



Statewatch analysis

EU Reform Treaty Analysis no. 3.7:

Revised text of Part Seven of the Treaty establishing the European Community (TEC): Final provisions

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Introduction

The following text sets out what will be the text of the final provisions of the revised Part Three of the Treaty establishing the European Community (TEC) following the amendments to be agreed by the planned Reform Treaty. This text is based on the draft Reform Treaty released on 23 July 2007, and incorporates the amendments which are proposed by this draft Treaty to the current TEC into the current TEC text.

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

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

The commentary on the Articles gives more detail on which Treaty provisions would be amended, and compares the text in detail to the text of the Constitutional Treaty (OJ 2004 C 310). The changes which stem from the Reform Treaty mandate are also discussed further in the commentary.

Some further changes to the text are possible before the final agreement upon it (planned for 18-19 October) and possibly even further changes could be made before signature of the Treaty - which is likely on 13 December (the planned date of an EU summit meeting), if the IGC concludes as planned in October.

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'; and
- the adoption of legislation other than by means of the co-decision procedure will be referred to as a 'special legislative procedure'.

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

This part of the Treaty contains a mixture of final provisions applicable to the entire current Treaty. The draft Reform Treaty would move some of these provisions to the Treaty on European Union (TEU) (although they still would be equally applicable to the TEC/TFEU) or to elsewhere in the TEC/TFEU. The draft Treaty would also repeal or amend some of the remaining provisions, and add new provisions.

Leaving aside Articles moved to the TEU or elsewhere in the TEC/TFEU, the substantive amendments to this Part of the TEC/TFEU in the draft Reform Treaty are as follows:

- a) co-decision shall apply to the adoption of the staff regulations;
- b) the current Article 293 TEC, concerning the negotiation of treaties in certain areas between Member States, would be repealed;
- c) Article 308 TEC, the 'residual powers' clause, would be amended;
- d) a new Article 308a would restrict the impact of the new simplified amendment procedure applicable to the Treaties; and
- e) it will be possible to alter the status of some associated territories, with the consent of the Member State concerned, without amending the Treaties (Article 313).

These amendments are in accordance with the Constitutional Treaty, except that the amended Article 308 would not apply to foreign policy.

It should also be recalled that the final provisions will now also be applicable to the second and third pillars (except for the non-application of Article 308 to foreign policy; also, Article 290 has always applied to the TEU and the TEU contains provisions identical to the current Articles 312-314). This is particularly important for Articles 285, 287, 288, 291, 292, 296-298 and 307.

PART SIX SEVEN

GENERAL AND FINAL PROVISIONS

~~Article 281~~
(1-7)

~~The Community shall have legal personality.~~

This Article has been repealed, because the EC's legal personality is now subsumed within the legal personality of the Union, as set out in the TEU.

Article 282 [334]
(III-426)

In each of the Member States, the ~~Community~~ Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the ~~Community~~ Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

The final line is new.

Article 283 [335]
(III-427)

~~The Council shall, acting by a qualified majority on a proposal from the Commission~~
The European Parliament and the Council, shall acting in accordance with the ordinary legislative procedure on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of ~~those Communities~~ the Union.

The co-decision procedure is extended to this Article.

Article 284 [336]
(III-428)

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of ~~this Treaty~~ the Treaties, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article 285 [337]
(III-429)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, ~~the Council, acting in accordance with the procedure referred to in Article 251,~~ **the European Parliament and the Council, acting in accordance with the ordinary legislative procedure**, shall adopt measures for the production of statistics where necessary for the performance of the activities of the ~~Community~~ **Union**.
2. The production of ~~Community~~ **Union** statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

~~Article 286~~
~~(I-51)~~

- ~~1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.~~
- ~~2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.~~

This Article has been moved, with amendments, to the citizenship Part of the Treaty. See Statewatch Reform treaty analysis 3.2.

Article 287 [338]
(III-430)

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

Article 288 [339]
(III-431)

The contractual liability of the ~~Community~~ **Union** shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the ~~Community~~ **Union** shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

~~The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.~~

Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

The personal liability of its servants towards the ~~Community~~ Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of employment applicable to them.

