordance with the ordinary legislative procedure,** and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this article through adopting **in order to meet common safety concerns:**

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) ~~by way of derogation from Article 37,~~ measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
- (c) ~~incentive measures designed to protect and improve human health, excluding~~

~~any harmonisation of the laws and regulations of the Member States.~~

measures setting high standards of quality and safety for medicinal products and devices for medical use.

5. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions and the Economic and Social Committee, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, as well as measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States.

~~6. The Council, acting by a qualified majority on a proposal from the Commission, may also adopt recommendations for the purposes set out in this article.~~

~~5. 7. Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.~~

Union action in the field of public health shall fully respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care, and the allocation of the resources assigned to them. The measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

The amendments: add a reference to 'physical and mental' health; refer to action on monitoring, etc. public health; encourage cooperation on cross-border health services; make the Commission's role clearer; create a specific legal base for legislation on medical products and medical devices; set out in more detail the power to adopt incentive measures; and clarify further the boundary between EU and Member State competences in this area.

In accordance with the Reform Treaty mandate, the new express EU competence concerning serious cross-border health threats has been moved from a shared power (ie a power for the EU to harmonise national law) to a supporting power only. Also, a declaration clarifying the internal market aspects of the new express power to harmonise law concerning medical devices, etc. is attached to the draft Reform Treaty. In fact, Article 95 EC is used at present to adopt legislation on this issue, so the 'new' legal base on this issue is not new in practice.

The draft Reform Treaty has also added a reference to the financing of health services.

TITLE XIV

CONSUMER PROTECTION

Article 153 [169]
(III-235)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the ~~Community~~Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

~~2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.~~

~~3.~~ 2. The ~~Community~~Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

- (a) measures adopted pursuant to Article ~~95~~ 94 in the context of the completion of the internal market;
- (b) measures which support, supplement and monitor the policy pursued by the Member States.

~~4.~~ 3. ~~The Council, acting in accordance with the procedure referred to in Article 254~~ The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph ~~3~~ 2(b).

~~5.~~ 4. Measures adopted pursuant to paragraph ~~4~~ 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with ~~this Treaty~~ the Treaties. The Commission shall be notified of them.

Article 153(2) has been moved to the general provisions in Part One of the Treaty, without amendments (see Statewatch Reform Treaty analysis 3.1).

TITLE XV

TRANS-EUROPEAN NETWORKS

Article 154 [170]
(III-246)

1. To help achieve the objectives referred to in Articles 14 and 158 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the ~~Community~~Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the ~~Community~~Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the ~~Community~~Union.

Article 155 [171]
(III-247(1), (3) and (4))

1. In order to achieve the objectives referred to in Article 154, the ~~Community~~ **Union**:

- shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,
- shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,
- may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the ~~Community~~ **Union** may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

The ~~Community's~~ **Union's** activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 154. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The ~~Community~~ **Union** may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 156 [172]
(III-247(2))

The guidelines and other measures referred to in Article 155(1) shall be adopted by 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**, and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

TITLE XVI

INDUSTRY

Article 157 [173]
(III-279)

1. The ~~Community~~ **Union** and the Member States shall ensure that the conditions necessary for the competitiveness of the ~~Community's~~ **Union's** industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- speeding up the adjustment of industry to structural changes,
- encouraging an environment favourable to initiative and to the development of undertakings throughout the ~~Community~~Union, particularly small and medium-sized undertakings,
- encouraging an environment favourable to cooperation between undertakings,
- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The ~~Community~~Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of this Treaty ~~the Treaties~~. ~~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, and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

This title shall not provide a basis for the introduction by the ~~Community~~Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

TITLE XVII

ECONOMIC, TERRITORIAL AND SOCIAL COHESION

Article 158 [174]
(III-220)

In order to promote its overall harmonious development, the ~~Community~~Union shall develop and pursue its actions leading to the strengthening of its economic, territorial and social cohesion.

In particular, the ~~Community~~Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions ~~or islands, including rural areas.~~

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

The amendment clarifies which areas should have priority.