This amendment is not substantive.

Article 289 [340]
(III-432)

The seat of the institutions of the ~~Community~~ Union shall be determined by common accord of the governments of the Member States.

Article 290 [341]
(III-433)

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

Article 291 [342]
(III-434)

The ~~Community~~ Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European ~~Communities~~ Union. The same shall apply to the European Central Bank, ~~the European Monetary Institute~~, and the European Investment Bank.

The European Monetary Institute ceased operations in 1998. This Article now applies to the second and third pillars.

Article 292 [343]
(III-375(2))

Member States undertake not to submit a dispute concerning the interpretation or application of ~~this Treaty~~ the Treaties to any method of settlement other than those provided for therein.

The Constitutional Treaty would have moved this Article to the section concerning the Court of Justice. The draft Reform Treaty would not. This Article now applies to the second and third pillars.

Article 293

~~Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:~~

- ~~the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals,~~
- ~~the abolition of double taxation within the Community,~~
- ~~the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries,~~
- ~~the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.~~

This Article will be repealed, as it has fallen into disuse since the Treaty of Amsterdam conferred competence on the EC as regards civil law.

*Article 294
(III-143)*

~~Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 48, without prejudice to the application of the other provisions of this Treaty.~~

This Article has been moved to the free movement provisions, to become Article 48a.

*Article 295 [344]
(III-425)*

~~This Treaty~~ ***The Treaties*** shall in no way prejudice the rules in Member States governing the system of property ownership.

*Article 296 [345]
(III-436)*

1. The provisions of ~~this Treaty~~ ***the Treaties*** shall not preclude the application of the following rules:

- (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the ~~common~~ ***internal*** market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

*Article 297 [346]
(III-131)*

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the ~~common~~-internal market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

*Article 298 [347]
(III-132)*

If measures taken in the circumstances referred to in Articles 296 and 297 have the effect of distorting the conditions of competition in the ~~common~~-internal market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in ~~this Treaty~~ the Treaties.

By way of derogation from the procedure laid down in Articles 226 and 227, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 296 and 297. The Court of Justice shall give its ruling in camera.

These provisions will now be applicable to the second and third pillar. The Constitutional Treaty would have moved the current Articles 297 and 298 TEC from the final provisions of the Treaty to the beginning of the internal market part of the Treaty. The draft Reform Treaty would not. This means that these provisions will not be subject to the possibility of a simplified revision pursuant to the new Article 33(2) TEU.

*Article 299 [348]
(III-424 and IV-440)*

~~1. This Treaty shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Republic of Slovakia, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.~~

~~2. The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.~~

~~However,~~ Taking account of the structural social and economic situation of ~~the French overseas departments,~~ Guadeloupe, French Guiana, Martinique, Réunion, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of

application of the present Treaty *the Treaties* to those regions, including common policies. *Such acts shall take the form of legislative acts when the legal base for the adoption of Union acts in the relevant field provides for the adoption of legislative acts.*

~~The Council shall, when adopting the relevant measures referred to in the second subparagraph, The acts referred to in the first paragraph shall take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal ~~Community~~ Union programmes.~~

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the ~~Community~~ Union legal order, including the internal market and common policies.

~~3. The special arrangements for association set out in part four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.~~

~~This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.~~

~~4. The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.~~

~~5. The provisions of this Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.~~

~~6. Notwithstanding the preceding paragraphs:~~

- ~~(a) - this Treaty shall not apply to the Faeroe Islands;~~
- ~~(b) - this Treaty shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;~~
- ~~(c) - this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.~~

Para. 1 has been moved to Article 37 TEU, while paragraphs 3 to 6 and part of paragraph 2 have been moved to Article 313 TEC below. The change to the remaining paragraph does not amount to a substantive amendment. The reference to the Council in the remaining third sub-paragraph probably needs to be amended as well.

Article 300
(III-325)

~~1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.~~

~~In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.~~

~~2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.~~

~~By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.~~

~~The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.~~

~~3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.~~

~~By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.~~

~~The Council and the European Parliament may, in an urgent situation, agree upon a time limit for the assent.~~

~~4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified~~

~~procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.~~

~~5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.~~

~~6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.~~

~~7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.~~

This Article has been moved, with amendments, to the new Part on external relations, to become Article 188n. See Statewatch Reform Treaty analysis 3.5.

*Article 301
(III-322)*

~~Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.~~

This Article has been moved, with amendments, to the new Part on external relations, to become Article 188k. See Statewatch Reform Treaty analysis 3.5.

*Article 302
(III-327)*

~~It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.~~

~~The Commission shall also maintain such relations as are appropriate with all international organisations.~~

This Article has been moved, with amendments, to the new Part on external relations, to become Article 188p. See Statewatch Reform Treaty analysis 3.5.

*Article 303
(III-327)*

~~The Community shall establish all appropriate forms of cooperation with the Council of Europe.~~

This Article has been moved, with amendments, to the new Part on external relations, to become Article 188p. See Statewatch Reform Treaty analysis 3.5.

Article 304
(III-327)

~~The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.~~

This Article has been moved, with amendments, to the new Part on external relations, to become Article 188p. See Statewatch Reform Treaty analysis 3.5.

Article 305

~~1. The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.~~

~~2. The provisions of this Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community.~~

Paragraph 1 has been dropped because it is obsolete following the expiry of the ECSC Treaty in 2002. Paragraph 2 has been moved to a new Article 106a(3) of the Euratom Treaty, which is inserted into that Treaty by Protocol 12 to the draft Reform Treaty.

Article 306 [349]
(IV-441)

The provisions of ~~this Treaty~~ the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of ~~this Treaty~~ the Treaties.

Article 307 [350]
(III-435)

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

To the extent that such agreements are not compatible with ~~this Treaty~~ the Treaties., the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under ~~this Treaty~~ the Treaties by each Member State form an integral part of the establishment of the Community Union and are thereby inseparably linked with the creation of common

institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

This Article is now applicable to the second and third pillars.

Article 308 [351]
(I-18)

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

1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.

2. Using the procedure for monitoring the subsidiarity principle referred to in [Article 5(3)] of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

4. This Article cannot serve as a basis for attaining an objective pertaining to the common foreign and security policy and shall respect the limits set out in Article 25 of the Treaty on European Union.

The new version of Article 308 comprises the text of Article I-18 of the Constitutional Treaty, with a new paragraph 4 added in the draft Reform Treaty. This new paragraph is a substantive change from the Constitutional Treaty, as it prevents this clause from applying to EU foreign policy, or from affecting EU foreign policy.

The other amendments confirm the existing practice and case law, as regards the wide scope of Article 308 (which would now also be applicable to the third pillar) and the limitation on using the Article to evade restrictions on harmonization of national law. The European Parliament would have the right of consent, rather than consultation, but unanimous voting in the Council would be retained. A reference to role of national parliaments has been added.

Several new legal bases have been added which will provide a specific legal base for some measures currently adopted on the basis of Article 308 (ie civil protection, European-wide intellectual property rights), but it will still be necessary to use this Article at least for certain measures where there is still no specific legal base (ie mergers legislation, as confirmed by a Protocol agreed as part of the Reform Treaty mandate, as well as the European Company Statute and

similar legal forms, and the EU's Fundamental Rights Agency and internal human rights funding programme).

It should be noted that either legislative or non-legislative measures could be adopted on the basis of this Article.

Article 308a [352]
(not in Constitutional Treaty)

Article [33(3)] of the Treaty on European Union shall not apply to the following Articles:

- 201b, point (a),
- 201b, point (b),
- 211,
- 256a(3), second sub-paragraph,
- 269, third and fourth sub-paragraphs,
- 270a(2),
- 308,
- 309, and
- 313(6).

In accordance with the Reform Treaty mandate, it is specified that the 'passerelle' procedure, providing for a simplified extension of qualified majority voting or the co-decision procedure, to be inserted into the TEU, does not apply to those provisions of the TEC/TFEU that would not have been subject to this special procedure under the Constitutional Treaty.

These Articles concern the European Council, the rotation system for the Commission, own resources, the multi-annual financial framework, the flexibility clause, the suspension of Member States, and changes to the territorial scope of the EU Treaties.