Article 159 [175]
(III-221)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the ~~Community's~~ Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The ~~Community-Union~~ shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other ~~Community-Union~~ policies, such actions may be adopted by 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, and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 160 [176]
(III-222)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the ~~Community-Union~~ through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 161 [177]
(III-223)

Without prejudice to Article 162, the ~~Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament~~ the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. ~~The Council, acting by the same procedure, shall also~~

~~define~~ The general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments **shall also be defined by the same procedure.**

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

~~From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.~~

The Article now reflects the move to QMV which took place, under the existing legal framework, at the start of 2007. It also changes the EP's role from consent to co-decision. Article III-223(2) of the Constitutional Treaty, which provided for unanimous voting and consent of the EP up until 1 Jan. 2007, has not been inserted into the TEC/TFEU, since it has become redundant.

Article 162 [178]
(III-224)

Implementing ~~decisions~~ **regulations** relating to the European Regional Development Fund shall be taken by ~~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**, and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 and 148 respectively shall continue to apply.

TITLE XVIII

RESEARCH AND TECHNOLOGICAL DEVELOPMENT AND SPACE

Article 163 [179]
(III-248)

~~1. The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other chapters of this Treaty.~~

1. The Union shall have the objective of strengthening its scientific and technological base by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the

research activities deemed necessary by virtue of other Chapters of the Treaties.

2. For this purpose the ~~Community~~ Union shall, throughout the ~~Community~~ Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at permitting researchers to cooperate freely across borders and enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All ~~Community~~ Union activities under ~~this Treaty~~ the Treaties in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this title.

The objectives of EU research policy have been clarified somewhat.

Article 164 [180]
(III-249)

In pursuing these objectives, the ~~Community~~ Union shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of ~~Community~~ Union research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in ~~Community~~ Union research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the ~~Community~~ Union.

Article 165 [181]
(III-250)

1. The ~~Community~~ Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and ~~Community~~ Union policy are mutually consistent, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

The role of the Commission has been clarified, in common with other similar provisions.

Article 166 [182]
(III-251)

1. A multiannual framework programme, setting out all the activities of the Community, shall be adopted by 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 Economic and Social Committee.

The framework programme shall:

- establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 and fix the relevant priorities,
- indicate the broad lines of such activities,
- fix the maximum overall amount and the detailed rules for ~~Community~~ **Union** financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, acting **in accordance with a special legislative procedure** ~~by a qualified majority on a proposal from the Commission~~ and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

5. As a complement to the activities planned in the multiannual framework programme, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the measures necessary for the implementation of the European research area.

Paragraph 4 is not a substantive amendment, but it is the second case of the Council adopting legislation by QMV, without co-decision of the EP. Paragraph 5 is entirely new.

Article 167 [183]
(III-252)

For the implementation of the multiannual framework programme the ~~Council~~ **Union** shall:

- determine the rules for the participation of undertakings, research centres and universities,
- lay down the rules governing the dissemination of research results.

Article 168 [184]
(III-252)

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible ~~Community~~ **Union** participation.

The ~~Council~~ **Union** shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

Article 169 [185]
(III-252)

In implementing the multiannual framework programme, the ~~Community~~ **Union** may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 170 [186]
(III-252)

In implementing the multiannual framework programme the ~~Community~~ **Union** may make provision for cooperation in ~~Community~~ **Union** research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the ~~Community~~ **Union** and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article 300.~~

Article 171 [187]
(III-253)

The ~~Community~~ **Union** may set up joint undertakings or any other structure necessary for the efficient execution of ~~Community~~ **Union** research, technological development and demonstration programmes.

Article 172 [188]
(III-252)

The Council, ~~acting by qualified majority~~ on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.

~~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**, and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

The Constitutional Treaty merged Articles 167-170 and 172. The draft Reform Treaty does not.

Article 172a [189]
(III-254)

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.

3. The Union shall establish any appropriate relations with the European Space Agency.

4. This Article shall be without prejudice to the other provisions of this Title.

This is a new clause. However, in accordance with the Reform Treaty mandate, harmonisation of national law has been ruled out.

Article 173 [190]
(III-255)

At the beginning of each year the Commission shall send a report to the European Parliament and to the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

TITLE XIX

ENVIRONMENT

Article 174 [191]
(III-233)

1. **Community Union** policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, **and in particular combating climate change.**

2. **Community Union** policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of

the ~~Community~~ Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a ~~Community inspection procedure~~ a procedure of inspection by the Union.