Five of the nine points listed here are incorrect. The references to Articles 201b, 211 and 313(6) are incorrect because these Articles refer to decision-making by the European Council, whereas Article 33(3) TEU can only be used to alter decision-making by the Council. Furthermore, Article 201b does not provide for unanimous voting or a special legislative procedure anyway. The reference to Article 256a(3) is also a technical error, as this provision is not a legal base.

It should be noted that Article 270a, concerning the multi-annual financial framework, is subject to a specific 'passerelle' clause.

Article 309 [353]
(1-59)

~~1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with Article 7(3) of the Treaty on European Union, these voting rights shall also be suspended with regard to this Treaty.~~

~~2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has~~

~~been determined in accordance with Article 7(2) of that Treaty, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.~~

~~The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.~~

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

~~4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).~~

~~This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.~~

For the purposes of Article 7 of the Treaty on European Union on the suspension of certain rights resulting from Union membership, the member of the European Council or of the Council representing the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of the one third or four fifths of Member States referred to in paragraphs 1 and 2 of that Article. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2 of that Article.

For the adoption of the decisions referred to in paragraphs 3 and 4 of that Article, a qualified majority shall be defined in accordance with Article 205(3)(b).

This new version of Article 309 contains the 'legal base' for voting on the suspension of a Member State. It has been moved here pursuant to the Reform Treaty mandate. This text is not a change of substance from the current rules.

*Article 310
(III-324)*

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

This Article has been moved, without amendments, to the new Part on external relations, to become Article 188 m. See Statewatch Reform Treaty analysis 3.5.

*Article 311
(IV-442)*

~~The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.~~

This Article has been moved to Article 36 TEU.

~~Article 312
(IV-446)~~

~~This Treaty is concluded for an unlimited period.~~

This Article has been moved to Article 38 TEU.

FINAL PROVISIONS

~~Article 313 (ex 299(2) to (6)) [354]
(IV-447)~~

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

~~This Treaty shall enter into force on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.~~

In addition to the provisions of Article 37 of the Treaty on European Union relating to the territorial scope of the Treaties, the following provisions shall apply:

~~2. 1. The provisions of this Treaty the Treaties shall apply to the French overseas departments, Guadeloupe, French Guiana, Martinique, Réunion, the Azores, Madeira and the Canary Islands, in accordance with Article 299.~~

~~3. 2. The special arrangements for association set out in part four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.~~

~~This Treaty The Treaties shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.~~

~~4. 3. The provisions of this Treaty the Treaties shall apply to the European territories for whose external relations a Member State is responsible.~~

~~5. 4. The provisions of this Treaty the Treaties shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.~~

~~6. 5. Notwithstanding the preceding paragraphs Article 37 of the Treaty on European Union and paragraphs 1 to 4:~~

- (a) ~~this Treaty~~ this Treaty *the Treaties* shall not apply to the Faeroe Islands;
- (b) ~~this Treaty~~ this Treaty *the Treaties* shall not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) ~~this Treaty~~ this Treaty *the Treaties* shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in ~~this Treaty~~ this Treaty *the Treaties* concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

6. The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission.

*The provisions on territorial scope now apply to the TEU as well; that Treaty previously had no clause on its territorial scope. A new paragraph 6 provides for a change in the status of certain territories without Treaty amendment, subject to the safeguards of unanimous voting and the initiative of the metropolitan countries concerned. This amendment does **not** concern any territory linked to the UK (Cyprus bases, Gibraltar, Isle of Man, or Channel Islands). The current Article 313 TEC has been moved to Article 40 TEU.*

Article 314 [355]
(IV-448)

~~This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.~~

~~Pursuant to the Accession Treaties, the Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovenian, Slovak, Spanish and Swedish versions of this Treaty shall also be authentic.~~

The final provisions of the Treaty on European Union shall apply to this Treaty.

This is a new provision, which is not found in the Constitutional Treaty either. It is necessary because the basic final provisions set out in Articles 311-314 of the current TEC will be moved to the TEU. The current Article 314 TEC has been moved to Article 41 TEU.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.

(List of signatories not reproduced)