3. In preparing its policy on the environment, the ~~Community~~ Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the ~~Community~~ Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the ~~Community~~ Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the ~~Community~~ Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for ~~Community~~ Union cooperation may be the subject of agreements between the ~~Community~~ Union and the third parties concerned, ~~which shall be negotiated and concluded in accordance with Article 300.~~

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

The reference to climate change was added as part of the Reform Treaty mandate.

Article 175 [192]
(III-234)

1. ~~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**, and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the ~~Community~~ Union in order to achieve the objectives referred to in Article 174.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article ~~95~~ 94, the Council, acting in accordance with a special legislative procedure unanimously ~~on a proposal from the Commission~~ and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

- (a) provisions primarily of a fiscal nature;
- (b) measures affecting:
 - town and country planning,
 - quantitative management of water resources or affecting, directly or

- indirectly, the availability of those resources,
 - land use, with the exception of waste management;
- (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

~~The Council may, under the conditions laid down in the first subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.~~

The Council, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may decide to make the ordinary legislative procedure applicable to the areas referred to in the first subparagraph.

~~3. In other areas, General action programmes setting out priority objectives to be attained shall be adopted by 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, and after consulting the Economic and Social Committee and the Committee of the Regions.~~

~~The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.~~

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or paragraph 2, as the case may be.

4. Without prejudice to certain measures of a Community nature **certain measures adopted by the Union**, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, ~~the Council shall, in the act adopting that measure, lay down~~ **such measure shall lay down** appropriate provisions in the form of:

- temporary derogations, and/or
- financial support from the Cohesion Fund set up pursuant to Article 161.

The amendment to paragraph 2 means that any use of the existing 'passerelle' provision to extend QMV to the areas governed by unanimity will also entail an extension of the co-decision procedure. The amendment to paragraph 5 is a technical error, as the revised text is ungrammatical.

Article 176 [193]
(III-235)

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with ~~this Treaty~~ the Treaties. They shall be notified to the Commission.

TITLE XX

ENERGY

Article 176a [194]
(III-256)

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union; and
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary in order to attain the objectives referred to in paragraph 1. Such measures shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 175(2)(c).

3. By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.

This is a new clause. The words in italics are added in accordance with the Reform Treaty. It should be noted that at under the current Treaties, the EC already is involved in energy policy issues via means of internal market and environmental legislation. Measures concerning atomic energy will continue to be adopted pursuant to the separate Euratom Treaty.

TITLE XXI

TOURISM

Article 176b [195]
(III-281)

1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector.

To that end, Union action shall be aimed at:

- (a) encouraging the creation of a favourable environment for the development of undertakings in this sector;
- (b) promoting cooperation between the Member States, particularly by the exchange of good practice.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.

This is a new provision.

TITLE XXII

CIVIL PROTECTION

Article 176c [196]
(III-284)

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

- (a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;
- (b) promote swift, effective operational cooperation within the Union between national civil-protection services;
- (c) promote consistency in international civil-protection work.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

This is a new provision, inserted in accordance with the Constitutional Treaty. The EC already has an active civil protection policy; measures are currently adopted on the basis of Article 308 TEC (the 'flexibility clause' or 'residual powers clause'), entailing unanimity in the Council and consultation of the EP.

TITLE XXIII

ADMINISTRATIVE COOPERATION

Article 176d [197]
(III-285)

1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.

This is a new provision.

TITLE XX

DEVELOPMENT COOPERATION

Article 177

~~1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:~~

- ~~- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,~~
- ~~- the smooth and gradual integration of the developing countries into the world economy,~~
- ~~- the campaign against poverty in the developing countries.~~

~~2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.~~

~~3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.~~

Article 178

~~The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.~~

Article 179

~~1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.~~

~~2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.~~

~~3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.~~

Article 180

~~1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.~~

~~2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.~~

Article 181

~~Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.~~

~~The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.~~

TITLE XXI

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article 181a

~~1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.~~

~~Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.~~

~~2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.~~

~~3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.~~

~~The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.~~

These two Titles have been moved to the new Part Five on external relations, to become Articles 188d to 188h, with amendments. See Statewatch Reform Treaty analysis 3.5.

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